



AGENDA REPORT
October 9, 2018

Ordinance Amendments to Update Existing Septic Codes

SUBJECT:

Ordinance No. 2018-___, Ordinance Amendments to Update Existing Septic Codes

FISCAL IMPACT:

FY 17-18 – No Impact

FY 18-19 – No Impact

DEPT/OFFICE:

Natural Resources Management

REQUESTED ACTION:

It is requested that the Board of County Commissioner approve Ordinance No. 2018-___, codifying amendments to Chapters 46, 62 and 110.

SUMMARY EXPLANATION and BACKGROUND:

Attached please find for your approval Ordinance No. 2018-___, codifying amendments to Chapters 46, 62, and 110. Specifically:

- Deleting Secs. 46-61, 46-62, 46-63, 46-64, 46-65, 46-66, 46-68, 46-69, 46-70, and 46-86;
- Amending the title of Chapter 46 of Division 2. Permit;
- Amending Secs. 46-37, 46-38, 46-39, 46-82, 46-83, 62-602, 62-1946(4), 62-3666(14) and (15), 110-66(d)(7), 110-67(c), 110-91, and 110-143;
- Amending and renumbering Secs. 46-67 and 46-84; and
- Creating Sec. 46-40.

The attached Summary Matrix briefly describes the proposed ordinance modifications for 26 sections of code. At the May 22, 2018, regular meeting, the Board of County Commissioners (Board) approved Ordinance 2018-13, establishing a county-wide, 150-day moratorium within a defined overlay area on new conventional septic systems that do not provide a minimum 65% total nitrogen reduction.

During the moratorium, a study was contracted to quantify in finer detail the nitrogen loading impacts of septic systems to the IRL. Additionally, staff conducted an analysis of County ordinances related to septic systems. Staff identified sections of septic code in

Chapters 46, 62, and 110 that are no longer relevant to County responsibilities or need to be updated for consistency with the intent of Board direction. On September 25, 2018, the Board approved legislative intent to draft ordinance revisions to address the relevant code sections.

ATTACHMENTS:

Description

- ▣ **Summary Matrix - Chapters 46, 62, & 110 Ordinance Amendments**
- ▣ **CAO Ordinance Approval Sheet**
- ▣ **Draft Ordinance 2018-_____**

**Septic Ordinance Update Amendments
Summary Matrix**

CODE SECTION	PROPOSED AMENDMENTS	DESCRIPTION
Chapter 46. Article II - Onsite Sewage Treatment and Disposal Systems and Water Well Permitting	Modification of Article II title	Well permits no longer administered by the County.
<i>Chapter 46 - Environment. Article II - Onsite Sewage Treatment and Disposal Systems and Water Well Permitting. Division 1 - Generally</i>		
Sec. 46-37. - Penalty	Update for consistency	County code enforcement is administered through the Special Magistrate, not an enforcement board.
Sec. 46-38. - Declaration of Intent	Delete remnant/duplicative criteria & update for consistency	Establishes a nitrogen reduction overlay area and requires the use of alternative OSTDS to mitigate the impact of nitrogen in ground water in the Indian River Lagoon. Removes language related to Brevard County Health Department, Environmental Health Services and water wells. Removes language related to discontinued programs (e.g., County groundwater monitoring for RCRA).
Sec. 46-39. - Incorporation of applicable Florida Statutes and Florida Administrative Code sections	Delete remnant/duplicative criteria & update for consistency	Removes criteria regulated by FDOH. Updates terminology.
Sec. 46-40. Density restrictions	Use current criteria for administrative variances related to density restrictions	Eliminates the need for the County Onsite Sewage Disposal Variance Board established in Sec. 46-69.
Sec. 46-41. - Fees	Update for consistency and renumber	Terminology of Sec. 46-67 is updated and Section is renumbered to Sec. 46-41.
Sec. 46-42. - Appeals	Delete remnant/duplicative criteria and update for consistency and renumber.	Language of Sec. 46-84 is updated and Section is renumbered to Sec. 46-42.

**Septic Ordinance Update Amendments
Summary Matrix**

CODE SECTION	PROPOSED AMENDMENTS	DESCRIPTION
<i>Chapter 46. Article II. Division 2 - Permit (All section in this division will either be deleted or renumbered. Division 2 will be reserved for future use.)</i>		
Sec. 46-61. - Required; application generally	Delete in its entirety and mark as reserved	Permit no longer administered by the County.
Sec. 46-62. - Soil profile test	Delete in its entirety and mark as reserved	Permit no longer administered by the County.
Sec. 46-63. - Conditions for issuance	Delete in its entirety and mark as reserved	Permit no longer administered by the County.
Sec. 46-64. - Connection to the public sewer required	Delete in its entirety and mark as reserved	Permit no longer administered by the County.
Sec. 46-65. - Additional criteria for permits in limited capacity sewer service areas	Delete in its entirety and mark as reserved	Permit no longer administered by the County.
Sec. 46-66. - Onsite sewage disposal systems in commercial manufacturing and industrial areas	Delete in its entirety and mark as reserved	Permit no longer administered by the County.
Sec. 46-67. - Fees	Update for consistency and renumber	Terminology is updated. Renumbered to Sec. 46-41.
Sec. 46.68. - Suspension or revocation	Delete in its entirety and mark as reserved	Permit no longer administered by the County.
Sec. 46-69. - Variance board	Delete in its entirety and mark as reserved	Administrative waiver criteria consistent with current variance criteria is established in Sec. 46-40. Density restrictions. Variance board discontinued.
Sec. 46-70. - Well construction permits	Delete in its entirety and mark as reserved	Permit no longer administered by the County.

**Septic Ordinance Update Amendments
Summary Matrix**

CODE SECTION	PROPOSED AMENDMENTS	DESCRIPTION
<i>Chapter 46. Article II. Division 3 - Lake Washington Area</i>		
Sec. 46-82. - Minimum building area requirements, variance from the minimum building area requirements, habitable first floor elevations, and setbacks for the ordinary high water levels	Delete remnant/duplicative criteria, update for consistency	Removes duplicative criteria established in Chapter 62. Removes language related to the County Onsite Sewage Disposal Variance Board and establishes administrative variance criteria consistent with state standards. Revises minimum lot size in Sec. 46-82(1)a from 0.41 acre to 0.5 acre for consistency with FDOH criteria.
Sec. 46-83. - Exemptions	Update for consistency	Terminology is updated.
Sec. 46-84. - Appeals	Delete remnant/duplicative criteria and update for consistency	Updates language to reflect current appeals process. Removes language related to the County Onsite Sewage Disposal Variance Board. Renumbered to Sec. 46-42.
Sec. 46-86. - Administration	Delete in its entirety and mark as reserved	Removes language related to Brevard County Health Department, Environmental Health Services.
<i>Chapter 62 - Land Development Regulations. Article IV - Concurrency Management. Division 1 - Generally</i>		
Sec. 62-602. - Concurrency evaluation procedure	Delete remnant/duplicative criteria	Removes language related to the County Consumer Health Services Division.

**Septic Ordinance Update Amendments
Summary Matrix**

CODE SECTION	PROPOSED AMENDMENTS	DESCRIPTION
<i>Chapter 62. Article VI. Division 5 - Specific Criteria for Permitted Uses with Conditions and Conditional Uses. Subdivision III - Conditional Uses</i>		
Sec. 62-1946. - Security mobile home	Update for consistency	Updates language to reflect current septic standards. Terminology is updated.
<i>Chapter 62. Article X - Environmental Protection and Conservation. Division 3 - Surface Water Protection</i>		
Sec. 62-3666. - General provisions	Combine, streamline, and update Sec. 62-3666(14) & (15). Remove duplicative criteria.	The setback for septic systems along Class I, II and III waters, Outstanding Florida Waters, Aquatic Preserves, and conditionally approved Class III shellfish harvesting waters remains at 100 feet. Language is modified to allow a reduced setback for lots with insufficient lot depth regardless of the age of the lot. Remove language related to advanced wastewater treatment, now established in Sec. 46-89.
<i>Chapter 110- Utilities. Article II - Water and Sewer Systems. Division 2 - Sewage Disposal Generally</i>		
Sec. 110-66. - Use of public sewer required	Update for consistency	Terminology is updated.
Sec. 110-67. - Private sewage disposal.	Update for consistency	Terminology is updated.

**Septic Ordinance Update Amendments
Summary Matrix**

CODE SECTION	PROPOSED AMENDMENTS	DESCRIPTION
<i>Chapter 110. Article II. Division 3 - Sewer Connections. Subdivision I - General Provisions</i>		
Section 110-91. - Definitions	Update for consistency	Terminology is updated.
<i>Chapter 110. Article II. Division 3. Subdivision II - Permit</i>		
Sec. 110-143. - Limited capacity service area septic tank permits and package facility permits	Update for consistency	Terminology is updated.

Brevard County Attorney
Ordinance Approval Sheet

SECTION I

The following information must be completed on all ordinances submitted to the Board:

Ordinance Name: Ordinance 2018-___, AMENDING THE TITLE OF CH. 46 OF DIVISION 2. PERMIT; AMENDING SECS. 46-37, 46-38, 46-39, 46-67, 46-82, 46-83, 46-84, 62-602, 62-1946(4), 62-3666(14) & (15), 110-66(d)(7), 110-67(c), 110-91, & 110-143; CREATING SEC. 46-40; DELETING SECS. 46-61, 46-62, 46-63, 46-64, 46-65, 46-66, 46-68, 46-69, 46-70, & 46-86		Ordinance Author: Darcie McGee
Division Name: Natural Resources Management Department	Review Deadline: 09/26/18	
Sent by: Darcie McGee		
Dept./Office Director: Virginia Barker Asst. Director, Environmental Protection: Darcie McGee		
Meeting Dates: LPA – 10/08/18	BCC 10/09/18	Advertising Deadline: 10/01/18

SECTION II

COUNTY OFFICE

	APPROVAL	INITIALS	DATE
	Yes No		
County Attorney's Office	<input checked="" type="checkbox"/> <input type="checkbox"/>	<u>DM</u>	<u>9/26/18</u>

SECTION III

Sent for Review

Land Dev. ___ Y ___ N ___ XX ___ N/A

NRMD ___ Y ___ N ___ XX ___ N/A

Other Dept./Office ___ Y ___ N ___ XX ___ N/A

Comments:



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

October 15, 2018

Honorable Scott Ellis
Clerk
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, Florida 32781-0999

Attention: Ms. Deborah Thomas

Dear Mr. Ellis:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2018-24, which was filed in this office on October 11, 2018.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

October 10, 2018

M E M O R A N D U M

TO: Virginia Barker, Natural Resources Management Director

RE: Item H.3., Ordinance Codifying Amendments to Chapters 46, 62, and 110 to Existing Septic Codes

The Board of County Commissioners, in regular session on October 9, 2018, adopted Ordinance No. 18-24, codifying amendments to Chapters 46, 62, and 110 to existing Septic Codes. Enclosed is a certified copy of the Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

Encl. (1)

cc: County Attorney

ORDINANCE 2018-24

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, REGARDING THE REGULATION OF ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS (OSTDS), COMMONLY REFERED TO AS SEPTIC SYSTEMS; AMENDING CHAPTER 46, ENVIRONMENT, ARTICLE II. ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS AND WATER WELL PERMITTING TO UPDATE TERMINOLOGY AND REFLECT CURRENT REGULATORY AUTHORITY; AMENDING THE TITLE OF CH. 46; AMENDING SEC. 46-37 PENALTY; AMENDING SEC. 46-38 DECLARATION OF INTENT; AMENDING SEC 46-39 INCORPORATION OF APPLICABLE FLORIDA STATUTES AND FLORIDA ADMINISTRATIVE CODE SECTIONS; CREATING SEC. 46-40 DENSITY RESTRICTIONS TO REPLACE VARIANCE BOARD; AMENDING THE TITLE OF DIVISION 2. PERMIT; DELETING SEC. 46-61 REQUIRED; APPLICATION GENERALLY; DELETING SEC. 46-62 SOIL PROFILE TEST; DELETING SEC. 46-63 CONDITIONS FOR ISSUANCE; DELETING SEC. 46-64 CONNECTION TO PUBLIC SEWER REQUIRED; DELETING SEC. 46-65 ADDITIONAL CRITERIA FOR PERMITS IN LIMITED CAPACITY SEWER SERVICE AREAS; DELETING SEC. 46-66 ONSITE SEWAGE DISPOSAL SYSTEMS IN COMMERCIAL, MANUFACTURING AND INDUSTRIAL AREAS; AMENDING AND RENUMBERING SEC. 46-67 FEES; DELETING SEC. 46-68 SUSPENSION OR REVOCATION; DELETING SEC. 46-69 VARIANCE BOARD; DELETING SEC. 46-70 WELL CONSTRUCTION PERMITS; AMENDING DIVISION 3. LAKE WASHINGTON AREA; AMENDING SEC. 46-82 MINIMUM BUILDING AREA REQUIREMENTS, VARIANCE FROM THE MINIMUM BUILDING AREA REQUIREMENTS, HABITABLE FIRST FLOOR ELEVATIONS AND SETBACKS FOR THE ORDINARY HIGH WATER LEVELS; AMENDING SEC. 46-83 EXEMPTIONS; AMENDING AND RENUMBERING SEC. 46-84 APPEALS; DELETING SECTION 46-86 ADMINISTRATION; AMENDING CH. 62, ARTICLE IV. CONCURRENCY MANAGEMENT; DIVISION 1. GENERALLY; AMENDING SEC. 62-602 CONCURRENCY EVALUATION PROCEDURE; ARTICLE VI ZONING REGULATIONS; DIVISION 5. SPECIFIC CRITERIA FOR PERMITTED USES WITH CONDITIONS AND CONDITIONAL USES; AMENDING SEC. 62-1946(4) SECURITY MOBILE HOMES; AMENDING ARTICLE X. ENVIRONMENTAL PROTECTION AND CONSERVATION; DIVISION 3 SURFACE WATER PROTECTION; SEC. 62-3666 GENERAL PROVISIONS TO ALTER SETBACKS SUBSECTIONS (14) AND (15); AMENDING CHAPTER 110 UTILITIES, ARTICLE II, DIVISION 2,

Officially filed with the Secretary of State on October 11, 2018.

SPECIFICALLY AMENDING SEC. 110-66(d)(7) USE OF PUBLIC SEWER REQUIRED; AMENDING SEC.110-67(c) PRIVATE SEWAGE DISPOSAL; AMENDING DIVISION 3 SEWER CONNECTIONS, SUBDIVISION I GENERAL PROVISIONS AMENDING SEC. 110-91 DEFINITIONS; AMENDING ARTICLE II. WATER AND SEWER SYSTEMS; DIVISION 1. GENERALLY; SUBDIVISION II. PERMIT; AMENDING SEC. 110-143 LIMITED CAPACITY SERVICE AREA SEPTIC TANK PERMITS AND PACKAGE FACILITY PERMITS; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the State Department of Health previously delegated authority to the County to implement local public health programs in Brevard, including the inspection and permitting of onsite sewage treatment and disposal systems (OSTDS), also called septic systems; and

WHEREAS, the St. John's River Water Management District Florida previously delegated authority to the County to implement a local well permitting program in Brevard; and

WHEREAS, the delegated authority for both programs was discontinued several years ago; and

WHEREAS, certain county code provisions enacted when those programs were in place are outdated and need to be updated to remove duplication and reflect current regulatory authority and terminology; and

WHEREAS, the Brevard County Board of County Commissioners finds that this Ordinance will promote the public health, welfare, safety and economic benefit of the IRL and the County as a whole.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Brevard County, Florida, that:

SECTION 1. The title of CHAPTER 46. ENVIRONMENT. ARTICLE II. ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS AND WATER WELL

PERMITTING, Code of Ordinances of Brevard County, Florida is hereby amended as follows:

ARTICLE II. ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS AND ~~WATER WELL PERMITTING~~

SECTION 2. **Sec. 46-37. Penalty.** Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

Sec. 46-37. Penalty.

Any person found to be in violation of this article shall be punished as provided in section 1-7. The county shall have the authority to enforce compliance with the provisions of this article by appropriate legal action in a court of competent jurisdiction, or by enforcement through the county code enforcement special magistrate board, pursuant to the provisions of chapter 2, article VI, division 2.

SECTION 3. **Sec. 46-38. Declaration of intent.** Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

Sec. 46-38. Declaration of intent.

It is hereby declared to be the intent of the board of county commissioners in enacting this article to establish minimum standards concerning health, safety and general welfare in regard to the construction, installation, utilization, operation, alteration, modification, repair and maintenance of onsite sewage treatment and disposal systems within the county; to protect the groundwater, surface water and the environment from harmful contamination from onsite sewage treatment and disposal systems and provide increased levels of protection for properties lying below the 100-year base flood elevation; to establish standards for onsite sewage treatment and disposal systems which meet or exceed the minimum standards established by F.S. ch. 381 and the state department of health, under F.A.C. ch. 64E-6, as such standards may be amended from time to time; to establish a nitrogen reduction overlay area and require the use of alternative OSTDS to mitigate the impact of nitrogen in ground water in the Indian River Lagoon; ~~to designate the county health department's environmental health services section as the local permitting agency; to provide a method and~~

~~procedure for the permitting of such onsite sewage treatment and disposal systems, so as to ensure strict compliance with applicable, minimum standards; to provide special requirements and environmental protection for onsite sewage treatment and disposal systems in industrial, manufacturing and commercial land use classifications; to ensure full compliance with groundwater monitoring requirements of the Federal Resource Conservation and Recovery Act; to protect, control and conserve the quality and availability of groundwater supplies in the county; in the interest of the public health, safety and welfare of the citizens and visitors of the county provide necessary regulation for the location, construction, repair, and abandonment of water wells less than six inches in diameter except potable wells within F.A.C. ch. 62-524 delineated areas through delegation from the water management district; and to reduce the risk of contamination to surface water and potable water wells sources from inundated flood waters.~~

SECTION 4. Sec. 46-39. Incorporation of applicable Florida Statutes and Florida Administrative Code sections. Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

Sec. 46-39. Incorporation of applicable Florida Statutes and Florida Administrative Code sections.

(a) The provisions of F.S. ch. 381 and F.A.C. ch. 64E-6, Standards For Onsite Sewage Treatment and Disposal Systems, except for F.A.C. ch. 64E-6.030, are hereby specifically adopted and incorporated in this article by this reference, as the minimum standards for the permitting, construction, installation, utilization, operation, alteration, modification, repair and maintenance of onsite sewage treatment and disposal systems in the county; provided, however, that to the extent such standards do not meet or exceed the provisions of this article and Sec. 62-3666(14), the requirements of this article and Sec. 62-3666(14) shall control. Further, ~~all references to state forms set forth in F.S. ch. 381, F.S. ch. 373, F.A.C. ch. 64E-6, F.A.C. ch. 64E-8, F.A.C. ch. 40 C-3, or F.A.C. ch. 62-555 shall be construed, for the purposes of this article, to refer to the equivalent state or county forms.~~

(b) ~~The following modifications to F.A.C. ch. 64E-6 shall apply to all onsite sewage disposal systems installed in the county:~~

~~(1) All septic tanks installed in the county shall be divided into, or have the equivalent of, two compartments, designed in accordance with applicable sections of F.A.C. ch. 64E-6.~~

(2) All septic tanks OSTDS installed and all OSTDS septic systems repaired in the county shall be equipped with an FDOH state department of health (DOH) approved tank outlet filter device.

~~(3) In addition to the soil replacement provisions set forth in F.A.C. ch. 64E-6, a soil excavation inspection shall be required for systems where severely or moderately limiting soil textures exist.~~

~~(4) In addition to the provisions of F.S. ch 381.0065(4)(a) through (f), subdivisions and lots may be developed with onsite sewage disposal systems provided that there are no more than four lots per acre or such subdivisions and lots fully comply with the variance provisions, procedures, and requirements set forth in section 46-69.~~

SECTION 5. Sec. 46-40. DENSITY RESTRICTIONS., is hereby created as follows:

Sec. 46-40. DENSITY RESTRICTIONS.

In addition to the requirements of F.S. Section 381.0065 and F.A.C. ch. 64E-6, the following density restrictions shall apply to all development requiring the use of an OSTDS:

(a) If the property will be connected to a public water supply that completely loops the entire block and there is sufficient capacity to serve all properties within said block:

(1) For properties at least ¼ acre in size, a standard OSTDS may be used.

(2) For properties less than a ¼ acre in size and development of other lots within the block on standard OSTDS does not exceed 66%, a standard OSTDS may be used.

- (3) For properties less than a ¼ acre in size and development of other lots within the block on standard OSTDS exceeds 66%, the minimum requirements in subsection (d) below must be satisfied.
- (b) If the property will be connected to a public water supply that does not completely loop the block or if the property will use a private, potable water well:
- (1) For properties at least ½ acre in size, a standard OSTDS may be used.
- (2) For properties less than ½ acre in size and the development of other lots within the block on standard OSTDS does not exceed 30%, a standard OSTDS may be used.
- (3) For properties less than ½ acre in size and the development of other lots within the block on standard OSTDS exceeds 30%, the minimum requirements in subsection (d) below must be satisfied.
- (c) The density of a block is determined by dividing the number of lots that have been granted an OSTDS construction permit by the total number of lots within the block. For example, 14 active construction permits/40 lots on block "z" = 35%. The number of active OSTDS construction permits change daily. The density calculation must be confirmed by FDOH.
- (d) For properties that cannot meet the density requirements, development may be approved if all of the following conditions are met:
- (1) In lieu of a standard OSTDS, an NSF-approved Class I aerobic treatment unit will be installed and maintained in accordance with ch. 64E-6 F.A.C.
- (2) No additional potable water wells or dry wells will be installed in the future. Properties on private wells will be required to connect to a public water supply when available.
- (3) The unobstructed area requirements set forth in ch. 64E-6, F.A.C. shall not be encroached upon without the express written approval of FDOH.
- (e) Blocks which abut canals or major areas of green space, such as parks or schools, are not required to satisfy the complete looping requirement.

(f) In the event that the density requirements in subsection (d) cannot be satisfied, the property owner may petition the state department of health for a hardship variance pursuant to Section 381.0065(4)(h), F.S.

SECTION 6. The title of CHAPTER 46, ARTICLE II, DIVISION 2. PERMIT. Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

Division 2. Permit Reserved.

SECTION 7. Sec. 46-61. Required; application generally. Code of Ordinances of Brevard County, Florida, is hereby deleted in its entirety and marked as reserved:

~~**Sec. 46-61. Required; application generally.**~~

- ~~(a) No person shall cause, nor allow the construction, installation, alteration, modification or repair of an onsite sewage disposal system without first applying for and obtaining an onsite sewage disposal permit. Application for approval for the use of individual sewage disposal facilities for a single lot, property or building shall be made by the owner, or the owner's legally authorized representative, on such form as provided by the department. The application shall be completed in full, attested to and signed by the applicant, and shall be accompanied by all required exhibits and fees, prior to, and as a condition for, acceptance by the department.~~
- ~~(b) The department shall be provided with the mean annual flood elevation or 100-year base flood elevation for the proposed site location of the onsite sewage treatment and disposal system or the proposed potable water well whichever is appropriate.~~
- ~~(c) No person shall cause, nor allow the location, construction, repair, and abandonment of water wells less than six inches in diameter within the geographic boundaries of the county after the effective date of both this division and the delegation agreement with the water management district without first applying for and obtaining a well permit. The application shall be completed in full, attested to and signed by the applicant, and shall be accompanied by all required exhibits and fees, prior to, and as a condition for, acceptance by the department.~~

- (1) ~~The following well types are exempt from the provisions of this section.~~
 - a. ~~Any well, pump or other equipment used temporarily for dewatering purposes, provided the well does not penetrate a confining layer.~~
 - b. ~~A well constructed solely for the purpose of a test hole.~~
 - c. ~~Temporary monitoring wells installed in the surficial aquifer system as part of approved contamination or environmental assessment activities.~~
 - d. ~~Wells within F.A.C. ch. 524 delineated areas.~~
 - e. ~~Wells six inches in diameter or greater.~~
- (2) ~~Each property is allowed one potable and one nonpotable well. Installation of additional water wells that prevent development of adjacent properties are prohibited. If all the following conditions are met an administrative waiver may be granted after review of existing and proposed well locations and uses.~~
 - a. ~~No improperly abandoned water wells exist on the property.~~
 - b. ~~Existing and proposed water wells are or will be utilized.~~
 - c. ~~Proposed water wells are placed to meet setback requirements and are not intentionally located to prohibit development of adjacent properties.~~
- (3) ~~Permits are required for the following alternative and emergency use wells:~~
 - a. ~~New alternative or emergency use wells.~~
 - b. ~~Existing nonpotable wells converted to an alternative or emergency use well.~~
 - c. ~~Existing potable wells used as an alternative or emergency use well after connection to a public water supply.~~
- (4) ~~One or more state approved backflow prevention devices will be required for alternative and emergency use wells.~~

SECTION 8. Sec. 46-62. Soil profile test. Code of Ordinances of Brevard County, Florida, is hereby deleted in entirety and marked as reserved:

Sec. 46-62. Soil profile test.

- (a) ~~Within 15 days after the date of acceptance of an application by the department, the applicant shall dig one or more soil profile test holes, at least 12 inches in diameter, to a depth of at least six feet, within the proposed drainfield area or areas of the subject property. If more than one drainfield is required, the department may require a separate soil test hole for each drainfield area. Soil materials from soil test holes shall be deposited adjacent to the holes for the purpose of obtaining a soil profile delineating the soil classification within the absorption field.~~
- (b) ~~The department shall not inspect any soil profile test hole, which has been excavated prior to the date of acceptance of an application by the department. Further, the applicant shall notify the department after preparation of the required soil profile test holes. The department shall then inspect the soil test holes; provided, however, that soil test holes shall not be inspected prior to 24 hours after excavation. The applicant shall take all steps necessary to prevent injury to persons or property, which may result from the test hole excavation. The applicant shall fill all soil test holes within five calendar days following inspection by the department. The department shall not issue any onsite sewage treatment and disposal permits until the applicant has presented an affidavit that the test hole has been properly filled. Failure to dig the test hole and to notify the department within 15 days of the date of submission of the application shall render the application void. The applicant must thereafter submit a new application and fee, in the same manner as an original application, for further consideration by the department for a permit. Violations of the requirement to fill all soil test holes within five calendar days following inspection by the department may be prosecuted against both the applicant and the owner of the property upon which the unfilled soil test hole is located, pursuant to the provisions of section 46-37.~~

SECTION 9. **Sec. 46-63. Conditions for issuance.** Code of Ordinances of Brevard County, Florida, is hereby deleted in entirety and marked as reserved:

Sec. 46-63. Conditions for issuance.

- (a) ~~The department shall issue an onsite sewage treatment and disposal permit only upon its determination that the applicant has completed the required application procedure, and has fully complied with all of the applicable requirements set forth in this article, as well as F.S. ch. 381 and F.A.C. ch. 64E-6.~~
- (b) ~~All onsite sewage treatment and disposal permits issued by the department shall be on an interim basis only, and shall be deemed void 365 days after the date of official notice that public sewer is available to the subject property, pursuant to the provisions of F.S. § 381.00655.~~
- (c) ~~Onsite sewage treatment and disposal and water well permits issued by the department are nontransferable to another location. In compliance with the requirements of F.S. § 381.0065(4) permits may be transferred with the original applicant's written approval.~~
- (d) ~~All onsite sewage treatment and disposal permits issued by the department shall be deemed to automatically expire and terminate upon the occurrence of one or more of the following:~~
- ~~(1) A building permit for construction of a habitable structure on the subject property is not obtained from the appropriate governmental authority within 120 days after the date of issuance of the onsite sewage treatment and disposal permit.~~
 - ~~(2) Construction is not commenced on the subject property within one year of the date of issuance of the OSTDS onsite sewage disposal permit. For the purpose of this subsection, commencement of construction shall be deemed to mean the pouring of a foundation and slab, or other comparable work, as determined by the department.~~
 - ~~(3) The building permit for construction on the subject property expires or is revoked by the appropriate governmental authority.~~
 - ~~(4) The violation of any condition included in any variance granted by the county onsite sewage disposal variance board, pursuant to the provisions of section 46-69.~~

- (5) — Pursuant to F.A.C. ch. 64E-6.003(1) an onsite sewage treatment and disposal system permit shall not exceed a period of 21 months. If the onsite sewage treatment and disposal system is not completed within the 21-month period, the applicant must reapply for a new permit and submit associated fees.
- (e) — If a building permit has not been obtained within 120 days after the date of issuance of the onsite sewage treatment and disposal permit, the department may, upon written request and justification by the applicant, as determined by the department, renew or extend the onsite sewage disposal permit for a period of time not to exceed six months from the date of issuance of the onsite sewage disposal permit. Any such request for a renewal or extension by the applicant shall be accompanied by a renewal fee, which fee shall be equal in amount to the original permit fee as specified by the board of county commissioners.
- (f) — No person may submit a new application for an onsite sewage disposal permit for a specific parcel of property until 30 days after a prior application for permit has been denied or until 30 days after the expiration of a previously issued onsite sewage disposal permit for the same subject property. For the purpose of this subsection, the issuance of a notice of deficiency shall not constitute denial of an application for onsite sewage disposal permit.
- (g) — If the department denies the issuance of any onsite sewage treatment and disposal permit upon its determination that the applicant does not fully comply with the density restrictions or minimum lot area requirements of F.S. 381.0065(4), the applicant may request a hearing before the county onsite sewage disposal variance board, which may uphold the department's denial or approve the issuance of an onsite sewage disposal permit under the terms and conditions set forth in section 46-69.

SECTION 10. Sec. 46-64. Connection to public sewer required. Code of Ordinances of Brevard County, Florida, is hereby deleted in entirety and this section shall be marked as reserved:

~~Sec. 46-64. Connection to public sewer required.~~

- (a) ~~The department shall not issue onsite sewage treatment and disposal permits for any property to which public sewerage service is available; except as provided in F.S. § 381.00655 and for the property located in limited capacity sewer service areas, under the provisions of section 46-65.~~
- (b) ~~It shall be the responsibility of the applicant of a new system or modification to contact the nearest public sewerage system to determine the availability and feasibility of service, and no onsite sewage treatment and disposal permit shall be issued unless, and until, the appropriate public sewerage system certifies, in writing, to the department that sewer service is not available within the parameters set forth in F.S. § 381.00655, and this article.~~

SECTION 11. Sec. 46-65. Additional criteria for permits in limited capacity sewer service areas. Code of Ordinances of Brevard County, Florida, is hereby deleted in its entirety and marked as reserved:

~~Sec. 46-65. Additional criteria for permits in limited capacity sewer service areas.~~

- (a) ~~A limited capacity sewer service area shall mean those areas of the county in which the board of county commissioners, by ordinance or resolution, determines that limited or no capacity exists for additional sewer service connections.~~
- (b) ~~A onsite sewage treatment and disposal permit shall only be issued in a limited capacity sewer service area under the following conditions:~~
- (1) ~~That the applicant for an onsite sewage treatment and disposal permit in a limited capacity sewer service area has submitted a completed application for public sewerage service, and has paid all required fees, but has been denied a sewer connection permit due to the lack of adequate sewage capacity to allow the applicant to connect immediately to the available public sewer.~~
 - (2) ~~That the property for which the application has been filed receives its water supply from a public water supply system.~~

- (3) ~~That the subject property has an existing dry line sewage connection to a fully constructed sewer collection system, with a plug placed in the dry line to prevent the flow of sewage wastes to the sewer collection system.~~
- (4) ~~That the applicant has filed a fully completed application for onsite sewage treatment and disposal permit with the department, and has paid all applicable fees for issuance of an onsite sewage treatment and disposal permit in a limited capacity sewer service area. All onsite sewage treatment and disposal systems in a limited capacity sewer service area shall be sized in accordance with all provisions of applicable sections of F.A.C. ch. 64E-6 and this article.~~
- (c) ~~Any onsite sewage treatment and disposal permit issued for property located in a limited capacity sewer service area shall expire and terminate upon the issuance of a sewer permit or permits to all of the holders of, or persons utilizing, a limited capacity service area onsite sewage treatment and disposal permit. Further, any onsite sewage treatment and disposal permit issued for property located within a limited capacity sewer service area shall automatically expire 120 days after the mailing of a notice of approval of an application for sewer service by the county utility services department to the holders of, or persons utilizing, a limited capacity service area onsite sewage treatment and disposal permit.~~
- (d) ~~After the expiration or termination of an onsite sewage treatment and disposal permit for a limited capacity sewer service area, it shall be unlawful to dispose of sewage waste from the subject property other than to the public sewer.~~

SECTION 12. Sec. 46-66. Onsite sewage disposal systems in commercial, manufacturing and industrial areas. Code of Ordinances of Brevard County, Florida, is hereby deleted in its entirety and marked as reserved:

~~Sec. 46-66. Onsite sewage disposal systems in commercial, manufacturing and industrial areas.~~

- (a) ~~No onsite sewage treatment and disposal permit shall be issued for disposal of any industrial, manufacturing, or commercial waste liquid, including, but not limited to: process water, chemicals, oil, gasoline or any other similar substance. All such~~

liquid waste must be handled by a separate collection and disposal system designed to protect surface water and groundwater quality, and must be approved and permitted by the state department of environmental protection.

- (b) ~~No initial, annual or temporary business tax receipt shall be issued by the county tax collector for any business, business location, profession or occupation, for any property within the county located in a commercial, manufacturing or industrial land use classification, as defined in chapter 62, article VI (zoning), or its equivalent, where such business, business location, profession or occupation on the property is served by an onsite sewage treatment disposal system, until such application for initial, annual or temporary business tax receipt has been reviewed and approved by the county's office of natural resource management and county health department's environmental health services section.~~
- (c) ~~Any person applying for an initial, annual or temporary business tax receipt for any business, business location, profession or occupation on property located within a commercial, manufacturing, or industrial land use classification, shall also complete an information form provided by the department.~~
- (d) ~~The county tax collector may renew a business tax receipt for any business, which has not changed ownership, nor materially changed in its operation, unless otherwise notified by the county's office of natural resource management or county health department's environmental health services section. If a request for renewal of a business tax receipt is denied pursuant to this subsection, the application shall be processed in the same manner as a new application.~~
- (e) ~~The county office of natural resource management shall review all applications for a business tax receipt for any business, business location, profession or occupation, on property located in a commercial, manufacturing, or industrial land use classification, as specified in subsection (a). Such review shall include, at a minimum, the type and method of operations, complete inventory of chemicals or raw material to be used, waste or byproducts produced, methods of recovery, and storage or disposal of waste or byproducts. The division of natural resource management shall, as a condition of approval of the business tax receipt, specify~~

methods of collection, storage, transportation and disposal of all hazardous waste or byproducts.

~~(f) — As a condition of approval of a business tax receipt for those businesses and properties which fall within this section, the applicant shall be required to install one or more groundwater monitoring wells, which shall be installed down gradient from each onsite sewage disposal system.~~

~~(1) — The property owner or applicant shall have a registered professional engineer prepare sealed plans for the location and design of all monitoring wells. These plans shall be submitted to the department for approval prior to installation. Approval shall be based on full compliance with the latest edition of the Federal EPA Resource Conservation Recovery Act, Groundwater Monitoring Technical Guidance Document, a copy of which shall be on file in the division of natural resource management.~~

~~(2) — The office of natural resource management shall specify the parameters to be checked and the frequency of monitoring of all groundwater monitoring wells installed under this provision. These parameters shall be based on the water types indicated in the latest edition of the Federal EPA List of Potential Hazardous Waste Generators by SIC Code, a copy of which shall be on file in the division of natural resource management. Based on changes in operations, or results from previous analyses, such parameters may be amended from time to time by the department, and the public shall be promptly notified of such changes in such parameters. A copy of any list of potential hazardous waste generators, as amended, shall be kept on file in the division of natural resource management.~~

~~(3) — Representatives of the office of natural resource management may also take additional samples from any monitoring well, and have the samples analyzed for any other substances.~~

~~(g) — If the office of natural resource management determines that such toxic or hazardous chemicals or wastes, other than domestic sewage, shall not be produced onsite, or disposed of into the onsite sewage treatment and disposal system, the~~

~~department may temporarily waive the requirement for a monitoring well. Such waiver shall be reviewed by the department on an annual basis, or more frequently as needed. If at any time, conditions change, one or more monitoring wells may be required, pursuant to the provisions of this article. For applications where existing monitoring wells have been installed, it shall be the responsibility of the applicant to provide documentation of the monitoring plan, including details of the well construction, and any other reasonable, relevant information requested by the department. The office of natural resource management may approve the existing plan, or may require the plan to be updated by a registered professional engineer, which may include the requirement for additional monitoring wells to be installed.~~

- ~~(h) The county health and social services division shall not recommend that any business tax receipt be issued, nor issue any onsite sewage treatment and disposal permit in an industrial, manufacturing, or commercial land use classification, until such operation has been reviewed and approved by the office of natural resource management. Upon receiving notification of such approval by the of natural resource management, the environmental health services section shall review the onsite sewage treatment and disposal system for compliance with all applicable state or local laws, rules or regulations. If the environmental health services section determines that the system is in full compliance, the health services section shall recommend the issuance of a business tax receipt.~~
- ~~(i) It shall be the responsibility of the holder of a business tax receipt for any business, business location, profession or occupation on property located in a commercial, manufacturing or industrial land use classification, to sample each monitoring well at least quarterly, or more often if deemed necessary by the department, so as to have the samples analyzed by a certified laboratory, and to submit the written results within 15 days to the division of natural resource management. The cost of all sampling shall be paid by the holder of the subject business tax receipt.~~
- ~~(j) It shall also be the responsibility of the holder of a business tax receipt which is subject to these regulations to fully and continuously operate in accordance with this article, as well as all information provided on the application forms, the approved~~

monitoring plan, and any other relevant, reasonable condition imposed by the office of natural resource management or environmental health services section.

(k) ~~Before any change in operation, process, use of raw materials or chemicals, waste or byproducts produced, or methods of recovery, storage or disposal, the holder of a business tax receipt subject to these regulations shall immediately notify the division office of natural resource management in writing. The office of natural resource management shall review any proposed change before said change is implemented, and may request that the monitoring plan be updated by a registered professional engineer, including the installation of additional wells, or a modification in monitoring frequency or parameters.~~

SECTION 13. **Sec. 46-67. Fees.** Code of Ordinances of Brevard County, Florida, is hereby renumbered and amended as follows:

Sec. 46- ~~41~~67. Fees.

The board of county commissioners may, by resolution or ordinance, authorize the levying and collection of fees by the department ~~office of natural resource management and county health department's environmental health services section,~~ for the review of all applications, and any services required under this article. Such fees shall be nonrefundable, and shall accompany all applications, and shall be paid prior to the performance of any service requested.

SECTION 14. **Sec. 46-68. Suspension or revocation.** Code of Ordinances of Brevard County, Florida, is hereby deleted in its entirety and marked as reserved:

Sec. 46-68. Suspension or revocation.

(a) ~~Any onsite sewage treatment and disposal permit issued under this article may be suspended by the department upon the occurrence of any of the following:~~

(1) ~~Nonpayment of any fee established by the board of county commissioners pursuant to the provisions of section 46-67.~~

- ~~(2) — Submission of false or erroneous information in an application, or in plans or other documents, which served as a basis for the issuance of the subject permit.~~
- ~~(3) — The failure of a permit holder to comply with any of the requirements of this article, or any terms or conditions placed upon the issuance of the permit by the department.~~
- ~~(b) — Any onsite sewage treatment and disposal permit issued pursuant to this article may be revoked by the department upon the occurrence of any of the following:
 - ~~(1) — Nonpayment of any fee established by the board of county commissioners pursuant to the provisions of section 46-67.~~
 - ~~(2) — Submission of false or erroneous information in an application, or in plans or other documents, which served as a basis for the issuance of the subject permit, and failure of the permit holder to correct such information within the time period specified by the department.~~
 - ~~(3) — The failure of the permit holder to comply with any of the requirements of this article, or any of the terms and conditions of the permit issued, after the permit holder has been notified of such noncompliance by the department, and has failed to correct the deficiencies within the time period specified in the notice.~~~~
- ~~(c) — If an onsite sewage treatment and disposal permit has been revoked, the permit shall not be reissued until the applicant has filed a new application and has paid an additional application fee.~~
- ~~(d) — No person shall operate under any onsite sewage treatment and disposal permit that has been suspended or revoked pursuant to this section.~~

SECTION 15. Sec. 46-69. Variance board. Code of Ordinances of Brevard County, Florida, is hereby deleted in its entirety and marked as reserved:

Sec. 46-69. Variance board.

- ~~(a) — There is hereby created and established the Brevard County Onsite Sewage Disposal Variance Board. This board shall be comprised of seven members,~~

~~including the following: the director of the natural resources management office or authorized designee; the director of the building department or authorized designee; the director of the county health department or authorized designee; one individual representative of the county building and construction industry, appointed by the board of county commissioners; one individual representative of the septic industry or a professional engineer appointed by the board of county commissioners; and two individual representatives of the county homeowners, appointed by the board of county commissioners.~~

- ~~(b) The individual representatives shall be appointed by the board of county commissioners, as set forth above, to serve one year terms, but shall serve at the pleasure of the board of county commissioners, or until their successors are appointed. With the exception of the chairman, each commissioner shall appoint one individual representative.~~
- ~~(c) The presence of four members of the variance board at any meeting or hearing shall constitute a quorum.~~
- ~~(d) The variance board may adopt further rules and procedures by which the board shall operate.~~
- ~~(e) Any applicant who is denied the issuance of any onsite sewage disposal permit by the county health department on the grounds specified in section 46-63(g), may file with the department a written application for a variance and a hearing before the county onsite sewage disposal variance board. The written application shall be submitted on forms provided by the department, and filed within 30 days after the date of denial of the requested permit for an onsite sewage treatment and disposal system.~~
- ~~(f) All applications for variances shall be accompanied by a non-refundable filing fee, the amount of which shall be established by resolution of the board of county commissioners.~~
- ~~(g) Meetings of the variance board shall be held at the call of the department, and at such other times as the board may determine. The department shall provide each~~

~~variance applicant with notice of their scheduled hearing time, date, and location before the board. This notice will be sent by U.S. mail to the address stated on the variance application at least ten days prior to the scheduled hearing date.~~

~~(h) The variance applicant may present any pertinent information to the variance board for its consideration at the scheduled hearing.~~

~~(i) All hearings before the variance board shall be open to the public and the records of the board shall constitute public records.~~

~~(j) The variance board shall consider the merits of each variance application, and if it determines that a variance is warranted, such variance shall only be granted conditioned upon full compliance with any or all of the following restrictions which the variance board deems necessary to insure that the permitted onsite sewage treatment and disposal system will not adversely affect the health of the applicant or other members of the public, or significantly degrade groundwater or surface water:~~

~~(1) Public water completely loops the applicable block, is available and there is sufficient capacity to serve all properties within said block. The applicant must connect the subject property to said public water system, when available. Blocks which abut canals or major areas of green space, such as parks or schools, do not need to satisfy the complete looping requirement.~~

~~(2) An NSF listed Class I aerobic system, or other comparable advanced wastewater treatment system, in any soil or area classified by the United States Department of Agriculture, Soil Conservation Service, as having severe or very severe limitations for absorption fields, regardless of the extent to which such soil is improved or replaced, or on any lot where any part of the system will be located laterally within 75 feet from wetlands or any stream or canal which is connected to the Indian River Lagoon System. The county onsite sewage disposal variance board may also require such aerobic or other comparable advanced onsite sewage disposal systems in any location where it deems a higher level of sewage treatment necessary to protect the public health or environment.~~

- ~~(3) — The installation of water wells, including dry wells, may be limited in number, location or character, as deemed necessary to protect the public health or environment.~~
- ~~(4) — Maintenance of space for absorption and expansion by prohibiting or limiting the construction of patios, walks, drives, sheds, pools or other ancillary improvements or covered areas.~~
- ~~(k) — As a condition(s) of approval, the county onsite sewage disposal variance board may impose other additional setbacks from Class I or Class II water bodies, and/or larger tanks or drainfields, and/or nutrient reducing systems, and/or additional buffers deemed necessary to insure protection of wetlands, the groundwater and surface water, including the Indian River Lagoon System, and to ensure the protection of the public health and environmental quality.~~
- ~~(l) — It shall require an affirmative vote of a majority of the variance board members present at a hearing to grant a requested variance. A tie vote will result in a decision upholding the department's previous denial of the permit.~~
- ~~(m) — If an applicant certifies to the department that the applicant shall fully comply with all four restrictions listed above, the application may be administratively approved by the department without reference of the application to the variance board. For property at least 0.25 acres and a public water supply does not completely loop the block, the application may be administratively approved by the department excluding subsection 46-69(j)(1).~~
- ~~(n) — If no more than 30 percent of all other lots in the same block as that of the applicant's lot have been granted any onsite sewage treatment and disposal permit, the application may be administratively approved by the department without the public water and NSF listed Class I aerobic system requirements. Further, if no more than 66 percent of all other lots in the same block as that of the applicant's lot have been granted any onsite sewage treatment and disposal permit, the application may be administratively approved by the department without the NSF listed Class I aerobic system requirement.~~

~~(o) In the event of a tie vote for the variance board or any applicant is not satisfied with the conditions of approval required by the county onsite sewage disposal variance board, such applicant may thereafter appeal the decision to the board of county commissioners.~~

~~(p) The county onsite sewage disposal variance board shall only have the authority to grant such relief as specifically provided in this section. All other applications or requests for relief shall vest in the state advisory review variance board, pursuant to applicable provisions of the Florida Administrative Code.~~

SECTION 16. Sec. 46-70. Well construction permits. Code of Ordinances of Brevard County, Florida, is hereby deleted in its entirety and marked as reserved:

~~Sec. 46-70. -- Well construction permits.~~

~~Wells requiring a well permit shall meet the following standards in addition to those referenced in section 46-39.~~

~~(1) Potable water well heads are required to be at least 36 inches above the mean annual flood elevation or six inches above the 100-year base flood elevation whichever is higher.~~

~~(2) The well head shall extend a minimum of 12 inches above the finished grade other than public wells.~~

~~(3) External pumps and associated electrical service connections serving potable wells shall be located no less than six inches above the 100-year base flood elevation.~~

~~(4) A certificate of occupancy will not be issued for any construction for which a water well permit has been issued until the following conditions are met.~~

~~a. Satisfactory water sample results are required prior to final construction approval for potable water wells.~~

~~b. An inspection has been conducted of the potable water well to verify that the well is constructed as permitted.~~

c. ~~Well completion report must be submitted to the department.~~

SECTION 17. Chapter 46, Article II, Division 3, Lake Washington Area, **Sec. 46-82. Minimum building area requirements, variance from the minimum building area requirements, habitable first floor elevations, and setbacks for the ordinary high water levels.** Code of Ordinances of Brevard County, Florida is hereby amended as follows:

Sec. 46-82. Minimum lot size building area requirements, variance from the ~~minimum building area requirements~~, habitable first floor elevations, and setbacks for the ordinary high water levels.

(a) No building permits shall be issued after the effective date of the ordinance from which this division derives for those properties within the encompassed area unless:

(1) The property for which a building permit is sought is served by a central sewage treatment facility, or a State approved OSTDS ~~onsite sewage disposal systems~~ is used satisfying the following requirements:

a. If the property is being serviced by a public water system, then there must be a minimum lot size building area of at least $\frac{1}{4}$ 10,890 square feet (.25 acre).

b. If the property is being serviced by a private well, then the minimum lot size building area must be at least $\frac{1}{2}$ 18,000 square feet (.41 acre).

c. All OSTDS must comply with the surface water setback requirements in Sec. 62-3666(14).

~~onsite sewage disposal systems shall comply with the standards and provisions of within Section 381.065 Florida Statutes, Chapter 64E-6 Florida Administrative Code and sections 46-36 through 46-69 of this Code.~~

(2) The board of county commissioners ~~county onsite sewage disposal variance board~~ shall hear variances relating to the minimum lot size building area requirements of this section under the following conditions, provided that no

topographic or water table conditions exist on the subject property that would present a health hazard.

- a. All other requirements and provisions of this division are met.
- b. The property owner seeking a variance has submitted to the department variance board sufficient written documentation to demonstrate that a reasonable, but unsuccessful, effort has been made to purchase contiguous property to comply with the minimum building area requirement.
- c. A written request for a variance shall be filed with the department within 30 days of denial of an OSTDS permit.

~~(3) The minimum elevation of the first habitable floor for all structures located on any affected property shall be no less than the 100-year flood elevation for the subject area, as established by the Federal Emergency Management Agency (FEMA).~~

~~(3 -4) All habitable structures located on the subject property shall be setback a minimum of 30 feet from the ordinary water level of any Class III adjacent body of water. Accessory uses as defined by section 62-1102 may be permitted closer to the ordinary high water level in accordance with the provisions of the section 62-3668.~~

~~(5) Properties shall, through the use of swales, berms, native vegetation or other appropriate methods, detain stormwater runoff prior to discharge to the surface water. A professional engineer shall design a stormwater system to retain the first one inch of runoff from impervious surfaces that drain to the shoreline. All requirements for stormwater management shall be reviewed and approved by the county manager or designee(s) and shall be inspected as necessary.~~

SECTION 18. Sec. 46-83. Exemptions. Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

Sec. 46-83. Exemptions.

The restrictions in this division do not pertain to minor structures or accessory uses that do not require a connection to a public sewer or OSTDS onsite sewage disposal system. Such exempted structures may include but are not limited to sheds, fences, boat docks, elevated walkways, pervious walkways, and the location of such structures are not prohibited under the provisions of sections 62-1102 and 62-3668.

SECTION 19. Sec. 46-84. Appeals. Code of Ordinances of Brevard County, Florida, is hereby renumbered amended as follows:

Sec. 46-42 84. Appeals.

In the event a property owner is not satisfied with any administrative decision or decision of the ~~county onsite sewage disposal variance board~~ regarding the implementation of this article ~~division~~, such property owner may appeal the decision to the board of county commissioners. ~~If so requested, the county onsite sewage disposal variance board may hear the appeal, take public comment and make a recommendation to the board of county commissioner as to the appropriateness of the interpretation or decision implementing this division. The board of county commissioner shall hold a second public hearing and shall make the final decision approving or disapproving the administrative decision or interpretation. An appeal from the decision of the county onsite sewage disposal variance board may proceed directly to the board of county commissioners.~~ A written request for an appeal shall be filed with the county manager's office within 30 days of rendition of the decision or interpretation. The written decision or interpretation shall specify the precise basis for the determination and supporting rationale therefore.

SECTION 20. Sec. 46-86. Administration. Code of Ordinances of Brevard County, Florida, is hereby deleted in its entirety and marked as reserved:

~~Sec. 46-86. Administration.~~

~~The Environmental Health Services Section of the Brevard County Health Department, and the county manager or designee(s) shall be responsible for the general administration of this division of this article. Review of applications and all~~

~~administrative decisions shall be coordinated by the appropriate agency. Written confirmation of any decision or finding relating to applications or review made pursuant to this division and letters of interpretation or intent shall be provided upon request.~~

SECTION 21. Sec. 62-602. Concurrency evaluation procedure. Subsection (2), Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

(2) *Sanitary sewer facilities.*

a. If the system is county operated, the county utilities services department shall determine capacity for sanitary sewer facilities by utilizing the existing capacity, which shall be determined by subtracting the committed capacity and present flow from the design capacity of the facilities. The county utilities department or other service providers shall issue a capacity certificate or its equivalent pursuant to subsection (c)(5) of this section and all other applicable sections of this Code.

b. The impact on the treatment plant shall be determined utilizing the county's level of service standards of 200 gallons per day per residential unit and 200 gallons per equivalent unit per day for nonresidential projects.

~~c. Where septic tanks are to be utilized, the county consumer health services division shall utilize the standards of F.A.C. ch. 10D-6 to determine suitability. A certificate from the county consumer health division that certifies that the site is or can be made suitable for the use of an onsite sewage disposal system shall be required.~~

SECTION 22. Sec. 62-1946. Security mobile homes. Subsection (4), Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

(4) An OSTDS septic tank is required for each mobile home as provided for in the Florida Department of Health health department regulations, Chapter 46 and Sec. 62-3666(14).

SECTION 23. Ch. 62, Article X. Environmental Protection and Conservation, Division 3, Surface Water Protection, Sec. 62-3666. General provisions. Subsections

(14 and (15), Code of Ordinances of Brevard County, Florida, are hereby amended as follows:

Sec. 62-3666. General provisions.

The following provisions shall apply to all Class I, II and III waters, Outstanding Florida Waters, Aquatic Preserves, and conditionally approved Class III shellfish harvesting waters within the county:

(14) Onsite sewage treatment and disposal systems

(a) All onsite sewage treatment and disposal systems (OSTDS) shall be set back at least 100 feet from the buffer establishment line, the safe upland line, mean high water line or ordinary high water line, as determined by the FDEP bureau of survey and mapping, which ever line the applicant prefers.

(b) In those cases where there is insufficient lot depth, the OSTDS may be set back a minimum of 75 feet. Insufficient lot depth does not exist if the structure(s), driveway(s) or other features on the property can be moved and still comply with all applicable codes.

(c) Lots legally established and recorded prior to January 1, 1972, that cannot accommodate a 75-foot OSTDS setback due to insufficient lot depth shall meet FDOH siting criteria.

~~For lots platted or established by deed on the official record books of the county after April 3, 1989, OSTDS septic tanks and drainfields shall be set back at least 100 feet from the buffer establishment line, or the safe upland, mean high water, or ordinary high water line as determined by the FDEP bureau of survey and mapping, whichever the applicant prefers, except where a variance has been granted by the state, and there is insufficient room to increase the setback. Advanced wastewater treatment or advanced secondary treatment shall be required for any septic tank and drainfield system within 100 feet of the Indian River Lagoon.~~

~~(15) For lots with no existing septic system and drainfield platted or established by deed on the official record books of the county before April 3, 1989, septic tanks and drainfields shall be set back at least 100 feet from the buffer establishment line, or the safe upland, mean high water, or ordinary high water line as determined by the FDEP bureau of survey and mapping, whichever the applicant prefers. In those cases where there is insufficient lot depth, the septic tank and drainfield shall be a minimum of 75 feet from buffer establishment line, or the safe upland, mean high water, or ordinary~~

~~high water line as determined by the FDEP bureau of survey and mapping, whichever the applicant prefers, except where a variance has been granted by the state, and there is insufficient room to increase the setback. Advanced wastewater treatment or advanced secondary treatment shall be required for any septic tank and drainfield system within 100 feet of the Indian River Lagoon.~~

SECTION 24. Sec. 110-66 Use of public sewer required. Subsection (d)(7), Code of Ordinances of Brevard County, Florida, is amended as follows:

(d)(7) The extension shall not apply to owners of property with a failing OSTDS septic tanks. No OSTDS septic tank repair permits may be issued after sewer service becomes available.

SECTION 25. Sec. 110-67. Private sewage disposal. Subsection (c), Code of Ordinances of Brevard County, Florida, is amended as follows:

(c) When connection is made to the public sewerage system under the terms of this article, any existing blackwater tank, septic tank containing toilet waste, cesspool, or other private OSTDS sewage disposal facilities containing toilet or kitchen wastes shall be abandoned and filled with a suitable material as specified by FDOH the county health department. However, the owner may elect to use the blackwater tank or septic tank as a graywater retention tank, and connect to the public sewer at the tank outlet.

SECTION 26. Sec. 110-91. Definitions. Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

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

~~*DER/DEP* means the state department of environmental regulation and the state department of environmental protection.~~

Director means the director of the utilities services department.

Drain field means a system of open jointed or perforated pipe or alternate distribution units which receive flow from septic tanks and other types of disposal

systems. The system is designed to distribute effluent for oxidation and absorption by the soil.

FDOH means the state agency, the Florida Department of Health in Brevard County.

Incremental increase means the amount of the increase in flow described in gallons per day (gpd) which the board of county commissioners will authorize to be connected in a service area of a sewage treatment plant owned by the county.

Limited capacity service area means an area in which the board of county commissioners by resolution finds that limited or no capacity exists for additional service connections.

Limited capacity service area septic tank permit means a permit issued under subdivision II of this division allowing the construction and use of a septic tank for the disposal of sewage waste on an interim basis for a limited capacity service area as defined in this section.

Limited capacity service area septic tank permit fee means the fee which shall accompany an application for a limited capacity service area septic tank permit.

Notice by mail means a written notice delivered to the U.S. Postal Service for mailing by certified mail to the person designated as the applicant and addressed to the mailing address listed on an application filed with the DER/DEP for a collection system permit.

Notice by publication means a notice which is published in a newspaper of general circulation in the county. The notice shall contain the name of the applicant and the name of the establishment which will be served as listed on the application for a DER collection system permit.

Onsite sewage treatment and disposal system or OSTDS includes conventional septic tank and drainfield systems and is defined in Section 381.0065(2)(k), Florida Statutes, to mean "a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer

on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.”

Package facility permit means a permit issued under subdivision II of this division allowing the construction and use of a package wastewater treatment facility for the disposal of sewage waste on an interim basis in a limited capacity service area, as defined in this section, or any other area of the county provided sewer service by the county utility system where limited or no capacity exists for additional sewer connections.

SECTION 27. Sec. 110-143. Limited capacity service area septic tank permits and package facility permits. Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

(a) *Application addenda.* Two addenda to the application for sewer service are hereby created and known respectively as the application for a limited capacity service area onsite sewage treatment and disposal system (OSTDS) septic tank permit and the application for a package facility permit. Each applicant for sewer service shall have the option to complete the addenda and make application for a limited capacity service area OSTDS septic tank permit or for a package facility permit. The limited capacity service area OSTDS septic tank permit or the package facility permit, respectively, shall allow the applicant to construct and use an OSTDS septic tank system or a package wastewater treatment facility for the disposal of sewage wastes on an interim basis until the sewage plant capacity and facilities are available for the applicant to connect to the county utility system in accordance with the provisions of county's ordinances and procedures.

(b) *Issuance criteria.*

(1) A limited capacity service area OSTDS septic tank permit or a package facility permit shall only be issued when the director determines that FDOH the county health department has found the property described in the application receives its water supply from a public water supply system.

(2) Additionally, no limited capacity service area OSTDS ~~septic tank~~ permit shall be issued unless the applicant meets the standards and criteria established by the board of county commissioners for issuance of such permit.

(3) The director must additionally determine that the following exist before issuing a package facility permit:

a. That the applicant owns property in a development, project or establishment in a limited capacity service area or other area of the county provided sewer service by the county utility system where limited or no capacity exists for future service connections, and has submitted a completed application, but because of the lack of adequate sewage facilities to allow the applicant to connect immediately to the county utility system a sewer permit cannot be issued.

b. That the property described on the application for a package facility permit has building sewer connections to a fully completed sewer collection system that has been constructed in accordance with the requirements of the county utility system.

c. That the package wastewater treatment facility will have sufficient treatment capacity to serve all of the property described in the application, if such property were to be developed.

d. That the proposed method of disposal complies with state law and criteria established by county code ~~health department~~.

e. That the design of the proposed package wastewater treatment facility is compatible with the facilities of all sewer collection and distribution systems serving the area of county in which the property is located.

f. That a construction permit for the package wastewater treatment facility has been issued by ~~DER/~~ the Florida Department of Environmental Protection ~~DEP~~.

g. That the average daily flow of wastewater into the facility does not exceed 300,000 gallons for any weekly period.

h. That the continued proper operation and maintenance of the facility will be accomplished at no expense to the county and that the facility will be dismantled within 60 days of the notice of approval described in subsection (c)(2) of this section.

i. That prior to a certificate of occupancy or completion certificate being issued, a performance bond, letter of credit, cash or certificate of deposit in an amount equal to ten percent of the construction cost of the proposed package wastewater treatment facility, including the sewer collection system, is provided to the board of county commissioners to ensure the continued proper maintenance and operation of the facility. Any such surety shall provide that the board of county commissioners shall be entitled to reasonable attorney's fees and costs in the event the board of county commissioners initiates legal action to enforce compliance with the terms of the surety.

j. That an agreement has been entered into between the board of county commissioners and the applicant setting forth the terms and conditions of the permit and ensuring compliance with the provisions of this subdivision.

(c) *Permit expiration.* The limited capacity service area OSTDS septic tank permit and the package facility permit shall expire and terminate upon the occurrence of the first of the following events:

(1) The issuance of a sewer permit or permits to all of the holders of or persons utilizing a sewer limited capacity service area OSTDS septic tank permit or a package facilities permit; or

(2) The passage of 120 days from the mailing of a notice of approval to the holders of or persons utilizing a limited capacity service area OSTDS septic tank permit, and the passage of 60 days from the mailing of such notice to the holders of or persons utilizing a package facility permit; subject, however, to the provisions of section 110-137(c).

(d) *Unlawful use of septic tank or package wastewater treatment facility.* It shall be unlawful to dispose of sewage waste from the property described on a

limited capacity service area OSTDS septic tank permit or package facility permit other than to the public sewer after the expiration of such permit.

(e) *Permit fees.* No limited capacity service area OSTDS septic tank permit or package facility permit shall be issued prior to payment by the applicant of ~~the a limited capacity service area septic tank permit fee or package facility permit fee~~ in an amount set by the board of county commissioners. Prior to the issuance of a certificate of occupancy for a structure utilizing an OSTDS septic tank or package wastewater treatment facility for the disposal of sewage wastes pursuant to a permit issued under this subdivision the applicant shall pay the connection fee. Provided, however, that for life care centers, nursing homes, and similar structures utilizing a package wastewater treatment facility, such connection fee may, by agreement with the board of county commissioners, be paid in phases or stages based upon the initial occupancy of each such stage or phase. After the payment of the connection fee when the capacity is available at a county utility system facility for sewer service the applicant shall be immediately entitled to this issuance of a sewer permit in accordance with the priority system governing the issuance of sewer permits.

SECTION 28. CONFLICTING PROVISIONS.

In the case of a direct conflict between any provision of this Ordinance and a portion or provision of any other applicable federal, state or county law, rule, code or regulation, the more restrictive shall apply, unless preempted by law.

SECTION 29. SEVERABILITY.

If any section, subsection, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such invalid unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, provided the remaining portions effectuate purpose and intent of this Ordinance.

SECTION 30. AREA ENCOMPASSED.

This Ordinance shall take effect only within the unincorporated area of Brevard County, Florida.

SECTION 31. EFFECTIVE DATE.

This Ordinance shall take effect upon adoption and filing as required by law. A certified copy of this Ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment.

DONE, ORDERED AND ADOPTED in Regular Session, this 9 day of October, 2018.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



A blue ink signature of Scott Ellis, consisting of stylized initials 'SE' followed by a long horizontal stroke.

Scott Ellis, Clerk



A blue ink signature of Rita Pritchett, consisting of stylized initials 'RP' followed by a long horizontal stroke.

Rita Pritchett, Chair

(As approved by the Board on October⁹, 2018)