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CHAPTER 170. GENERAL PROVISIONS

§ 170.001. Title.

This Title XVII shall be known and may be cited as the “City of Palm Bay Land Development Code.”

§ 170.002. Authority — adoption.

This Title, together with all future amendments, is adopted under the terms and authority granted by Fla. Stat. Ch. 163 and Ch. 166, and the Charter of the city.

§ 170.003. Purpose.

The city land development code is based on, consistent with, related to and adopted to effectuate and implement the policies of the city comprehensive plan in order to protect, preserve and improve the public health, safety, order, appearance, convenience and welfare of the inhabitants of the city, including, but not limited to:

- A. Improving mobility;
- B. Encouraging the most appropriate use of land, water and resources;
- C. Providing adequate light and air;
- D. Securing safety from fire and other dangers;
- E. Preventing the overcrowding of land;
- F. Presenting the character and stability of residential, commercial, industrial and other areas;
- G. Facilitating the adequate provisions for transportation, water supply, sewerage, drainage, sanitation, recreation, schools, housing, and other services; and
- H. Conserving and enhancing the standard of living within the city.

§ 170.004. Applicability; conformance.

The provisions of this Title shall apply to all lands, waters, buildings, structures, and the use thereof, within the jurisdictional limits of the city. No lands, waters, buildings or structures shall be used, no buildings or structures shall be erected, and no existing buildings or structures shall be moved, added to, enlarged, altered or maintained except in conformity with the provisions of this chapter.

§ 170.005. Conflict.

It is not intended by this Title to repeal, abrogate, annul or in any way impede or interfere with existing provisions of other laws or ordinances, except as specifically repealed by this Title. Where this Title imposes a greater restriction upon land, water, building or structures than is imposed or required by such existing provisions of law, ordinance, contract or deed, the provisions of this Title shall control.

§ 170.006. Adoption of standards by reference.

Adoption by reference of specific documents to be utilized for administration, review of development proposals, and other related purposes shall be established by City Council by resolution. Such documents shall be considered binding on all development occurring or being reviewed for approval by the City and its

adoption by City Council shall be considered administrative in nature. Adoption by resolution for adopted by reference materials shall specify the document, standard, rule, or law being adopted by name, version, and date, as applicable. Specific reference to the documents does not require adoption within each applicable chapter of this code.

(Ord. 2007-93, passed 10-18-07)

§ 170.007. Administration and enforcement.

The Growth Management Director, under the supervision of the City Manager, shall administer and enforce this Land Development Code. The Growth Management Director may be provided with the assistance of such other officers and employees of the city as may be necessary to enforce the provisions of this chapter. If any provisions of this Land Development Code are violated, the person responsible for such violation shall be notified in writing, indicating the nature of the violation and ordering the action necessary to correct it. The Growth Management Director, at their discretion, shall order discontinuance of illegal use of land, buildings, or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this chapter to ensure compliance with or to prevent violation of its provisions.

('74 Code, § 25-251) (Ord. 89-08, passed 4-27-89; Am. Ord. 2016-17, passed 4-21-16)

§ 170.008. Nonconformance provisions

- A. Intent.** Within the districts established by this chapter or amendments that may later be adopted, there exists lots, structures, uses of land and structures and characteristics of use which were lawful before this chapter was passed or amended, but which would be prohibited, regulated or restricted under the terms of this chapter or future amendments.

It is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their continuation. Such uses are declared by this chapter to be incompatible with permitted uses in the districts involved. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

('74 Code, § 25-101) (Ord. 89-08, passed 4-27-89)

B. Extension and enlargement.

1. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged after passage of this chapter by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the district involved.
2. To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building on which an active building permit has been issued. Actual building construction shall be diligently carried on until the, subject structure is completed.

('74 Code, § 25-102) (Ord. 89-08, passed 4-27-89)

C. Nonconforming lots of record.

1. In any district, permitted principal and accessory structures may be erected on any single lot that is of record on the effective date of this section, notwithstanding limitations imposed by other provisions of this code of ordinances and any other applicable ordinance of the city. Such lots must be in separate ownership and not of continuous frontage with other lots in the same ownership. These provisions shall apply even though such lot fails to meet the requirements for area or width or both, that are generally applicable in the district, provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through the procedure established in § 169.009.
2. If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this chapter, and if all or part of the lots do not meet the requirements for lot width and area as established by this chapter, the lands involved shall be considered to be an undivided parcel for the purpose of this chapter, and no portion of the parcel shall be used which does not meet lot width and area requirements established by this chapter.

('74 Code, § 25-103) (Ord. 89-08, passed 4-27-89; Am. Ord. 2010-76, passed 11-4-10)

D. Nonconforming uses of land. Where, at the effective date of adoption or amendment of this chapter, lawful use of land exists that is made no longer permissible under the terms of this chapter as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this chapter; unless such use is changed to a use permitted in the district in which such use is located;
2. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this chapter;
3. If any such nonconforming use of land ceases for any reason for a period of more than ninety (90) consecutive days. Any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located;
4. No additional structure which does not conform to the requirements of this chapter shall be erected in connection with such nonconforming use of land.

('74 Code, § 25-104) (Ord. 89-08, passed 4-27-89)

E. Nonconforming structures. Where a lawful structure exists at the effective date of adoption or amendment of this chapter that could not be built under the terms of this, chapter by reason of restrictions on area, lot coverage, height, yards or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such structure may be enlarged or altered in a way which increases its nonconformity;

2. But any structure or portion thereof may be altered to decrease its nonconformity;
3. Should such a structure be destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter;
4. Should such a structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations of the district in which it is located after it is moved.

('74 Code, § 25-105) (Ord. 89-08, passed 4-27-89)

F. Nonconforming uses of structures or of structures and premises in combination. If a lawful use involving individual structures, or of structure and premises in combination, exists at the effective date of adoption or amendment of this chapter, that would not be allowed in the district under the terms of this chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this chapter in the district on which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this chapter, but no such use shall be extended to occupy any land outside such building;
3. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may not thereafter be resumed;
4. When a nonconforming use of a structure or structure and premises in combination is discontinued or abandoned for six (6) consecutive months, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located;
5. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction, for the purpose of this chapter, is defined as damage to an extent of more than fifty percent (50%) of the replacement cost at time of destruction.

('74 Code, § 25-106) (Ord. 89-08, passed 4-27-89; Am. Ord. 2016-17, passed 4-21-16)

G. Repairs and maintenance.

1. On any building devoted in whole or in part to any nonconforming use, work may be done in any period of six (6) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent (10%) of the current replacement value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this chapter shall not be increased.

2. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

('74 Code, § 25-107) (Ord. 89-08, passed 4-27-89; Am. Ord. 2016-17, passed 4-21-16)

H. Nonconforming or sub-standard lots created by eminent domain proceedings. Any lot or parcel which shall be made nonconforming or substandard as a result of eminent domain proceedings instituted by the city or other governmental agency or through a voluntary conveyance by a lot owner in lieu of formal eminent domain proceedings, which lot or parcel except for such eminent domain or voluntary conveyance shall be deemed to be a conforming lot or parcel for all purposes under this chapter. However, any new construction or building addition shall conform to the subject yard requirements of the applicable district. Any re-construction or maintenance of the existing structures may be performed with no additional encroachment into the subject yard requirements.

('74 Code, § 25-108) (Ord. 89-08, passed 4-27-89; Am. Ord. 2016-88, passed 12-15-16)

I. Uses under conditional use provisions not nonconforming uses. Any use for which a conditional use is permitted as provided in this chapter shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use in such district.

('74 Code, § 25-109) (Ord. 89-08, passed 4-27-89; Am. Ord. 95-44, passed 11-2-95)

J. Temporary uses. The casual, intermittent, temporary or illegal use of land or structures shall not be sufficient to establish the existence of a nonconforming use. Such use shall not be validated by the adoption of this chapter unless it complies with the terms of this chapter.

('74 Code, § 25-110) (Ord. 89-08, passed 4-27-89)

§ 170.009. Vested rights.

In the event any provision of this chapter would limit or modify the vested rights of any person or entity to complete a development that has been previously authorized, then in that event, the city may recognize the right to complete the development as provided herein. The city recognizes the right of any person to complete the following development:

- A. Development that has received a building permit as long as that permit remains valid;
- B. Development that has received final site plan approval shall have one (1) year to obtain and maintain a valid building permit; and
- C. Development that has filed a completed application for a building permit shall have 180 days to obtain and maintain a valid building permit.
- D. Development that has received preliminary plat approval, preliminary subdivision approval, or preliminary PUD approval provided the development has secured a permit to construct all or any phase of such development and is continuing the development in good faith. [MOVED D-F FROM 183.01 (Comprehensive Plan)]
- E. Any person or entity with vested rights who has a right to complete a development and has secured a building permit, final plat approval, final site plan approval, or preliminary approval as provided above

shall lose its right to complete such development if such development does not maintain a current building permit, or current site plan or development approval as provided for by this code of ordinances of the city. Once a development has lost its current approval, then in that event future development shall comply with applicable provisions of the comprehensive plan and maps.

- F. The city may recognize other applications for vested rights in accordance with the following procedure:
1. Any property owner who claims to have vested rights based upon a prior approval from the city other than as provided above may submit to the city manager, within one hundred and twenty (120) days after the effective date of this section, a written request for recognition of the vested rights.
 2. The applicant shall submit such information as the applicant deems appropriate to support a claim of vested rights including a legal description of property, dates of any recent rezoning, preparation of any plans, approval of any plans, any action of the city upon which applicant has relied, facts showing substantial reliance or change in position.
 3. Within ninety (90) days after receipt of the application, the City Council shall either recognize or reject the applicant's claim of vested rights. If this city fails to act upon such request within ninety (90) days, then the application shall be deemed to be denied. No suit shall be filed by the applicant unless prior thereto the applicant has made a request of the city prior to the litigation.

('74 Code, § 25-314) (Ord. 89-08, passed 4-27-89; Am. Ord. 2016-17, passed 4-21-16)