CHAPTER 172. DEVELOPMENT REVIEW PROCEDURES

PART 1. APPLICABILITY

§ 172.001. DEVELOPMENT ORDER REQUIRED.

The purpose of requiring a development order is to determine compliance with development standards, ensure the availability of adequate services, and calculate impact fees, when applicable, prior to the issuance of a building permit. The development order shall specify the terms and conditions regulating development.

A. **Activities requiring a development order**. It shall be unlawful to change the use of an existing structure; modify an approved site plan; clear land; construct a building or other structure; store building materials or erect temporary field offices; or to commence the moving, alteration, or repair of any structure, including accessory structures, until a development order has been issued for such activity.

B. **Exceptions**. The following construction activities do not require a development order, but require other permits:

1. The construction of, or additions to, single family and duplex dwellings on individual lots.
2. Interior renovations which do not add dwelling units or change the occupancy of the building.
3. The construction or modification to accessory structures, including but not limited to swimming pools, decks, patios, fences, and sheds (except in non-residential zoning districts).
4. Sign installation.
5. Tree removal from a single family or duplex lot.
6. Exterior above-ground renovations which do not add square footage to the building.
7. Residential driveways

§ 172.002. BUILDING PERMITS REQUIRED.

A. No building or other structure shall be erected, moved, added to or structurally altered without a permit therefore issued by the Building Official. No building permit shall be issued except in conformity with the provisions of this chapter, except after written order pursuant to the provisions of Section 172.025.

B. The issuance of a permit upon plans and specifications shall not prevent the Building Official from thereafter requiring the correction of errors in such plans and specifications or preventing the building operations being carried on thereunder when in violation of this chapter or any other provision of this code of ordinances or any other city ordinance.

('74 Code, § 25-252) (Ord. 89-08, passed 4-27-89; Am. Ord. 95-44, passed 11-2-95; Am. Ord. 2010-76, passed 11-4-10)

§ 172.003. CERTIFICATE OF OCCUPANCY REQUIRED.

No land or building, or part thereof, hereafter erected or altered in its use or structure shall be used until the Building Official shall have issued a certificate of occupancy stating that such land, building, or part thereof, and the proposed use thereof are found to be in conformity with the provisions of this chapter. Within three (3) days after notification that a building or premises, or part thereof, is ready for occupancy or use, it shall be the duty of the Building Official to make a final inspection thereof and to issue a certificate of occupancy if the land, building or part thereof and the proposed use thereof are found to conform with the provisions of this chapter, or, if such certificate is refused, to state such refusal in writing with the cause.

('74 Code, § 25-254) (Ord. 89-08, passed 4-27-89)

§ 172.004. CODE VIOLATIONS AND PROCESSING OF APPLICATIONS.

No applications for development approval shall be processed or scheduled for hearings if properties involved in the applications have outstanding code violations as determined by the Code Compliance Division. Exceptions to this shall be made for applications directly necessary to correct a violation. Such determination shall be made by the Growth Management Director.

(Ord. 2006-61, passed 6-15-06)

§ 172.005. ENVIRONMENTAL FEES

Upon issuance of a city-wide Incidental Take Permit and approval of a city-wide Habitat Conservation Plan by the United States Fish and Wildlife Service, a minimum fee, as established by City Council by resolution will be affixed to each building permit issued by the Palm Bay Building Division for any new structure on previously unimproved land.

(Ord. 2007-42, passed 5-24-06; Am. Ord. 2013-54, passed 10-3-13)

A. Establishment of Environmental Fee Fund account. There is hereby established the Environmental Fee Fund account for the purpose of insuring that the fees collected pursuant to this chapter are utilized solely and specifically to comply with the Habitat Conservation Plan, Incidental Take Permit issued by the United States Fish and Wildlife Service and related activities adopted by the City of Palm Bay.

B. Expenditure of fees. Monies in the Environmental Fee Fund account may be utilized to fulfill commitments and pay all legal fees and administrative costs related to and set forth in the Habitat Conservation Plan and/or any permit issued by the United States Fish and Wildlife Service.

(Ord. 2007-42, passed 5-24-07)

§ 172.006. RESERVED

§ 172.007. RESERVED

§ 172.008. RESERVED

§ 172.009. RESERVED

PART 2. GENERAL PROCEDURES

§ 172.010. GENERAL PROVISIONS

A. Level of review required. Table 172-1 lists the development permits required by this chapter together with the review and approval authority.

Table 172 - 1. Development Order Review Authorities.

Application Type	See Section	Approval Type	Pre-Application Meeting	Growth Management	DRC	Planning & Zoning Board	City Council
COMPREHENSIVE PLAN/LDC/ZONING MAP AMENDMENTS:							
Annexation	172.020	?	Yes	Yes	No	Yes	Yes
Comprehensive Plan Future Land Use Map Amendment	172.021	L	Yes	Yes	No	Yes	Yes
LDC text amendments	172.022	L	Yes	Yes	No	Yes	Yes
Zoning map amendment (City initiated - areawide)	172.022	L	No	Yes	No	Yes	Yes
Zoning map amendment (site specific, PUD)	172.022 & Part 4	Q	Yes	Yes	No	Yes	Yes
SITE PLANS:							
Preliminary development Plan (PUD)	172.030	Q	Yes	Yes	Yes	Yes	Yes
Preliminary Site Plan	172.023	A	Yes	?	Yes		
Final development Plan (PUD)	172.031	Q	No	?	Yes		
Final Site Plan	172.023	A	No	?	Yes		
SUBDIVISIONS:							
Preliminary Plat	172.042	Q	Yes	Yes	Yes	Yes	Yes
Construction Drawings	172.046	A	No	Yes	Yes	No	No
Final Plat	172.043	Q	Yes	Yes	Yes	No	Yes
Vacation of Streets/Plats	172.057 & 172.058	L	No	Yes	Yes	No	Yes
OTHER APPLICATIONS:							
Conditional Use	172.024	Q	Yes	Yes	Yes	Yes	Yes
Development Agreement	##	L/Q	Yes	Yes	No	Yes	Yes
Variance	172.025	Q	Yes	Yes	Yes	Yes	Yes
Administrative Variance	172.026	A	Yes	Yes	Yes	No	No
Floodplain Variance	179.007	Q	Yes	Yes	Yes	No	Yes

Legend: A = Administrative; L = Legislative; Q = Quasi-judicial; DRC: Development Review Committee

B. Pre-application meeting. Whenever a pre-application meeting is required per **Table 172-1**, the applicant shall request such meeting with staff prior to filing an application. The pre-application meeting is an informal meeting to discuss the development review process requirements. During the pre-application meeting, the applicant is required to share preliminary plans and data to show existing conditions of the site and its vicinity and the proposed layout. Comments made by staff at a pre-application meeting are made solely for preliminary informational purposes and shall not be construed as an approval or denial or agreement to approve or deny any development order. Failure of staff to identify any required permits, procedures or standards at a pre-application conference shall not relieve the applicant of any such requirements nor constitute a waiver of the requirement by the decision-making body. The City Manager or designee may waive a pre-application meeting based on the specific circumstances to a case.

C. Application submittal.

1. *Application forms and requirements*.
   a. The City shall maintain application forms and submittal requirements for all development applications referenced in this chapter.
   b. Applicants for projects requiring more than one type of review (e.g., conditional use and site plan) may submit concurrent applications if determined appropriate by the City Manager or designee.
   c. Application fees are established by Resolution by the City Council.
2. *Completeness review of application*. When an application for development approval is submitted, the City Manager or designee shall make a determination as to whether the application is complete.

D. Development Review Committee review.

1. After an application is determined to be complete, the City Manager or designee shall forward copies of the application to the DRC. Applications that do not require review by the DRC per **Table 172-1** shall be reviewed by Growth Management Staff for compliance with the Land Development Code, comprehensive plan, PBUD Policies, Procedures & Standards Handbook, and any other regulatory requirements, if applicable.
2. The DRC shall review the application and determine compliance with the requirements of the Land Development Code, comprehensive plan, PBUD Policies, Procedures & Standards Handbook, if applicable, and any other applicable regulatory requirements. After reviewing the application, the DRC shall issue a report listing the requirements that need to be addressed. The DRC reserves the right to require additional reviews based on the level of plan changes requested.
3. Upon receipt of a determination from the DRC, or a request from the applicant to proceed notwithstanding insufficiencies, the City Manager or designee shall prepare a report and recommendation to the appropriate decision-making or recommending body and schedule a hearing, if applicable, or notify the applicant in writing of the approval.

§ 172.011. SCHEDULE OF FEES AND CHARGES

A. Fee schedule. Fees and other charges for Land Development Code applications, administration, reviews, and other related purposes shall be established by City Council by resolution. Such fees or charges, and their adoption by City Council, shall be considered administrative in nature and shall not be considered a part of the Land Development Code nor a Land Development Regulation.

(Ord. 2005-68, passed 11-3-05; Am. Ord. 2006-44, passed 5-16-06)

B. Additional fees. In the event an applicant causes any cancellation, continuance, delay, postponement, rescheduling, withdrawal or reapplication of any rezoning, conditional use, variance or appeal of administrative decision, additional fees for costs shall be imposed against the applicant as established by resolution.

('74 Code, § 25-321) (Ord. 89-08, passed 4-27-89; Am. Ord. 95-46, passed 10-19-95; Am. Ord. 2003-46, passed 11-20-03; Am. Ord. 2006-10, passed 2-2-06)

C. Payment; refunds or rebates. No permit certificate shall be issued and no inspection, public notice or other action relative to zoning, petitions for changes in zoning, or appeals, shall be instituted until after such fees, costs and charges have been paid. When in accordance with the provisions of this section, a fee is paid and application is filed, there shall be no return or rebate of any funds so received, regardless of the city's determination in the matter involved. All fees, costs and charges shall be, upon collection, deposited in the general fund of the city.

('74 Code, § 25-322) (Ord. 89-08, passed 4-27-89)

§ 172.012. CITIZEN PARTICIPATION PLANS.

A. Purpose. The purpose of the citizen participation plan is to:

1. Ensure that applicants pursue early and effective citizen participation in conjunction with their applications, giving them the opportunity to understand and try to mitigate any real or perceived impacts their application may have on the community.
2. Ensure that citizens have an adequate opportunity to learn about applications that may affect them and to work with applicants to resolve concerns at an early stage of the review and decision-making process.
3. Facilitate ongoing communication between the applicant, interested citizens, city staff, appointed and elected officials throughout the applicant review process.
4. The citizen participation plan is not intended to produce complete consensus on all applications, but to encourage applicants to be good neighbors and to allow for informed decision-making.

B. Applicability.

1. Every application for development, unless specifically exempted by this subchapter, shall include a citizen participation plan and a citizen participation report that must be implemented prior to an application being deemed sufficient for staff review and scheduling of public hearings.
2. When in compliance with all other city ordinances and regulations, the following projects are exempted from the other provisions of this section.
    a. Construction of one single-family detached dwelling.
    b. Construction of ten (10) or less multi-family dwelling units, regardless of density.
    c. Amendments to an approved Planned Unit Development (PUD) that are exempt per Section 172.030.

C. Meeting notice and plan contents.

1. At a minimum, the applicant shall host at least one citizen participation plan that shall be held within city limits and may be accompanied by a virtual meeting link.
2. The citizen participation plan shall include the following information:

a. A copy of the notice containing the date, time and location of the meeting that was mailed to all residents, property owners, interested parties, political jurisdictions and public agencies that may be affected by the application within five hundred (500) feet of the subject property and a copy of the mailing list. These requirements apply in addition to any notice provisions required elsewhere in the Land Development Regulations. Citizen participation plan meeting dates may not overlap with any City of Palm Bay Council meetings or Planning and Zoning Board meetings.

b. A brief statement introducing the request, identifying the location of the subject parcel(s), the total acreage, its current use, its current future land use designation, its current zoning designation and identifying whether it is improved or unimproved.

3. During the citizen participation plan meeting, the applicant shall provide an overview of the request describing the potential impact the proposed request may have on the surrounding properties.

4. Citizen participation plan meetings must be held within ninety (90) days of official submittal of a complete application to the City of Palm Bay.

D. Citizen participation report.

1. When a citizen participation plan is required, the applicant shall provide a written report, on a city prescribed form, documenting the results of the citizen participation plan meeting. This report shall be required as part of the complete application submittal package filed with the Growth Management Department.

2. The citizen participation report shall include a copy of any meeting notice(s) and any attachments or accompanying materials included with the notice.

3. The report shall identify the number of attendees, include a copy of the sign-in sheet, any materials distributed or presented at the meeting and summarize the substance of concerns, issues and problems expressed during the meeting.

4. The report shall describe how the applicant has addressed, or intends to address the concerns, issues and problems expressed during the process.

5. The report shall identify which concerns, issues and problems the applicant is unwilling or unable to address, if any, and shall state the applicant's justification.

(Ord. 2006-45, passed 5-16-06; Am. Ord. 2014-48, passed 10-14-14; Am. Ord. 2016-12, passed 3-17-16; Am. Ord. 2022-84, passed 8-18-22; Am. Ord. 2023-06, passed 2-16-23)

§ 172.013. PUBLIC HEARINGS.

The approving/reviewing authority listed in **Table 172-1** shall conduct the public hearing in accordance with the hearing requirements noted in this section and the city standard operating procedures for public hearings. At the hearing, the authority shall approve, approve with conditions, continue, or deny the application.

A. Notice of public hearings. All meetings of the City Council and the Planning & Zoning Board shall be noticed and advertised in accordance with the Florida Statutes, the city advertising standard operating procedures, and the rules of order of the City Council.

B. **Approval subject to conditions**. When approving a development order or development permit application, the approving body may attach such conditions to the approval as deemed necessary to assure compliance with this Code. Such conditions may address matters including, but not limited to limitations on size, bulk and location; duration of construction period; requirements for landscaping, signage, outdoor lighting and the provision of adequate ingress and egress; duration of the approval; design and appearance; hours of operation; and the mitigation of traffic and environmental impacts.

§ 172.014. DEVELOPMENT REVIEW COMMITTEE (DRC).

A. Establishment of Development Review Committee. There is hereby established a Development Review Committee (DRC). The structure, membership, and duties may be modified by the City Manager or designee.

B. Duties and Powers. The DRC is responsible for reviewing development applications, as specified in this Code, and providing comments and recommendations to the applicable approving authority regarding consistency of the proposed application with the City's adopted Land Development Code and Comprehensive Plan.

C. Membership. The DRC shall be composed of representatives of City departments as determined by the City Manager or designee to be essential in the review of development proposals. The chairperson of the DRC shall be the City Manager or designee. Other officers and subcommittees may be appointed by the City manager or designee, as needed, to carry out the purposes of this section.

D. **Meetings**. The DRC shall meet on a regular schedule to be determined by the City Manager or designee.

E. **Rules of Procedure**. The DRC rules and procedures are set by Resolution.

§ 172.015. APPEALS

A. Administrative appeals. The City Council shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Growth Management Director in the enforcement of the city's land development regulations.

1. Such appeal shall be taken within a reasonable time not to exceed sixty (60) days, by filing with the city a notice of appeal specifying the grounds thereof. The Growth Management Director shall forthwith transmit to the City Clerk all papers constituting the record upon which the action appealed from was taken. The City Council shall hear the appeal at a regularly scheduled or special City Council meeting within thirty (30) days and give public notice thereof at least fifteen (15) days in advance of public hearing as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person or by agent or attorney.

2. An appeal stays all proceedings in furtherance of the action appealed from, unless the Growth Management Director from whom the appeal is taken certifies to the City Council, through the City Manager, after the notice of appeal is filed with the City Clerk, that by reason of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed other than by a restraining order which may be granted by a court of competent jurisdiction.

3. In exercising any of the powers listed in this section, the City Council may, so long as the action is in conformity with the terms of the city's land development regulations, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as should be made and, to that end, shall have all of the powers of the Growth Management Director whose action is being appealed.

(Ord. 2006-46, passed 5-16-06)

B. Appeals of Quasi-Judicial Decisions. Any final action, including final order, issued by the approving authority may be appealed, within thirty (30) days of the date of the action taken, by any aggrieved person or entity, with the appropriate court of record as provided by law. All such appeals shall be filed with the court of record and shall include a petition, duly verified, setting forth that such decision is illegal, and/or improper, and specifying the grounds of the illegality.

§ 172.016. ADMINISTRATIVE MORATORIA

A. Comprehensive Plan amendment moratoria.

1. Whenever the Planning and Zoning Board votes to recommend in favor of any proposed amendment to the city's Comprehensive Plan, the City Manager shall issue an administrative order setting forth the proposed amendment and establishing a moratorium during which any city employee, board or department will be prohibited from granting an approval or permit that would be prohibited in the event that the proposed amendment recommended for approval by the Planning and Zoning Board is subsequently enacted by the City Council.
2. Any administrative order issued pursuant to division 1 above shall be complied with by all city employees, boards and departments and shall be effective until the proposed amendment is enacted or rejected by the City Council. However, in the event that the City Council fails to:
    a. Adopt a small-scale amendment; or
    b. Transmit a proposed amendment pursuant to state law; or
    c. Reject an amendment within ninety (90) days after a favorable recommendation by the Planning and Zoning Board; or
    d. Enact or reject an amendment within one hundred twenty (120) days after receiving comments on the proposed amendment pursuant to state law; any administrative order shall be deemed expired and shall be without further effect.
3. Notwithstanding divisions 1 and 2 above, excepted from any administrative order is any project that has a validly issued building permit, variance approval, or has a completed application meeting all submission requirements submitted for City approval, variance approval, or building permit approval prior to a vote by the Planning and Zoning Board in favor of a proposed amendment.

(Ord. 2003-49, passed 11-20-03)

B. Land Development Code.

1. Whenever the Planning and Zoning Board votes to recommend in favor of any proposed amendment to the city's Land Development Code, the City Manager shall issue an administrative

order setting forth the proposed amendment and establishing a moratorium during which any city employee, board, or department will be prohibited from granting a development order or development permit for any development, as defined in Chapter 163.3164, Florida Statutes, that would be prohibited, with or without variances, in the event that the proposed amendment recommended for approval by the Planning and Zoning Board is subsequently enacted by the City Council.

2. Any administrative order issued pursuant to division 1 above shall be complied with by all city employees, boards and departments and shall be effective until the proposed amendment is enacted or rejected by the City Council. However, in the event that the City Council fails to enact or reject an amendment within ninety (90) days after a favorable recommendation by the Planning and Zoning Board any administrative order shall be deemed expired and shall be without further effect.
3. Notwithstanding divisions 1 and 2 above, excepted from any administrative order is any project that has a validly issued building permit, variance approval, or has a completed application meeting all submission requirements submitted for city approval, variance approval, or building permit approval prior to a vote by the Planning and Zoning Board in favor of a proposed amendment.

(Ord. 2003-49, passed 11-20-03)

§ 172.017. RESERVED

§ 172.018. RESERVED

§ 172.019. RESERVED

PART 3. APPLICATION TYPES

§ 172.020. ANNEXATIONS

See F.S. ch. 171 for general annexation procedures. When reviewing annexation requests, the City shall determine if the site's maximum development potential based on the proposed Future Land Use Category for the site may negatively impact the adopted LOS for any public facility or service. If such requests are estimated to negatively impact the City's ability to maintain its adopted LOS but the City is amenable to approve the annexation, the developer will be required to enter into an impact mitigation agreement with the City.

§ 172.021. COMPREHENSIVE PLAN AMENDMENTS

A. Purpose. The Comprehensive Plan (Goals, Objectives and Policies, and Map Series) may be amended from time to time in accordance with the procedures set forth in the Florida Statutes and this section.

B. Review Procedures. Comprehensive plan amendments may be initiated by a property owner or the City. The following procedures shall apply:

1. *Pre-application Meeting.* The applicant is required to schedule and attend a pre-application meeting as provided for in Section 172.010.
2. *Application submittal*. Applications shall be filed as prescribed in Section 172.010

3. *Planning and Zoning Board Review*. The Planning and Zoning Board shall review the proposed application at a public hearing. After consideration of the petition, the Board shall transmit its recommendation to City Council.
4. *City Council Review*. The City Council shall consider the application at one (1) public hearing for small-scale comprehensive plan amendments as required by F.S. § 163.3187, or two (2) hearings (transmittal/first reading and adoption) for expedited comprehensive plan amendments per F.S. § 163.3184(3).

C. Review Criteria for Future Land Use Map and Comprehensive Plan Text Amendments. In reviewing proposed changes to the future land use map, the reviewing authorities shall consider the following criteria:

1. Consistency with the goals, objectives, and policies of the comprehensive plan.
2. The need for the change based on the projected population of the City and the availability of property designated for the land use being requested by the petitioner.
3. The compatibility of the proposed category with adjacent sites.
4. The potential impact of the proposed change on adopted levels of service.
5. The potential impact on hurricane evacuation plans, routes, or shelter facilities as determined by the review criteria contained in the Coastal Management Element of the City's Comprehensive Plan.

§ 172.022. ZONING MAP AND LDC AMENDMENTS

A. Purpose. The regulations, restrictions and zoning district boundaries set forth in this chapter may, from time to time, be amended, supplemented, changed, or repealed, in the manner prescribed by law.

('74 Code, § 25-291) (Ord. 89-08, passed 4-27-89)

B. Application.

1. A zoning district boundary may be initiated by:
   a. The owner or owners of at least seventy-five percent (75%) of the property described in the application;
   b. Tenant or tenants, with owner's sworn-to consent;
   c. Duly authorized agents evidenced by a written power of attorney;
   d. City Council;
   e. Planning and Zoning Board;
   f. Any department or agency of the city.
2. A text amendment to this Land Development Code may be proposed by:
   a. City Council;
   b. Planning and Zoning Board;

c. Any department or agency of the city;

d. (4) Any individual, corporation or agency.

C. Public notice

1. When a change of zoning classification of a single parcel is proposed, or a group of not more than five hundred (500) parcels, of any property within the city, a notice shall be mailed to each property owner whose zoning classification is proposed to be changed, using owner's current address of record, as maintained by the Tax Assessor, and be postmarked no later than ten (10) days prior to the scheduled hearing. Prior to the effective date of any zoning classification change, the City Council shall cause an affidavit to be filed with the City Clerk certifying its compliance with the provisions of this section. A failure to give notice shall not affect the validity of zoning except as to the property of the complaining owner.
2. When any proposed change of a zoning district boundary lies within five hundred (500) feet of the boundary of an incorporated or unincorporated area, notice shall be forwarded to the Planning Board or governing body of such incorporated or unincorporated areas in order to give such body an opportunity to appear at the hearing and express its opinion on the effect of the district boundary change.

D. Review Procedures.

1. *Pre-application meeting*. The applicant is required to schedule and attend a pre-application meeting as provided for in Section ##.
2. *Application submittal*. Applications shall be filed as prescribed in Section 172.010
3. *Planning and Zoning Board Review*. All proposed amendments shall be submitted to the Planning and Zoning Board. Based on the review of the application in light of the review criteria stated below, the Planning and Zoning Board shall submit the request to the City Council with written reasons for its recommendation.
4. *City Council Review*. The City Council shall hold public hearings on the recommendation of the Planning and Zoning Board, giving public notice as required by the state statutes and by posting notice in city hall.
5. *Denial*. If the Planning and Zoning Board or the City Council determine that the request should be denied, the Planning and Zoning Board may recommend, and/or the City Council may change the district classification for the property to any district classification that is less restrictive than the requested zoning classification consistent with the Future Land Use Map.

E. Review Criteria for Zoning Map and LDC Text Amendments. In reviewing proposed changes to the zoning map or LDC, the reviewing authorities shall consider the following factors:

1. Future Land Use Map Amendment Factors of Analysis:

   a. Whether the proposed amendment will have a favorable or unfavorable effect on the city's budget, or the economy of the city;

   b. Whether the proposed amendment will adversely affect the level of service of public facilities;

c. Whether the proposed amendment will adversely affect the environment or the natural or historical resources of the city or the region as a result of the proposed amendment;

d. Whether the amendment will have a favorable or adverse effect on the ability of people to find adequate housing reasonably accessible to their places of employment;

e. Whether the proposed amendment will promote or adversely impact the public health, safety, welfare, or aesthetics of the region or the city;

f. Whether the requested amendment is consistent with all elements of the Comprehensive Plan and established Levels of Service.

g. Whether the request maximizes compatibility (consistent with the definition found in Florida Statutes 163.31649) between uses;

h. Whether the request provides for a transition between areas of different character, density or intensity;

i. Whether the request relocates higher density and intensity uses in areas which already feature adequate vehicular access and access to public facilities; and

j. Whether the request considers land use equity in accordance with Policy FLU – 1.12A of the Comprehensive Plan.

2. Zoning Map Amendment Factors of Analysis:

   a. The applicant's need and justification for the change and whether it aligns with the community's current or future needs;

   b. The effect of the change, if any, on a particular property and surrounding properties;

   c. The amount of existing undeveloped land in the general area of the city having the same classification as that requested;

   d. Whether the proposed amendment furthers the purpose of the city's Comprehensive Plan, or other strategic plans applicable to the proposed development and the provisions in the Land Development Code;

   e. Whether the requested district is substantially different from that of the surrounding area; and

   f. Whether the request provides for a transition between areas of different character, density or intensity.

3. When considering rezones to higher density districts, the following criteria shall also be considered:

   a. Existing or planned alternative transportation infrastructure such as bike lanes, trails, transit, and sidewalks in the neighboring area to the site; and

   b. The availability of nonresidential uses which can help meet the daily needs of residents for goods, services, and employment.

4. When considering applications to rezone sites to commercial districts, the City should consider directing commercial activities to develop at nodes, rather than along roadway corridors.

5. Applications to rezone to Neighborhood Commercial (NC) should consider the lack of neighborhood scale services available to the surrounding community, especially grocery stores offering fresh foods;
6. Applications to rezone property to non-industrial districts should not encroach into areas designated for industrial use on the Future Land Use Map;
7. Whether the application to rezone a site will create land use inequities.
8. Location within a prime water recharge area and the potential impact of the allowable uses in the district.

F. Reconsideration. When a proposed change in district boundaries has been acted upon by the City Council and disapproved or failed to pass, such proposed change, in the same or substantially similar form, shall not be reconsidered by the City Council, for a period of six (6) months. Such restriction shall not apply to the owner if the original request was initiated by the City Council, Planning and Zoning Board, or any department or agency of the city.

('74 Code, § 25-296) (Ord. 89-08, passed 4-27-89; Am. Ord. 2017-09, passed 1-19-17)

§ 172.023. SITE PLANS.

Prior to the issuance of a Building Permit for any development in the City of Palm Bay, other than construction of a single-family residence or duplex, a site plan shall be submitted for administrative review. The submittal requirements shall follow the Guidelines for Site and Building Permitting Procedures Manual.

(Ord. 2016-17, passed 4-21-16)

§ 172.024. CONDITIONAL USES

A. Intent. Certain land uses, due to their unique functional characteristics and the potentiality for their incompatibility with adjoining land uses, require special consideration on an individual basis of their suitability for location and development within particular zoning districts. Such uses have been designated as conditional uses within appropriate zoning district classifications set forth in Chapter 173. It is the intent of this subchapter that such uses may be permitted in the zoning district classifications only after affirmative findings that they can be developed at particular locations in a compatible manner.

('74 Code, § 25-161) (Ord. 89-08, passed 4-27-89; Am. Ord. 95-44, passed 11-2-95)

B. Application for conditional uses; fees. Written application for conditional use shall be complete and made to the Land Development Division using the application form provided by the city. Application must be filed not later than the first day of the month preceding the scheduled hearing month. The applicant shall be required to pay any fee as may be established to defray processing and advertising costs related to review and hearing of the application. An application shall be accepted only for a conditional use specifically listed within the zoning district classification applying to the subject property or as specifically provided for elsewhere in this chapter.

('74 Code, § 25-162) (Ord. 89-08, passed 4-27-89; Am. Ord. 95-44, passed 11-2-95; Am. Ord. 2016-17, passed 4-21-16)

C. Review criteria. In its deliberations concerning the granting of a conditional use, the City Council shall carefully consider the following criteria:

1. Adequate ingress and egress may be obtained to and from the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency.
2. Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor or other detrimental effects upon adjoining properties.
3. Adequate and properly located utilities are available or may be reasonably provided to serve the proposed development.
4. Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.
5. Signs, if any, and proposed exterior lighting will be designed and arranged so as to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.
6. Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.
7. The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation or type, of physical activity. The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties.
8. Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, reasonable time limit within which the action for which special approval is requested shall be begin or be completed, or both.

('74 Code, § 25-163) (Ord. 89-08, passed 4-27-89; Am. Ord. 95-44, passed 11-2-95; Am. Ord. 2015-27, passed 6-4-15; Am. Ord. 2016-17, passed 4-21-16)

D. Conditional use review.

1. A written application for a conditional use is submitted indicating the section of this chapter under which the conditional use is sought and stating the grounds on which it is requested.
2. All applications for conditional uses shall be submitted to the Planning and Zoning Board for study and written, advisory recommendations to the City Council.
3. The City Council shall review the application and may either grant conditional uses with such conditions and safeguards as are appropriate under this chapter or other applicable code or ordinance provisions, or deny conditional uses when not in harmony with the purpose and intent of this chapter.
4. In granting any conditional use, the City Council may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when

made a part of the terms under which the conditional use is granted, shall be deemed a violation of this chapter and punishable as provided by this chapter. The City Council shall prescribe a time limit within which the action for which the conditional use is required shall be begun or completed, or both. Failure to begin or complete, or both, such action within the time limit set shall void the conditional use.

E. Public notice

1. Public notice shall be given as required by state statutes. The owner of the property for which conditional use is sought or his agent shall be notified by certified mail. Notice of such hearing shall be posted on the property for which conditional use is sought.
2. A courtesy notice may be mailed to the property owners of record within a radius of five hundred (500) feet, provided, however, that failure to mail or receive such courtesy notice shall not affect any action or proceedings taken hereunder.

('74 Code, § 25-164) (Ord. 89- 08, passed 4-27-89; Am. Ord. 94- 36, passed 7-7-94; Am. Ord. 95- 44, passed 11-2-95; Am. Ord. 96- 06, passed 2-15-96; Am. Ord. 98- 07, passed 4-16-98; Am. Ord. 98- 20, passed 7-16-98; Am. Ord. 2004-02, passed 1-22-04; Am. Ord. 2005-15, passed 4-21-05; Am. Ord. 2008-42, passed 6-5-08; Am. Ord. 2009-29, passed 7-16-09; Am. Ord. 2010-76, passed 11-4-10; Am. Ord. 2011-26, passed 4-7-11; Am. Ord. 2011-39, passed 7-7-11; Am. Ord. 2011-40, passed 7-7-11; Am. Ord. 2016-17, passed 4-21-16; Am. Ord. 2017-82, passed 11-16-17; Am. Ord. 2019-16, passed 3-21-19)

§ 172.025. VARIANCES.

A. Purpose. The City Council shall hear petitions for variances only from the height, area or size of structures, and the size of yards and open spaces, as will not be contrary to the public interest where, owing to special conditions, the enforcement of the provisions of the City's land development regulations would result in unnecessary hardship. The establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.

B. Procedures.

1. *Planning and Zoning Board Review*. The Planning & Zoning Board shall review the application in light of the review criteria contained below and forward a recommendation to the City Council.
2. *City Council Review*. Upon receipt from the Planning and Zoning Board of a recommendation concerning disposition of a requested variance, the City Council shall hold a public hearing and may grant, deny or grant with conditions any variance request upon finding that the request meets the review criteria.
3. In granting any variance, appropriate conditions and safeguards may be prescribed to ensure compliance with the requirements of the Land Development Code and the code in general. Such conditions may include time limits for the initiation of the variance, specific minimum or maximum limits to regular code requirements, or any other conditions reasonably related to the requirements and criteria of this chapter.

C. Review criteria: The following criteria shall be used to determine the justification for granting of relief from requirements of the development code. All variance requests shall demonstrate the application of each criterion to the specific case.

1. Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structures or buildings in the same land use category, zoning district or situation.
2. The special conditions and circumstances identified in paragraph (1) above are not the result of actions of the applicant.
3. Literal interpretation and enforcement of the Land Development Code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district or situation, and would result in unnecessary and undue hardship on the applicant.
4. The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building or structure.
5. Granting of the variance request will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings or structures in the same land use category, zoning district or situation.
6. The granting of the variance will be in harmony with the general intent and purpose of this code, and will not be injurious to the surrounding properties or detrimental to the public welfare.
7. The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has unreasonably burdened the applicant's property, based upon the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act.

Financial disadvantages or inconvenience to the applicant shall not of themselves constitute conclusive evidence of unnecessary and undue hardship and be grounds to justify granting of a variance.

Notwithstanding the foregoing criteria, variances may be granted under the authority of the Americans with Disabilities Act as reasonable accommodations based on the disabilities of any applicant or a member of the applicant's household. For purposes herein, "reasonable accommodation" and "disabilities" shall have the meanings provided under the Americans with Disabilities Act.

D. **Transfer of Variances**. Variances run with the property and the use of a variance may be transferred to another party for the same use on the same property.

§ 172.026. ADMINISTRATIVE VARIANCES.

A. Purpose. An administrative variance involves matters such as setbacks, floor area ratios, frontage requirements, subdivision regulations, height limitations, lot coverage/size restrictions, yard requirements, parking, and other variances which have no relation to change of use of the property in question. Administrative variances, however, will not be granted within easements.

Approval may be given for variances to any **proposed** principal, accessory, or other structure up to twelve (12) inches administratively. Approval may be given for variances to any **existing** principal, accessory, or other structure up to twenty percent (20%) of the applicable code section,

administratively. Such requests will be made by the property owner in writing and supported by a current survey to the Growth Management Director for review and approval. A fee shall be assessed to the request as adopted in the latest fee resolution.

B. Procedures.

1. Application. An application for an administrative variance shall be made by the fee owner of the property on a form prescribed by the Growth Management Department and shall be submitted to the Department with a processing fee which shall be set and may be amended from time to time by City Council in accordance with Section 172.022. The application shall include a recent survey of the property, a site plan showing the existing structures on the subject property, the general location and use of existing structures on the adjacent properties from which the administrative variance is being requested and a letter of intent explaining the reason and justification for the variance.
2. Administrative Review. An administrative variance may be granted by the City Manager, or designee, as authorized by the procedure set forth and shall be used for a variance from the provisions of this Code limited to improvements existing at the time of application as opposed to planned construction.
    a. Upon receipt of the completed application, to include all supporting documentation as may be required, the Department, prior to making their decision, shall inspect the subject property and its surrounding properties to determine what impact, if any, the proposed request will have on the area.
    b. The Department shall prepare a staff report and render a decision either approving, approving with modifications, or denying the request. In granting any administrative variance, the Department may prescribe any appropriate conditions and safeguards necessary to protect and further the interest of the area and abutting properties.
    c. The City Manager shall review the staff report and recommendation of the Department and approve, approve with additional conditions, or deny the request.

C. Public notice. The Department shall mail a courtesy notice containing the City Manager's decision to all property owners whose property abuts the applicant's property, and their tenants and/or agents as noted on the application.

D. Appeals.

1. Any aggrieved property owner may appeal the decision of the City Manager within thirty (30) days from the date of the letter. All appeals shall be in the written form prescribed by the Department. A building permit, if required, shall not be issued until the appeal period has expired.
2. An applicant may appeal the decision of the City Manager in accordance with Section 172.015.

(Ord. 2010-72, passed 11-4-10; Am. Ord. 2015-58, passed 12-1-15; Am. Ord. 2020-11, passed 2-20-20; Am. Ord. 2022-73, passed 7-21-22)

§ 172.027. MASTER SITE PLAN FOR MIXED-USE DISTRICTS

A. Purpose/Applicability: Master Site Plan approval is required in conjunction with rezonings to the Mixed-Use zoning districts. The review process is intended to ensure coordinated design of phased

developments. Due to the scale of the developments in the MU district, the master plan is intended to be a conceptual plan but must demonstrate compliance with the requirements of the MU district stated in Chapter 173.

B. Process: The review of development plans for properties zoned Mixed Use District (MU) includes the following steps:

1. Pre-application meeting: The applicant must attend a pre-application meeting per Section 172.010.
2. Development Review Committee: The DRC shall review the Master Site Plan for conformance with the Comprehensive Plan and this Land Development Code. The DRC must submit a recommendation for approval, approval subject to modifications necessary to meet code, or denial.
3. Planning & Zoning Board: The Board considers the DRC recommendations and the review criteria contained in this section in order to issue a recommendation to the City Council.
4. City Council. The City Council shall, upon receipt of the Planning and Zoning Board and DRC recommendations, review the application and approve or deny the final Master Site Plan. This approval allows the applicant to sell or start designing the various components of the development.

C. Phasing. All phases within the development must stand alone and meet code independently from future phases. To ensure adequate distribution of residential uses throughout the development, specific conditions may be placed upon the Master Site Plan to ensure the delivery of such mixes occur.

D. Effect of approval. Approval of the Master Site Plan authorizes the applicant to submit individual Preliminary Development Plans or Preliminary Subdivision Plats for the various components of the development, which must be consistent with the approved Master Site Plan. The Preliminary Development Plan and preliminary Plat shall be reviewed by the Development Review Committee to ensure compliance with the Master Site Plan. Final Plas must meet the requirements stated in Section 172.042 (Final Subdivision Plat).

E. Review criteria. The DRC, Planning and Zoning Board and City Council shall consider the following factors when reviewing a Master Site Plan:

1. Degree of departure of the proposed development from surrounding residential areas in terms of character and density.
2. Compatibility within the development and relationship with surrounding neighborhoods.
3. Prevention of erosion and degrading of surrounding area.
4. Provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control and soil conservation as shown in the preliminary development plan.
5. The nature, intent, and compatibility of common open space, including the proposed method for the maintenance and conservation of the common open space.
6. The feasibility and compatibility of the development plan to function as an independent development.

7. The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed development.
8. The availability and adequacy of water and sewer service to support the proposed development.
9. The benefits within the proposed development and to the general public to justify the requested departure from standard requirements of the Mixed-Use district.
10. The conformity of the development with the city's Comprehensive Plan and Land Development regulations.
11. The conformity and compatibility of the proposed common open space, primary residential and secondary nonresidential uses within the proposed development.

F. **Submittal requirements**. the following items shall be submitted:

1. Written project description outlining the following:
    a. Site plan data.
    b. The effect of the proposed project on surrounding land uses, and the effect of the proposed development on the city's comprehensive plan, adjacent applicable local governments or other appropriate government agencies.
    c. All applicable concurrency requirements relative to the amount, location, design and appropriateness of the proposed land-use arrangement for the size and configuration of the property involved, including, but not limited to, the following:
        i. Transportation;
        ii. Water;
        iii. Sewer;
        iv. Schools;
        v. Recreation/open space;
        vi. Stormwater;
        vii. Solid waste; and
        viii. Public safety
    d. Proposed development schedule and phasing plan, showing the number of dwelling units, and/or the amount of nonresidential square feet to be provided during the various phases of the subdistricts development.
    e. The ability of the subject property or surrounding areas to accommodate any contemplated future expansion of the master site plan, if appropriate.
2. Conceptual Master Site Plan, including, but not limited to, the following:
    a. The location, description and quantity of all land uses to be included.

b. Proposed location and amount of land to be used, including, but not limited to, the following uses:

i. Vehicular rights-of-way and dimensions;

ii. Pedestrian/bicycle circulation;

iii. Common uses;

iv. Recreation/open space;

v. Schools;

vi. Government/civic;

vii. Stormwater; and

viii. Conservation

c. Projected type, location, number and density of all residential dwelling units to be constructed in the development.

d. Proposed development schedule and phasing plan, showing the number and type of dwelling units, and/or the amount of nonresidential square feet to be provided during the various phases of the subdistrict's development.

3. Any other items determined by the department of City staff to be pertinent to preliminary review of the application.

§ 172.028. RESERVED

§ 172.029. RESERVED

PART 4. ZONING MAP AMENDMENT TO PLANNED DEVELOPMENT

The rezone to Planned Development includes two steps: Preliminary Application Approval and Final Application Approval. A Planned Development zoning classification is established when the Final Application is approved by City Council by Ordinance. Both the preliminary and final applications must be submitted for review and action to the Planning and Zoning Board and City Council.

§ 172.030. PRELIMINARY DEVELOPMENT PLAN

A. Preliminary development plan application.

1. *Preliminary application*. A preliminary application shall be submitted to the Land Development Division by the developer requesting approval of the site as a planned unit development zone. The preliminary application shall contain the name of the developer, surveyor and engineer who prepared the development plan and topographic data map, and the name of the proposed planned unit development.

2. *Exhibits*. The following exhibits shall be attached to the preliminary application:

a. Development plan that shall contain, but not be limited to, the following information:

    i. Proposed name or title of project, the name of the engineer, architect, and developer.

    ii. North arrow, scale (one (1) inch equals two hundred (200) feet or larger), date, and legal description of the proposed site.

    iii. Boundaries of tract shown with bearings, distances, closures, and bulkhead liner. All existing easements, section lines and all existing streets and physical features in and adjoining the project, and the existing zoning.

    iv. Proposed parks, school sites or other public or private open space.

    v. Off-street parking, loading areas, driveways and access points.

    vi. Site data including tabulation of the total number of gross acres in the project, the acreage to be devoted to each of the several types of primary residential and secondary nonresidential uses, and the total number of dwelling units, the maximum height of all structures, the minimum setbacks of all structures (and parking areas) and the total area of pervious and impervious surfaces.

    vii. Delineation of phased development, if applicable.

    viii. Proposed means of drainage for the site.

b. Schematic drawing of the elevation and architectural construction of the proposed primary and secondary nonresidential structures.

3. *Submittal*.

a. The PUD zoning application and preliminary development plan shall be submitted to the Land Development Division. Plans will not be distributed for city staff review until all items are submitted and sufficient for review.

    i. City staff will determine sufficiency of the preliminary development plan application package within five business days of submittal. The development coordinator will email notice of any missing items within five business days. The application has 30 days to address the deficiencies by submitting the required additional information.

    ii. Once the preliminary development plan application package is determined sufficient, the development coordinator will distribute the package to city staff within two business days.

    iii. City staff has ten business days to submit comments back to the development coordinator.

    iv. This process is repeated for subsequent submittals with the development coordinator having two business days to distribute and city staff having a maximum of ten business days to submit comments back to the development coordinator. Pursuant to F.S. § 166.033(2) when an application for a development permit or development order is certified by a professional listed in F.S. § 403.0877 before a third request for additional information is issued the city will offer a meeting to attempt to resolve outstanding issues. The city will not request additional information from the applicant more than three times, unless the

applicant waives this limitation in writing. If not waived, the city will proceed to process the application for approval or denial.

v. The PDP application must be complete and accompanied by two (2) copies of the preliminary development plan, as described in these regulations, an approved electronic copy of the plat, a filing fee, and a list of all owners of adjacent property and/or property directly opposite of the proposed subdivision. Such property owner information shall be obtained from the most recent County Tax Appraiser's rolls.

vi. The applicant will be notified when all city staff and outside agency comments have been sufficiently addressed. Preliminary development plans must be approved by the city council. Once the plans are ready for the city council, the applicant will need to submit adequate paper copies for the council agenda packets.

b. The Land Development Division shall process and coordinate the review of the preliminary development plan by the appropriate city departments. The appropriate city departments, to include police and fire departments, shall review and comment on the submitted information. Written comments from the city departments shall be returned to the Land Development Division to be incorporated into a staff report generated by the Land Development Division. The staff report is submitted to the Planning and Zoning Board at the time of the next regular meeting of the Board.

c. The preliminary development plan application shall be heard by the Planning and Zoning Board at a public meeting in the month following the submittal deadline date. Insufficient or incomplete applications will be postponed to the next available meeting following receipt of a sufficient and complete application. Courtesy notice letters of the meeting shall be sent to the owners of abutting and opposite properties of the proposed subdivision. Failure by owners to receive such courtesy notice shall not affect any action or proceedings taken, however. Notice of such a meeting shall also be posted on the property for which subdivision is sought.

4. *Application review*.

a. The preliminary development plan shall be reviewed formally by the Planning and Zoning Board to determine its conformity with the official plans and policies of the city and the requirements of this subchapter.

b. Upon completion of its review, the Planning and Zoning Board shall recommend to the City Council the approval, approval subject to conditions, or disapproval of the preliminary development plan application.

c. Upon receiving the recommendation of the Planning and Zoning Board, the City Council shall, at a regularly scheduled public hearing, review the recommendation and preliminary development plan and either approve, approve subject to conditions, or disapprove the preliminary development plan application. The decision of the Council shall be based upon a consideration of the review criteria stated in this section.

5. *Review criteria*. The decision of the Planning and Zoning Board on the preliminary development plan application shall include the findings of fact that serve as a basis for its recommendation. In making its recommendation, the Planning and Zoning Board shall consider the following facts:
    a. Consistency with the Comprehensive Plan.
    b. Degree of departure of proposed planned unit development from surrounding areas in terms of character and density.
    c. Compatibility within the planned unit development and relationship with surrounding neighborhoods.
    d. Prevention of erosion and degrading of surrounding area.
    e. Provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control and soil conservation as shown in the preliminary development plan.
    f. The nature, intent and compatibility of common open space, including the proposed method for the maintenance and conservation of the common open space.
    g. The feasibility and compatibility of the development plan to function as an independent development, providing for connectivity and walkability between residential and nonresidential uses within the development.
    h. The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned unit development.
    i. The availability and adequacy of water and sewer service to support the proposed planned unit development.
    j. The availability and adequacy of existing police and fire services to support the proposed planned unit development.
    k. The benefits within the proposed development and to the general public to justify the requested departure from standard land use requirements inherent in a planned unit development classification.
    l. The conformity and compatibility of the planned unit development within any adopted development plan of the city.
    m. The conformity and compatibility of the proposed common open space, residential and nonresidential uses within the proposed planned unit development.
6. *Consistency with Comprehensive Plan*. A PDP application may only be approved if it is consistent with the Comprehensive Plan.
7. *Recordation of preliminary application*. In the event the primary development plan application is approved by the City Council, a copy of such application and required exhibits shall be certified and approved by the City Clerk as a permanent record.

B. Applications in excess of one thousand (1,000) acres.

1. In the event any PUD application is in excess of one thousand (1,000) acres, the City Council may approve planned unit development zoning based on the requirements in this section on a revised or general basis. Specifically, the exact requirements of division A.2 above may be revised in terms of map scale and detail required.
2. Following this, the developer shall have six (6) months to present a preliminary development plan for any minimum stage of ten (10) acres. At the request of the developer, and for good cause shown, the City Council may extend the period required for the filing of the plan for a time certain not to exceed six (6) months. The plan shall be reviewed by the Planning and Zoning Board and the procedure of division A above would specifically then apply to any stage or the total development. Provided, however, approval of a preliminary development plan shall be a condition precedent to the filing of an application for the approval of a final development plan under Section 172.031.

C. Joint preliminary development and final development plan application. At the option of the applicant, a Preliminary Development Plan (PDP) may be reviewed simultaneously with a Final Development Plan (FDP). In addition, modifications to an approved PDP may be made as part of the approval process for an FDP. All applicable requirements for both the PDP and the FDP submittal applications must be addressed.

D. Consistency with final development plan approval. Development of the property must be consistent with the approved Preliminary Development Plan and the Final Development Plan for the project. Administrative review and approval processes for subdivisions, site plans, building permits and other land development regulations shall ensure such consistency.

E. Amendments. The following types of amendments to the requirements of an approved PDP may be authorized by the appropriate reviewing authority during development plan review, provided such amendments meet the criteria set forth in this subchapter for the development review process. All other amendments shall be accomplished only by a new rezoning application.

a. Minor adjustments or shifts in the location and siting of buildings, structures, parking bays, and parking spaces.
b. Changes in the location of utility tie-ins and solid waste, recycling, and yard trash containers.
c. Reductions in the overall density or intensity of structural ground coverage of the development.
d. Changes in the location and types of landscape materials, excluding changes in location of buffers.
e. Minor changes in the walkway and bikeway systems.
f. The addition of accessory structures or utility buildings of less than one thousand (1,000) square feet where there are no major changes to the perimeter features of the development.
g. The addition of up to ten new parking spaces.
h. Any expansion of gross floor area or enlargement of the building envelope that does not require the addition of required parking spaces or alter standards of the PUD ordinance.

i. Modifications that do not entail amendments to specific language included within the Planned Development Preliminary Development Plan ordinance.

('74 Code, § 25-132(g)) (Ord. 89- 08, passed 4-27-89; Am. Ord. 2006-10, passed 2-2-06; Am. Ord. 2016-02, passed 1-19-16; Am. Ord. 2016-75, passed 11-17-16; Am. Ord. 2017-16, passed 2-16-17; Am. Ord. 2022-94, passed 9-15-22)

§ 172.031. FINAL DEVELOPMENT PLAN.

The developer shall have one (1) year from the approval of the preliminary development plan (PDP)for a planned unit development zone in which to file a final development plan application. At the request of the developer, and for good cause shown, the City Council may extend the period required for the filing of the application for a time certain not to exceed one (1) year. The final development plan application may request approval for the entire planned unit development plan or any stage. If approval is not requested for the entire planned unit development, the developer shall have one (1) year from approval of the final development plan application to file another final development plan application for approval of any or all of the remaining stages specified in the preliminary development plan. At the request of the developer, and for good cause shown, the City Council may extend for a time certain not to exceed one (1) year, the period for the filing of the application.

A. Required exhibits. In addition to the exhibits identified in Section 172.019.A.2, the following documents shall be attached to the final development plan application.

1. *Topographic map*. A boundary and topographic map shall be submitted and shall include the location, size and type of all trees (per the standards identified in Chapter 175).
2. *Development schedule*. The development schedule shall contain the following information:
   a. The order of construction of the proposed stages delineated in the development plan.
   b. The proposed date for the beginning of construction of such stages.
   c. The proposed date for the completion of construction on such stages.
   d. The proposed schedule for the construction and improvement of common open space within such stages, including any complementary buildings.
3. *Deed restrictions*. Deed restriction proposals to preserve the character of the required common open space. The deed restrictions shall include a prohibition against partition by any residential property owner.
4. *Legal instruments.* Instruments dedicating all rights-of-way, easements and other public lands shown on the final development plan from all persons having any interest in the land.
5. *Title opinion*. A title opinion from an attorney showing the status of the title to the site encompassed by the final development plan and all liens, encumbrances, and defects, if any.

B. Procedure.

1. A fee as established by resolution pursuant to Section 172.011 shall accompany the final development plan application for the purpose of administration, additionally, engineering, plat filing, necessary copies and travel fees will be incurred.

2. The Planning and Zoning Board shall recommend the approval, approval subject to conditions, or disapproval of the final development plan with the preliminary development plan, the sufficiency and accurateness of the required exhibits, and the requirements and purposes of this subchapter and any other applicable provision of this code of ordinances and any other regulation of the city. The Planning and Zoning Board shall recommend the approval, approval subject to change, or denial of the final development plan.
3. The City Council shall review the recommendations of the Planning and Zoning Board at a regular public hearing of the City Council and shall approve, approve subject to conditions, or deny the final development plan application. The final development plan approval shall constitute a PUD rezoning enacted by Ordinance. The final development plan shall be binding upon the land contained within the plan. Any proposed modifications to the final development plan shall be submitted to the Growth Management Director for determination of departure. If determined to be a substantial deviation from the approved final development plan, the applicant must receive Final PUD approval from City Council for such deviation.

C. Recording of final development plan. After approval by the City Council of the final development plan application, the final development plan shall be recorded in the public records of the county.

D. Sale or Transfer of PUD. The transfer of, sale of, agreement to sell, or negotiation to sell land by reference to or exhibition of, or other use of a final development plan of a planned unit development, or portion thereof, that has not been given final approval by the City Council and recorded in the official records of the county is prohibited. The description by metes and bounds in the instrument of transfer or other documents shall not exempt the transaction from such prohibition.

('74 Code, § 25-132(h)) (Ord. 89- 08, passed 4-27-89; Am. Ord. 2006-10, passed 2-2-06; Am. Ord. 2016-02, passed 1-19-16; Am. Ord. 2016-17, passed 4-21-16; Am. Ord. 2016-75, passed 11-17-16; Am. Ord. 2017-16, passed 2-16-17)

§ 172.032. PHYSICAL REVIEW.

The city shall have the right to evaluate the physical layout, architectural characteristics and amenities of the planned unit development and to suggest changes or modifications designed to create compatibility and conformity in the variety of uses within the development to insure, protect and promote the health, safety and general welfare of the property owners of the planned unit development and the residents of the city.

('74 Code, § 25-132(i)) (Ord. 89-08, passed 4-27-89)

§ 172.033. BUILDING PERMIT.

Approval of the final development plan does not entitle the applicant to receive building permits if other development approvals (e.g., platting, site plan) have not been granted.

('74 Code, § 25-132(j)) (Ord. 89-08, passed 4-27-89)

§ 172.034. BONDING.

The PUD shall follow the bonding procedures listed in Section 172.045.

('74 Code, § 25-132(k)) (Ord. 89- 08, passed 4-27-89; Am. Ord. 2016-02, passed 1-19-16; Am. Ord. 2017-16, passed 2-16-17)

§ 172.035. TERMINATION OF PUD ZONE.

A. Any owners of all or a portion of land that has been designated a planned unit development under the provisions of this subchapter can apply to the city for the termination of that portion of a stage within an approved final development plan within which his property is located if construction has not been commenced pursuant to such final development plan. The procedure for the termination shall be processed as a zoning district change under this chapter.

B. Failure of the developer to file a final development plan application within the time periods specified in this chapter shall automatically revoke approval of the rezone to PUD, and the site shall revert to the zoning classifications for which the property was zoned prior to the approval of the preliminary development plan. A notice of the revocation, containing a legal description of the site, shall be recorded in the official records of the county.

('74 Code, § 25-132(l)) (Ord. 89- 08, passed 4-27-89; Am. Ord. 2016-02, passed 1-19-16)

§ 172.036. ENFORCEMENT.

In addition to any other method of enforcement, the city shall have the power to enforce the provisions of this subchapter by appropriate suit in equity.

('74 Code, § 25-132(m)) (Ord. 89- 08, passed 4-27-89)

§ 172.037. RESERVED

§ 172.038. RESERVED

§ 172.039. RESERVED

PART 5. SUBDIVISION APPLICATION AND APPROVAL PROCESS.

§ 172.040. GENERAL REQUIREMENTS

Whenever any subdivision of land is proposed, before any contract is made for the sale of any part thereof, and before any permit for the erection of a structure in such proposed subdivision shall be granted, the subdividing owner and or his/her authorized agent, shall apply for and secure approval of such subdivision in accordance with the following procedure:

A. Pre-application concept plan.

B. Preliminary plat.

C. Final subdivision plat.

In instances where the subdivision of land involves no public improvements, the preliminary plat and final plat application may be combined.

Applications for preliminary and final plat must be submitted to the Land Development office prior to 5:00 p.m. on the first day of the month to be processed for consideration by the Planning and Zoning Board the following month. If the first of the month happens to fall on a weekend or holiday the applications must be submitted prior to 5:00 p.m. on the previous working day.]

(Ord. 96-05, passed 2-15-96; Am. Ord. 2016-32, passed 5-19-16)

§ 172.041. PRELIMINARY PLAT.

A. Application procedure. After a preapplication conference has been held, an applicant can submit an application for preliminary plat approval.

B. Application review. The Land Development Division shall process and coordinate the review of the preliminary plat application by the Development Review Committee. The DRC shall review and comment on the submitted information. Written comments from the city departments are to be returned to the Land Development Division to be incorporated into a staff report generated by the Land Development Division. The staff report, with the DRC recommendation is submitted to the Planning and Zoning Board at the time of the next regular meeting of the Board.

C. Public meetings. The preliminary plat application shall be heard by the Planning and Zoning Board at its regular meeting in the month following the submittal deadline date. Courtesy notice letters of the meeting are to be sent to the owners of abutting and opposite properties of the proposed subdivision. Failure to mail or receive such courtesy notice shall not affect any action or proceedings taken. Notice of such a meeting shall also be posted on the property for which subdivision is sought.

D. Preliminary approval.

1. After the Planning and Zoning Board has reviewed the preliminary plat, the city staff report with its recommendations, and testimony and exhibits submitted at the public meeting, the Planning and Zoning Board shall recommend approval, approval with conditions, or disapproval of the preliminary plat to the City Council.
2. The City Council shall then approve, approve with conditions, or disapprove the preliminary plat based on the Planning and Zoning Board recommendations, the City staff report, and the testimony and exhibits submitted at public hearings.

E. Effective period of preliminary approval. The approval of a preliminary plat shall be effective for a period of one year at the end of which time final approval on the subdivision must have been obtained from the City Council, although the plat need not yet be signed and filed with the County Clerk of Records. Any plat not receiving final approval within the period of time set forth herein shall be null and void, and the developer shall be required to resubmit a new plat for preliminary approval subject to all new zoning and subdivision regulations.

F. Zoning regulations. Every plat shall conform to existing zoning regulations and subdivision regulations applicable at the time of proposed final approval, except that any plat which has received preliminary approval shall be exempt from any subsequent amendments to the zoning ordinance rendering the plat nonconforming as to bulk or use, provided that the final approval is obtained within the one-year period.

G. Effect of approval of preliminary plat. Approval of the preliminary plat shall not constitute approval of the final plat. It shall only be deemed an expression of approval of the layout submitted on the preliminary plat as a guide for the preparation of the final plat.

(Ord. 96-05, passed 2-15-96; Am. Ord. 2016-32, passed 5-19-16)

H. Submittal requirements. The Preliminary Plan application must be made on forms available from the City's Land Development office. The application must be complete and accompanied by the preliminary plat as described in these regulations, a CD or other approved electronic copy of the plat, a filing fee, and a list of all owners of adjacent property and/or property directly opposite of the proposed subdivision. Such property owner information shall be obtained from the most recent County Tax Appraiser's rolls. The application packet must also include the following:

1. Three (3) copies of the preliminary plat, a CD or other approved electronic copy of the plat and the required supplementary material shall be submitted to the Land Development office along with a completed written application. The preliminary plat shall be at a scale of two hundred (200) feet to one (1) inch or larger, with a preferred scale of one hundred (100) feet to one (1) inch.
2. The preliminary plat shall be designed in conformity with the design standards established herein and shall contain the following information:
    a. The title and certifications, the present tract designation according to official records in the office of the appropriate recorder, the title under which the proposed subdivision is to be recorded, with the names and addresses of the owners, and a notation stating the approximate acreage and the scale and north arrow;
    b. All streets, including their names and right-of-way widths;
    c. Other rights-of-way and easements, including their locations, widths and purposes;
    d. The location of utilities, if not shown on other exhibits;
    e. The lot lines, lot numbers and block numbers;
    f. The sites, if any, to be reserved or dedicated for parks, playgrounds or other public uses;
    g. The site, if any, for multi-family dwellings, shopping centers, churches, industries or other nonpublic uses, exclusive of single-family dwellings.
    h. Site data, including but not limited to, the number of residential lots, typical lot sizes and the approximate number of acres in parks;
    i. The protective covenants whereby the subdivider proposes to regulate land use in the subdivision and otherwise protect the proposed development.
    j. Existing conditions such as boundary lines, adjacent easements showing their locations, widths and purposes, streets on or adjacent to the subdivision showing their right-of-way widths and locations, adjacent utilities including the location, size and invert elevation of sanitary sewer, the location and size of water mains, and the location of fire hydrants, electric poles, telephone poles and street lights. If water mains and sewers are not on or adjacent to the tract, the directions and distance to and size of the nearest ones shall be shown, indicating the invert elevation of the sewers.
    k. The approximate direction and gradient of the ground slope on adjacent land shall be shown including any embankments or retaining walls. Adjacent platted land shall be referred to by book and page number and subdivision title.

(Ord. 96-05, passed 2-15-96; Am. Ord. 2016-32, passed 5-19-16)

§ 172.042. FINAL SUBDIVISION PLAT.

A. Application procedure. Following the approval of the preliminary plat, the applicant may submit an application for final plat approval. Such an application must be made on forms available from the City. The application must be complete and accompanied by two (2) copies of the final plat and construction plans as described in these regulations, a CD or other approved electronic copy of the plat, a filing fee, and a list of all owners of adjacent property and/or property directly opposite of the proposed subdivision. Such property owner information shall be obtained from the most recent County Tax Appraiser's rolls.

B. Final plat to conform to preliminary plat. The final plat shall conform substantially to the preliminary plat as approved, and if desired by the subdivider, it may constitute only that portion of the approved preliminary plat which he/she proposes to record and develop at the time, if such portion conforms to the requirements of this chapter.

C. Application review. The review of the final plat application will be substantially the same as the processing of the preliminary plat application described previously in Section 172.041.

D. Public meetings. The final plat application shall be heard by the Planning and Zoning Board at its regular meeting in the month following the submittal deadline date. Courtesy notice letters of the meeting are to be sent to the owners of abutting and opposite properties of the proposed subdivision. Failure to mail or receive such courtesy notice shall not affect any action or proceedings taken. Notice of such a meeting shall also be posted on the property for which subdivision is sought.

E. Final approval. After the Planning and Zoning Board has reviewed the final plat and construction plans, the city staff report with its recommendations, and testimony and exhibits submitted at the public meeting, the Planning and Zoning Board shall forward its recommendations for final action to the City Council. Upon receiving the recommendation of the Planning and Zoning Board including the city's staff report, the City Council shall hold a public meeting and shall act to either approve, approve with conditions, or disapprove such application.

(Ord. 96-05, passed 2-15-96; Am. Ord. 2016-32, passed 5-19-16)

F. Submittal requirements.

1. Three (3) copies of the final plat, a CD or other approved electronic copy of the plat and construction plans shall be submitted with a completed application to the Land Development office. The final plat shall be drawn in ink on tracing cloth on sheets twenty- four (24) inches wide by thirty (30) inches long and shall be at a scale of two hundred (200) feet to one (1) inch or larger with a preferred scale of one hundred (100) feet to one (1) inch. Where necessary, the plat may be on several sheets accompanied by an index sheet.

2. The final plat and construction plans for the subdivision shall be designed and in conformity with the design standards established herein and must show the following information:

    a. The final plat shall be prepared in conformance with the requirements of the applicable Florida Statute;

b. The primary control points, approved by the City Engineer, or descriptions and "ties" to such control points to which all dimensions, angles, bearings and similar data on the plat shall be referred;

c. The tract boundary lines, right-of-way lines of streets, easements and other rights-of-way, and property lines of residential lots and other sites, with accurate dimensions, bearing or deflection angles, and radii, arcs and central angles of all curves;

d. The name and right-of-way width of each street or other right-of-way;

e. The location, dimensions and purpose of any easement;

f. Numbers or letters to identify each lot or site;

g. The purpose for which sites, other than residential lots, are dedicated or reserved;

h. The location of monuments;

i. Reference to any recorded subdivision plat of adjoining platted land by plat book, page and number;

j. A certification of a surveyor as to the accuracy of the survey and plat;

k. A certification of title showing that the applicant is the landowner;

l. Statements by the owner dedicating streets, rights-of-way and any sites for public uses.

3. The construction plans shall show the following information:

a. The title, scale, north arrow and datum;

b. The plans of streets and drainage showing grades approved by the City Engineer and any other public improvements; such plans shall be drawn to city standard scales and elevations and shall be based on datum plane approved by the City Engineer and shall be in conformance with the design specifications of the Public Works Manual of the city.

c. Two copies of stormwater calculations.

d. A tree survey meeting the requirements of Chapter 175, trees and shrubbery.

(Ord. 96-05, passed 2-15-96; Am. Ord. 2016-32, passed 5-19-16)

§ 172.043. SIGNING AND RECORDING OF SUBDIVISION PLAT.

A. Signing of the plat.

1. When a bond is required, city officials (City Clerk, City Surveyor, and Mayor) shall endorse approval on the plat after the bond has been approved by the City Attorney and City Engineer, and all the conditions of approval pertaining to the plat have been satisfied.

2. When installation of improvements is required, city officials (City Clerk and Mayor) shall endorse approval on the plat after all conditions of approval on the plat have been satisfied and all improvements satisfactorily completed. There shall be written evidence or certificate of completion that the required public facilities have been installed in manner satisfactory to the City's Public

Works Director and/or his/her designee and that the necessary dedication of public lands and improvements has been accomplished.

B. Recording of the subdivision plat. Upon the signing of the reproducible mylar of the plat by the appropriate city officials, the subdivider shall file the plat with the County Clerk of Records within thirty (30) days of the date of the last signature. After filing the plat with the County Clerk of Records, the subdivider shall provide the City Clerk's office with a reproducible mylar of the recorded plat and three (3) prints of the plat. The mylars and prints are then to be forwarded to the appropriate city departments for their files.

(Ord. 96-05, passed 2-15-96; Am. Ord. 2016-32, passed 5-19-16)

§ 172.044. CONSTRUCTION APPROVAL.

A. Commencement of construction prior to approval of plat. No construction of any kind shall be permitted prior to final subdivision approval by the City Council.

B. Construction authorization. Prior to beginning any construction of the proposed subdivision, the applicant must have a preconstruction meeting with the Public Works Department. Authorization from the City Engineer in the form of a construction permit must also be obtained before any construction may begin.

C. Clearing. Prior to commencement of clearing and/or land alteration activities, the applicant must receive the required Site Work Permit from the Land Development Division.

(Ord. 96-05, passed 2-15-96; Am. Ord. 2016-32, passed 5-19-16)

§ 172.045. IMPROVEMENTS AND PERFORMANCE AND MAINTENANCE BONDS.

A. Performance bond. As a condition for approval of a final plat by the City Council, the subdivider may be required to deposit with the City Clerk a bond or other security binding the subdivider to payment to the city to assure completion of all streets, drainage and other public improvements both on site and off site as may be required. The bond or other security will be in the amount of one hundred twenty-five percent (125%) of the value of all Public Improvements. The City Council may conditionally approve the final plat to become effective at such time as the required bond or other security shall be deposited with the City Clerk within a time fixed by the City Council. The bond shall be executed by the subdivider as principal and may have at least one (1) good and sufficient surety approved by the city. It is the purpose and intent of this section that the subdivider provide such security as the city shall deem to be reasonably necessary to assure completion. The requirement of a surety on the bond shall be at the discretion of the City Council; however, before the City Council accepts a bond or other security, it must first obtain approval from the City Engineer as to the amount and approval from the City Attorney as to the form of the bond or other security.

B. Completion of improvements. If a performance bond is not required, all applicants shall be required to complete, in accordance with the City Councils' decision and to the satisfaction of the City Engineer all public improvements and lot improvements of the subdivision as required in these regulations and to dedicate the same to the city free and clear of all liens and encumbrances on the property prior to city officials signing the plat. The City may allow incremental drawdown of the performance bond as improvements are made.

C. Temporary improvement. The applicant shall build and pay for all costs of temporary improvements required by the city and shall maintain the same for the period specified by the city. Prior to construction of any temporary facility or improvement, the developer shall file with the local government a separate suitable bond for temporary facilities, which bond shall ensure that the temporary facilities will be properly constructed, maintained and removed.

D. Costs of improvements. All required improvements shall be made by the applicants at his/her expense, without reimbursement by the city.

E. Failure to complete improvement. For subdivisions for which no performance bond has been posted, if the improvements are not completed within the period specified by the City Council at the time of final plat approval, the approval shall be deemed to have expired. In those cases when a performance bond has been posted and required improvements have not been installed within the terms of such performance bond, the City Council may declare the bond to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the bond is declared to be in default.

F. Acceptance of dedication offers. Acceptance of formal offers of dedication of public improvements (such as streets, public areas, parks, etc.) shall be in accordance with the procedure and process established in Section 172.054, procedure for acceptance and maintenance of public improvements.

G. Maintenance Bonds. After completion of improvements and exception of dedication, a two (2) year maintenance bond or other security will be required in the amount of twenty-five percent (25%) of all dedicated Public Improvements.

(Ord. 96-05, passed 2-15-96; Am. Ord. 2016-32, passed 5-19-16; Am. Ord. 2016-74, passed 11-17-16)

§ 172.046. INSPECTION OF IMPROVEMENTS.

A. General procedure and fees. The City Public Works Department shall provide for the inspection of required public improvements during construction and ensure their satisfactory completion. The applicant shall pay the city an inspection fee as established by resolution pursuant to Section 172.011, and the subdivision plat shall not be signed by city officials unless such fee has been paid at the time of application. No building permits, certificate of occupancies, or certificates of completion shall be issued until all fees are paid. If the Public Works Department inspector finds that any of the required improvements have not been constructed in accordance with the city's construction standards and specifications, the applicant shall be responsible for completing the improvements. Wherever the cost of the improvements is covered by a performance bond, the applicant and the bonding company shall be severally and jointly liable for completing the improvements according to specifications.

B. Release of performance bond; certificate of completion. The city will not release nor reduce a performance bond until the City Engineer has submitted a certificate stating that all the required improvements have been satisfactorily completed and until the applicant's engineer or surveyor has certified to the City Engineer, through the submission of a detailed “as-built” survey of the subdivision, indicating location, dimensions, materials and other information required by the City Engineer, that the layout of the line and grade of all public improvements is in accordance with construction plans for the subdivision. Upon such approval and recommendation, the city may accept the improvements for

dedication in accordance with the process and procedures outlined in Section 172.054, public improvements.

(Ord. 96-05, passed 2-15-96; Am. Ord. 2006-09, passed 2-2-06)

§ 172.047. MAINTENANCE OF IMPROVEMENTS.

The applicant shall be required to maintain all improvements in the subdivision until acceptance of such improvements by the city according to the process and procedure outlined in Section 172.054, public improvements.

(Ord. 96-05, passed 2-15-96)

§ 172.048. DEFERRAL OR WAIVER OF REQUIRED IMPROVEMENTS.

The City Council may defer or waive at the time of final approval, subject to appropriate conditions, the provision of any or all such improvements as, in its judgment, are not requisite in the interests of the public health, safety and general welfare, or which are inappropriate because of inadequacy or lack of connecting facilities.

(Ord. 96-05, passed 2-15-96)

§ 172.049. ISSUANCE OF BUILDING PERMIT.

A. No building permits shall be issued for any building in the subdivision, except as provided for below, until a certificate of completion has been issued by the City Engineer certifying that the subdivision improvements have been completed and the subdivision has been recorded with the County Clerk of Records. The City Engineer shall notify the City Building Division of when a subdivision has received a certificate of completion and thus is open for building.

B. Model homes and developer owned/builder owned homes may be permitted prior to the subdivision improvements receiving a certificate of completion provided the following conditions are adhered to:

1. A stabilized, all weather roadway is provided for fire apparatus to access all structures proposed for permitting;
2. A water source for fire apparatus use shall be provided and approved by the City of Palm Bay Fire Marshal;
3. A waiver of liability shall be provided to the City;
4. All homes proposed for permitting under this section shall maintain a minimum of one hundred (100) feet distance from existing structures not within the subdivision;
5. A maximum of twenty-five (25) structures will be permitted under this section per preliminary subdivision plat;
6. Builders must certify in writing that title will remain in the builder's name or the developer's name until such time as the subdivision plat is recorded in the Brevard County Public Records. In no case shall a Certificate of Occupancy be granted for a home until the certificate of completion has been issued;

7. The builder must bond the estimated cost of demolition of the structures should the subdivision improvements not be completed and the building permit expires or is revoked. Said demolition must occur within one (1) year of notification from the City or the City shall demolish the structures utilizing the bond proceeds.

(Ord. 96-05, passed 2-15-96; Am. Ord. 2005-47, passed 9-15-05; Am. Ord. 2016-32, passed 5-19-16; Am. Ord. 2017-50, passed 7-20-17; Am. Ord. 2020-43, passed 7-16-20; Am. Ord. 2020-77, passed 11-19- 20; Am. Ord. 2022-67, passed 6-16-22)

§ 172.050. DESIGN IMPROVEMENT AND RESERVATION STANDARDS.

A. Conformance to applicable rules and regulations.

1. In addition to the requirements established herein, all subdivision plats shall comply with the following laws, rules and regulations:
   a. All applicable statutory provisions.
   b. The City Comprehensive Plan.
   c. The zoning ordinance of the city.
   d. The regulations established in the public works manual.
   e. The regulations and rules of any appropriate state or county agency (such as, St. Johns River Water Management District, Florida Department of Transportation, the Environmental Health Services Division, etc.)
2. Plat approval may be withheld if a subdivision is not in conformity with the above guides or policy and purposes of these regulations.

B. Self-imposed restrictions. If the subdivider places restrictions on any of the land contained in the subdivision greater than those required by the zoning ordinance or these regulations, such restrictions or reference thereto may be required to be indicated on the subdivision plat, or the City Council may require that deed restrictions be recorded with the County Clerk of Records and a copy filed with the city, including any subsequent amendments to the restrictions.

C. Monuments. Concrete monument reference markers shall be placed at all block corners and set by a licensed professional surveyor.

D. Subdivision name. The proposed name of the subdivision shall not duplicate, or too closely approximate phonetically, the name of any other subdivision in the greater city area.

(Ord. 96-05, passed 2-15-96; Am. Ord. 2016-32, passed 5-19-16)

§ 172.051. SUBDIVISION VARIANCES.

A. General. Where the City Council finds that undue hardships or practical difficulties may result from strict compliance with these regulations and/or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve variances to these subdivision regulations so that substantial justice may be done and the public interest secured, provided that such variance shall not have the effect of nullifying the intent and purpose of these regulations. The City Council may

approve low impact development designed stormwater systems that vary from the design standards above provided the development is certified under the City of Palm Bay's Green Development Incentive Program.

B. Procedures. A petition for any such variance shall be submitted in writing by the subdivider at the time when the preliminary plat is filed for the consideration of the City Council. The petition shall state fully the grounds for the application and all of the facts relied upon by the petitioner.

(Ord. 96-05, passed 2-15-96; Am. Ord. 2010-88, passed 1-6-11)

§ 172.052. MINOR SUBDIVISIONS.

A. Minor subdivisions. Division of such parcels into no more than ten (10) lots, that comply with the following criteria, shall be considered a minor subdivision and shall be administratively reviewed in two (2) stages: 1) preliminary plat review; and 2) construction plan and final plat review. A minor subdivision may be approved for a division of land if the following conditions are met:

1. All proposed lots are for detached single family residential lots.
2. Any proposed street may not exceed one thousand three hundred twenty (1,320) feet in total length and the new street shall directly connect to an existing public or privately maintained right-of- way.
3. All lots being created shall have fee simple access on a public or privately maintained street.
4. All lots shall meet the minimum lot frontage area and dimensional requirements for the zoning district in which they are located.
5. The subdivision shall be all inclusive and shall not consist of more than one (1) phase of development.

B. Re-Plats. Re-plats or subdivisions that do not require the creation of new streets or right-of-way and are not located within a Special Flood Hazard Area may be reviewed under an application for final plat review and approval. A lot grading plan, drainage plan, and wetlands delineation, if applicable, shall be included with the final plat for review.

C. Exemptions. The division of one (1) parcel or lot into no more than two (2) lots, where both of the proposed lots meet the minimum frontage requirements abutting a public or privately maintained road and there is no change in street lines or easements, is exempt from the subdivision platting process.

D. Provision of water and sewer. A minor subdivision may be developed under the following parameters:

1. Parcels with city water available to them, meaning existing water lines running along the parcel's frontage or across the street that the parcel has frontage upon, may be exempt from providing city sewer if existing sewer lines are not located within one-quarter (¼) mile of the parcel. This distance shall be measured using existing road rights-of-way. For such a parcel of land, the lots in the minor subdivision shall be a minimum of one-half (½) acre in size. The subdivision must connect to the city water system.

2. Parcels with city water available to them, and existing sewer lines located within one-quarter (¼) mile of the parcel, must provide sewer to each lot, regardless of the size of the lots in the subdivision. The subdivision must connect to the city water system.
3. Parcels located within areas that do not have either water or sewer lines available to them shall be required to provide both water and sewer to the subdivision, unless each lot is a minimum of one (1) acre in size. If both water and sewer are brought to the site, then the minimum lot size shall be consistent with what is provided for in the applicable Zoning District.

(Ord. 2016-55, passed 8-16-16; Am. Ord. 2017-40, passed 6-1-17)

§ 172.053. ENFORCEMENT AND PENALTIES.

A. It shall be the duty of the Director of Growth Management to enforce the provisions of this chapter and to bring to the attention of the City Code Enforcement Board any violations or lack of compliance.

B. The Code Enforcement Board shall have recourse to such remedies in law and equity as may be necessary to ensure compliance with the provisions of these regulations.

(Ord. 96-05, passed 2-15-96; Am. Ord. 2016-32, passed 5-19-16; Am. Ord. 2016-55, passed 8-16-16)

§ 172.054. PUBLIC IMPROVEMENTS

A. Request by applicant.

1. Contents. Prior to any public improvement(s) being submitted for acceptance for perpetual maintenance by the city, a written request must first be submitted to the city. Such request must describe the type, location and purpose of such improvement(s) to include, as applicable, the legal description of the area to be served by the improvement(s), the detailed operation of the improvement(s), and the public purpose served by the improvements. Any acceptance of public improvements shall meet all requirements contained in this Chapter with the exception of the following public improvement types:
    a. Water, wastewater and reclaimed water improvements may be accepted administratively by the Utilities Department provided the conditions of acceptance are contained within a written Service Agreement or other contract. The Utilities Department has the right to not accept such improvements administratively and may require that the applicant's request follow the procedures contained in this Chapter.
    b. Subdivision improvements, where the City Council has agreed to accept identified public improvements during the Preliminary or Final Subdivision process, may be accepted administratively provided the applicant has constructed all improvements in conformance with approved subdivision construction plans. The reviewing Departments have the right to not accept such improvements administratively and may require that the applicant's request follow the procedures contained in this Chapter.
2. Meeting of City Council. Such request shall be heard at a regularly scheduled meeting of the City Council. The City Council, in its determination of whether to accept such improvements, shall consider the following:

a. The public necessity and purpose of accepting the improvement(s) to promote the health, safety, and welfare of the public;

b. The existing physical condition of the improvement(s);

c. The extent to which the improvement(s) meets city or site construction and design requirements or standards;

d. The city's financial ability and other capabilities to maintain such improvement(s) given its size, location, condition, and design;

e. The characteristics of the existing development to be served by the improvement(s), to include the type of development and density of development.

3. Determination of need to accept improvement(s). Following consideration of the above factors, the City Council shall make a determination of the need to accept the improvement(s), whether the city has the financial ability to maintain the improvement(s), the impact acceptance of the improvement(s) will have upon other municipal services, the public purpose to be served by accepting the improvement(s), the general capability of the city to maintain the improvement(s), whether the health, safety, and welfare of the general public will be served by acceptance of the improvement(s), and its intent to accept the improvement(s), or to accept the improvement(s) with conditions.

4. Written request, accompanying documents. Following a determination of the City Council of its intent to accept the public improvements(s) for maintenance, the applicant shall submit a written request to the City Manager with two (2) copies and one (1) complete set of “as-builts” which shall be reproducible. The request shall specifically request consideration of the following items:

a. Staff recommendations for approval of construction of the public improvement(s);

b. Release of the applicant from the performance bond or surety for construction of the public improvement(s);

c. A review of the project with the city staff on the issue of completion and acceptance of the public improvement(s) for maintenance purposes;

d. A request for the city to accept and maintain public improvement(s);

e. The applicant shall attach the engineer's certificate of completion with the application.

f. A review of a two (2) year maintenance bond as per Section 172.045.

5. Applicability of provisions. The provisions of this section shall apply to all improvements proposed to be accepted by the city for maintenance unless a written request with “as-built” drawings has been submitted to the city prior to the effective date of this section.

('74 Code, § 19½-23) (Ord. 82-24, passed 7-1-82; Am. Ord. 89-16, passed 5-18-89; Am. Ord. 2012-49, passed 1-3-13; Am. Ord. 2016-31, passed 5-19-16)

B. Initial consideration. The city staff shall review, inspect and test the public improvements at the applicant's expense. The type of tests shall be selected by the city, shall be carried out by firms

selected by the city and shall be carried out in accordance with the standards, practices and procedures generally utilized by the industry for such tests. Review of the public improvements by the city staff is to be based upon the applicable city, county, state and/or industry construction specifications that set the standards for the public improvement contained in the request. The construction standards that will apply will vary as follows:

1. For public improvements that were constructed, placed, or installed prior to July 1, 1982, the construction, placement or installation shall be in accordance with the approved construction plans and the applicable construction standards in effect at the time of construction. If, however, review, inspection or testing yield results not in keeping with the above, corrective measures shall be made in accordance with the approved construction plans and the applicable construction standards in effect at the time of construction by the developer.
2. For public improvements to be constructed within the subdivided plats that were recorded prior to July 1, 1982, but have not been constructed, and for which construction plans have been prepared and approved, the applicable construction standards will be the standard construction specifications of the city and made a part of this chapter, by reference, including, but not limited to, Divisions 2, 3, 4 and 5 thereof as those specifications exist today or as they may be amended from time to time by the city engineer with the exception of those improvements where construction has begun within two (2) years from July 1, 1982. In those instances, the construction standards shall be in accordance with the approved construction plans and the applicable construction standards in effect at the date of platting and plan approval. Upon the written request of a developer for good cause, the City Manager may extend, for a maximum period of one (1) year, the initial construction date for the applicable units under this section. GOOD CAUSE, for purposes of this division (B), shall include the inability to obtain or receive approval of necessary permits and approvals from the regulatory agencies that regulate such construction.
3. For public improvements to be constructed within subdivided plats that were recorded prior to the effective date of this chapter but for which construction plans have not been approved, the applicable construction standards will be the standard construction specifications of the city adopted and made a part of this chapter, by reference, including but not limited to Divisions 2, 3, 4 and 5 thereof as those specifications exist today or as they may be amended from time to time by the City Engineer.
4. For public improvements to be constructed under other than any of the foregoing conditions, the applicable construction standards will be the standard construction specifications of the city adopted and made a part of this chapter, by reference, including but not limited to Divisions 2, 3, 4 and 5 thereof as those specifications exist today or as they may be amended from time to time by the City Engineer.
5. In all of the foregoing cases, where modification of the requirements of the city's current standard construction specifications is being accepted, the modification is not intended to exempt compliance with any and all other applicable existing provisions of this code of ordinances and any other ordinance of the city.

6. It is the express intent of the City Council to permit the City Engineer, in his sound discretion, to amend specifications from time to time in accordance with the standards as established by good engineering practices and industry standards that pertain to the particular improvement offered for acceptance by the developer.

('74 Code, § 19½-24) (Ord. 82-24, passed 7-1-82; Am. Ord. 83-9, passed 3-7-83)

C. Unacceptable improvements. If the public improvement is determined to be unacceptable, the City Manager shall have the following options:

1. Recommendation to the City Council that they invoke any posted bond or surety;
2. Direction of the city staff to continue working with the applicant on a correction list system to complete the public improvements and/or bring them up to all applicable standards, all at the applicant's expense;
3. Recommendation to the City Council that the public improvement not be accepted.

('74 Code, § 19½-25) (Ord. 82-24, passed 7-1-82)

D. Report to Council. Upon completion of the review, inspection, testing and approval of the public improvement, the City Manager shall report the findings to the City Council. In no event shall the staff review process exceed sixty (60) days unless testing of the public improvement cannot be completed within such time period, in which event the time period shall be extended an additional sixty (60) days.

('74 Code, § 19½-26) (Ord. 82-24, passed 7-1-82)

E. Acceptable improvements. If the public improvement is determined to be acceptable, the City Council may consider a resolution accepting the construction of the public improvements specifically listed in the resolution, releasing the performance bond as to those acceptable public improvements and requiring the applicant to maintain the specified public improvements. Adoption of the resolution shall be contingent upon the applicant posting a maintenance bond or adequate security as determined by the Council, for the maintenance period prescribed by the City Council. For those public improvements that were constructed prior to July 1, 1982, the maintenance period will be for one (1) year; for those public improvements constructed after July 1, 1982, the maintenance period will be for two (2) years. The amount of the maintenance bond must be approved by the City Council and the City Attorney as to the form. Such resolution shall also be contingent upon the applicant complying with the provisions of § 182.08. Such bond or security shall be filed with the City Clerk.

('74 Code, § 19½-27) (Ord. 82-24, passed 7-1-82; Am. Ord. 85-31, passed 7-11-85)

F. Review for final acceptance for maintenance.

1. Not less than ninety (90) days and not more than one hundred and fifty (150) days prior to the expiration of the two (2) year maintenance period, the applicant shall request the city to review, reinspect and retest the public improvement, at the applicant's expense, for purposes of final acceptance of the improvement for maintenance purposes.
    a. Such retesting shall be based upon standards, practices and procedures that are generally utilized in the industry that pertain to the public improvement sought to be accepted.

b. If the public improvement is determined to be acceptable, the City Council shall consider adoption of a final resolution accepting the maintenance of the improvements specifically listed in the resolution and establish the effective date as the termination of the two (2) year maintenance period.

c. If the public improvement is determined to be unacceptable, the City Manager shall have the following options:

i. Recommendation to the City Council that they invoke the posted maintenance bond or security;

ii. Direction of the city staff to continue working with the applicant on a correction list to complete the improvement at the applicant's expense;

iii. Recommendation that the City Council take any other action it may deem appropriate, including the rejection or tabling of the request.

2. In the event an applicant fails to either request review of the applicable improvement or complete the required corrections under this section within the appropriate time, such applicant will be required to post and additional one (1) year maintenance bond or security. If the applicant fails to post such a bond or security within thirty (30) days before expiration of the existing bond or security, the City Council may rescind its prior resolution accepting construction of the improvements, invoke the posted maintenance bond or security, if appropriate, and the applicant shall be required to recommence beginning with the requirements as established in § 182.03.

('74 Code, § 19½-28) (Ord. 82-24, passed 7-1-82)

G. Necessity of council action to assume maintenance responsibility. Any resolution that provides for the city to finally assume responsibility to maintain any public improvement shall not become final until the expiration of any maintenance period required hereunder. The maintenance of public improvements shall never become the responsibility of the city unless and until final acceptance by the City Council by appropriate resolution at the end of the two (2) year maintenance period.

('74 Code, § 19½-29) (Ord. 82-24, passed 7-1-82)

H. Fees. The fee charged to the applicant shall be on the basis of actual time spent reviewing the public improvement by the city staff and any actual testing costs. The maximum amount an applicant may be charged for staff review time, not including actual testing costs, is set by adopted City Fee Schedule per request to review a public improvement. The charge per hour of individual staff time is a flat rate of twenty dollars ($20.00) per hour. The minimum charge for any review is twenty dollars ($20.00). Fees shall be paid as invoiced by the Finance Department of the city and before the City Council's consideration of the public improvement.

('74 Code, § 19½-30) (Ord. 82-24, passed 7-1-82; Am. Ord. 2016-31, passed 5-19-16)

§ 172.055. RESUBDIVISION OF LAND.

For any change in a map of an approved or recorded subdivision plat, if such change affects any street layout shown on such plat or map, or any lot line, or if it affects any map or plan legally reached prior to the adoption

of any regulations controlling subdivisions, such parcel shall be approved by the City Council by the same procedure, rules and regulations as for a subdivision.

(Ord. 96-05, passed 2-15-96)

§ 172.056. VACATING OF PLAT.

A. Any plat or part of any plat may be vacated by the owner of the premises, at any time before the sale of any lot therein, by a written instrument, to which a copy of such plat shall be attached, declaring the same to be vacated. Such an instrument shall be approved by the City Council in accordance with the procedures established in Fla. Stat. Chapter 177 if the Council finds the vacation of the plat is in the public interest. Such instrument shall then be recorded with the County Clerk of Records.

B. When lots have been sold, the plat may be vacated in the manner herein provided by all the owners of lots in such plat joining in the execution of such writing.

(Ord. 96-05, passed 2-15-96)

§ 172.057. VACATING RIGHT-OF-WAY

A. Power of council. The City Council may, upon its own motion, upon the request of any agency of the city, the state or the federal government, or upon the written petition of any person or persons owning property abutting any street located within the city limits, cause any street to be vacated. All Council actions that would create new or change existing right-of-way lines, under this chapter, require public hearings.

('74 Code, § 20-13) (Ord. 83-23, passed 4-7-83; Am. Ord. 2007-94, passed 10-18-07; Am. Ord. 2008-17, passed 4-3-08; Am. Ord. 2016-30, passed 5-19-16)

B. Notice of hearing.

1. Before vacating a street, the city shall first hold a public hearing and with fifteen (15) days written notice to all persons whose property abuts upon the street or right-of-way by mailing such notice to each property owner.
2. The names and addresses of such property owners shall be obtained by the applicant from the current records of the Property Appraiser of Brevard County with a copy provided for the city. Proof of such mailing shall be made by affidavit of the City Clerk, or the Deputy City Clerk, which affidavit shall be filed with the City Clerk. However, failure to receive such notices shall not affect the validity of the proceedings under this chapter.
3. Notice shall also be by publication once in a newspaper of general circulation in the city, and if there be no newspaper of general circulation published in the city, the City Council shall cause the notice to be published in a like manner in a newspaper of general circulation published in the county. Publication shall be at least ten (10) days prior to the date of the hearing, and service by publication shall be verified by affidavit of the publisher and filed with the City Clerk.
4. For all requests, the City shall post a sign at the approximate location of the street vacation at least fifteen (15) days prior to the public hearing.
5. The costs of providing notice of the public hearing shall be the responsibility of the applicant.

('74 Code, § 20-14) (Ord. 83-23, passed 4-7-83; Am. Ord. 2007-94, passed 10-18-07; Am. Ord. 2008-17, passed 4-3-08; Am. Ord. 2016-30, passed 5-19-16)

C. Council action. The City Council, in its sole discretion, shall make a final determination on the application for closure or vacation subsequent to the public hearing. In the case of a vacation, the action shall be quasi-legislative in nature. In the case of a closure, the action shall be quasi-executive in nature.

1. After the public hearing, the City Council may, by appropriate ordinances, take such action for which notice was previously given.
2. After the public hearing for a closure request, the City Council may, by resolution, take such action for which notice was previously given.
3. When the City Council is acting upon a request for creation or widening or improvement of a street, whether public or private, the proposed ordinance shall require a dedication of such street to the appropriate persons, depending upon its proposed use as a public or private street. However, nothing herein shall be construed as creating an obligation upon the city to perform any act of construction or maintenance within such dedicated areas, except when such obligation is voluntarily assumed by the city.
4. When the City Council is acting upon a request for vacation or narrowing of a public street, to the extent to which the street is vacated or narrowed, such action shall operate as revocation of acceptance thereof by the City Council. However, the right-of-way and easement therein of any lot owner shall not be impaired by such action.

('74 Code, §20-15) (Ord. 83-23, passed 4-7-83; Am. Ord. 2007-94, passed 10-18-07; Am. Ord. 2008-17, passed 4-3-08; Am. Ord. 2016-30, passed 5-19-16)

D. Notice of passage.

1. Notice of the adoption of such ordinance by the City Council shall be published one (1) time, within thirty (30) days following its adoption in one (1) issue of a newspaper of general circulation published in the city, and if there be no newspaper published in the city, the City Council shall cause the notice to be published in a newspaper of general circulation published in the county.
2. A certified copy of an ordinance that change right-of-way lines shall be sent by the City Clerk to the Clerk of the Circuit Court of the county for recordation within thirty (30) days from the date of adoption of the ordinance.

('74 Code, § 20-16) (Ord. 83-23, passed 4-7-83; Am. Ord. 2007-94, passed 10-18-07; Am. Ord. 2008-17, passed 4-3-08)

E. Approval by city engineer emergency and temporary closure.

1. Approval by City Engineer: After approval by City Council and before any construction of any street is commenced, written approval of the City Engineer shall be obtained certifying that the city's design standards have been met.
2. Approval by City Manager: The City Manager may authorize emergency and temporary closures.

(Ord. 2016-30, passed 5-9-16)

F. Effect on utility easements. Any action by Council under this chapter shall not in any manner affect utility equipment or services already installed in the affected or proposed street or the right to maintain and operate the equipment and services in the affected or proposed street or portion thereof. The requestor or petitioner shall notify the applicable utility and service companies of the proposed action regarding the street add shall obtain a notarized letter from the appropriate utility and service companies stating such companies have no objection to the proposed action.

('74 Code, § 20-18) (Ord. 83-23, passed 4-7-83)

G. Fee Every application or petition filed with the city under this chapter, except those developments that follow the subdivision or PUD fee schedule, shall be in writing and accompanied by a filing fee as established by resolution pursuant to Section 172.011.

('74 Code, § 20-19) (Ord. 83-23, passed 4-7-83; Am. Ord. 2006-07, passed 2-2-06)

§ 172.058. RESERVED

§ 172.059. RESERVED

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§ 172.062. RESERVED

§ 172.063. RESERVED

§ 172.064. RESERVED

PART 6. CONCURRENCY MANAGEMENT SYSTEM

§ 172.065. PURPOSE AND INTENT.

The concurrency management system shall implement established minimum acceptable level of service standards for roads, potable water, sanitary sewer, solid waste, drainage and parks. This system is designed to utilize the most current and available data regarding the above public facilities or services to measure the impact of any development permit proposal upon the facilities for which levels of service have been adopted. No final development permit can be issued unless adequate facilities or services are available as determined by the concurrency evaluation.

('74 Code, § 18½-71) (Ord. 89-09, passed 4-27-89)

§ 172.066. EVALUATION CRITERIA.

The city shall utilize the following criteria to determine whether levels of service are adequate to support the specific impacts of a proposed development:

A. Roadways.

1. Capacity for transportation facilities shall be evaluated using the 2002 Quality/Level of Service Handbook, Florida Department of Transportation.
2. Projected impacts on the transportation system shall be determined by utilizing the trip generation standards set forth in the Trip Generation Manual, 7th Edition, Institute of Transportation Engineers, and evaluating their impact at points of ingress and egress to roadways in the city.
3. The calculation of total traffic generated by a proposed nonresidential project will assume one hundred percent (100%) buildout and occupancy of the project. Credit against the trip generation rates may be taken utilizing the percentages below:

Percent of Captured Trips from Passing Traffic	
Use	**Percentage (%)**
Supermarkets	25
Hardware stores	5
Convenience stores	40
Fast food restaurants	35
Restaurants	15
Banks	46
Day care centers	10
Service stations/carwashes	58
Offices	0
Industrial uses	0

4. Any capture of trips from passing traffic for uses not specified above or in excess of those percentages must be justified by the applicant.
5. Current operating level of service shall be based upon the most recent traffic counts available plus projected traffic counts from previously committed developments.

B. Sanitary sewer and potable water.

1. Capacity shall be determined by capacity reservation for the project by the Utilities Department of the city.
2. Issuance of a septic tank permit and approval of potable water well if city utilities are not readily available and connection to city utilities is not required by the Code of Ordinances

C. Solid waste. County Utilities Department shall certify that capacity exists prior to development approval.

D. Parks.

1. Adequacy of public parks shall be based on Palm Bay's level of service standards of five (5) acres per one thousand (1,000) population by planning area.

2. The impact of a proposed development will be determined by utilizing the official household-size multiplier, from the University of Florida, Bureau of Economic and Business Research for Palm Bay, times the number of units projected for a project.

E. Drainage. Certification that a project meets all applicable standards of the stormwater management regulations set forth in Chapter 177 of this code shall be made by the city engineering division prior to permit approval.

('74 Code, § 18½-72) (Ord. 88-09, passed 4-27-89; Am. Ord. 2006-128, passed 11-14-06)

§ 172.067. CONCURRENCY EVALUATION FINDINGS.

The city shall issue a concurrency evaluation during the building permit process and this evaluation shall certify either a nondeficiency finding or a deficiency finding:

A. Nondeficiency finding. A finding of nondeficiency by the concurrency evaluation shall remain valid provided a building permit has been issued within sixty (60) days of the concurrency evaluation. Once a building permit has been issued, the finding shall remain valid until construction has been completed and a certificate of occupancy issued; or for the life of the permit until it is revoked or suspended for failure to proceed in a timely manner as prescribed.

B. Deficiency finding. A finding of deficiency by the concurrency evaluation shall negate approval of the building permit application or force deferral of this approval.

('74 Code, § 18½-73) (Ord. 89-09, passed 4-27-89)

§ 172.068. CUMULATIVE RECORDS OF LEVEL OF SERVICE.

The concurrency management system shall maintain a cumulative record of the level of service allocations permitted by the approval of building permits relative to the operating levels of service for the referenced public facilities.

('74 Code, § 18½-74) (Ord. 89-09, passed 4-27-89)

§ 172.069. ADMINISTRATION.

The Planning Division shall administer the provisions of this Part 6 and may develop such administrative rules, forms, applications and fees as may be required to implement the concurrency management system.

('74 Code, § 18½-75) (Ord. 89-09, passed 4-27-89)

§ 172.070. RESERVED

§ 172.071. RESERVED

§ 172.072. RESERVED

§ 172.073. RESERVED

§ 172.074. RESERVED

PART 7. PROPORTIONATE FAIR SHARE TRANSPORTATION

§ 172.075. SHORT TITLE, AUTHORITY, APPLICABILITY.

A. This Part shall be known and may be cited as the "City of Palm Bay Proportionate Fair Share Transportation Ordinance."

B. This Part is adopted pursuant to Fla. Stat. § 163.3180(16).

C. The provisions of this Part shall apply to all developments within the city that impact a road segment where the road segment has failed to achieve transportation concurrency by having a level of service below that adopted in the city Comprehensive Plan.

D. This section shall not apply to multiuse Developments of Regional Impacts (DRIs), to developments exempted from concurrency or to developments creating de minimis impacts.

E. This Part shall be superior to any Brevard County ordinance which is adopted pursuant to Fla. Stat. § 163.3180(16).

(Ord. 2006-128, passed 11-14-06)

§ 172.076. PURPOSE AND INTENT.

The purpose and intent of this Part is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors.

(Ord. 2006-128, passed 11-14-06)

§ 172.077. RULES OF CONSTRUCTION.

In the construction of this Part, the rules set out in this section shall be observed unless such construction is inconsistent with the manifest intent of the City Council. The rules of construction and definitions set out herein shall not be applied to any part of this section that contains any express provisions excluding such construction or where the subject matter or content of such section would be inconsistent with this section.

A. Generally. All provisions, terms, phrases, and expressions contained in this section shall be liberally construed in order that the true intent and meaning of the City Council may be fully carried out. Terms used in this section, unless otherwise specifically provided, shall have the meanings prescribed by the Florida Statutes for the same terms.

B. Text. In case of any difference of meaning or implication between the text of this Part and any figure, the text shall control.

C. Delegation of authority. Where there is a provision requiring the head of a department or some other city officer to do some act or to perform some duty, it is to be construed to authorize that person to delegate professional level subordinates to perform the duty, unless the terms of the provision or section specify otherwise.

D. Gender. Words of the masculine gender shall be construed to include the feminine and vice versa.

E. Day. A calendar day.

F. Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

G. Number. A word of the singular number only, may extend and be applied to several persons and things as well as to one (1) person and thing. The use of the plural number shall be deemed to include any single person or thing.

H. Shall, may. "Shall" is mandatory; "may" is permissive.

I. Tense. Words used in the past tense include the future as well as the past or present.

J. Written or in writing. Any representation of words, letters or figures whether by printing or otherwise.

K. Year. A calendar year unless a fiscal year is indicated.

(Ord. 2006-128, passed 11-14-06)

§ 172.078. GENERAL REQUIREMENTS.

A. A developer may choose to satisfy the transportation concurrency requirements of the city by making a proportionate fair share contribution, pursuant to the following requirements:

1. The proposed development is consistent with the Comprehensive Plan and applicable Land Development Regulations; and,

2. The city five-year Community Investment Program (CIP) includes a transportation capital improvement that, upon completion, will accommodate additional traffic generated by the proposed development.

B. The city may choose to allow a developer to satisfy transportation concurrency requirements by making a proportionate fair share contribution by contributing to an improvement, that upon completion, will accommodate additional traffic generated by the proposed development, but is not contained in the five-year CIP, where one (1) of the following conditions apply:

1. The city adds the improvement to the five-year CIP no later than the next regular capital improvements update of the Comprehensive Plan, provided that the improvement is financially feasible as defined by Fla. Stat. § 163.3180(16)(b)(1); or,

2. If the funds in the five-year CIP are insufficient to fully fund the construction of the improvement, the city may enter into a proportionate fair share agreement with the developer authorizing construction of that amount of development on which the proportionate fair share amount is calculated if the proportionate fair share amount in such agreement is sufficient to pay for one (1) or more improvements which will, in the opinion of the City Council, significantly benefit the impacted transportation system, provided that improvement(s) is(are) adopted into the five-year CIP no later than the next regular capital improvements update of the Comprehensive Plan.

C. Any transportation capital improvement proposed to meet the developer's proportionate fair share obligation must meet the design standards of the city for city-maintained roads and the design standards of the applicable governmental entity for all other roads.

(Ord. 2006-128, passed 11-14-06)

§ 172.079. APPLICATION PROCESS.

A. A developer who shall commence any land development activity generating traffic that results in a failure of a road segment to achieve transportation concurrency may apply to the city for a proportionate fair share agreement.

B. Prior to submitting an application for a proportionate fair share agreement, a pre-application meeting shall be held to discuss eligibility, application submittal requirements, potential mitigation options and other relevant issues. If the road segment that has failed to achieve transportation concurrency is on the Strategic Intermodal System, the Florida Department of Transportation shall be requested to participate in the pre-application meeting.

C. Procedures for review of application for proportionate fair share agreement.

1. The developer shall submit an application to the Growth Management Director that includes a non-refundable application fee of five thousand dollars ($5,000.00) and the following:

   a. Name, address and contact information of the developer;

   b. A drawing and legal description of the land;

   c. Phasing schedule;

   d. Description of the requested fair share mitigation;

   e. If the requested fair share mitigation involves a road segment on the Strategic Intermodal System (SIS), evidence of concurrence from the Florida Department of Transportation.

   f. Traffic study performed by a licensed traffic engineer demonstrating failure of road segment to achieve transportation concurrency.

2. Within twenty (20) days of receipt of the application, the Growth Management Director shall review the application to determine if the application is complete. If it is determined that the application is not complete, the Growth Management Director shall send a written statement to the developer delineating the deficiencies. If such deficiencies are not remedied by the developer within thirty (30) days of receipt of the written notification, then the application shall be deemed abandoned. The Growth Management Director shall grant an extension to cure such deficiencies, provided the developer has shown good cause for the extension and has taken reasonable steps to effect a cure.

3. Once the Growth Management Director determines that the application is complete, written notification shall be sent to the developer. The Growth Management Director shall also forward the developer's application to the City Attorney who shall, within thirty (30) days, draft a proportionate fair share agreement for consideration by the City Council at a meeting no later than sixty (60) days from the date the developer received the notification that the application was complete.

4. No proportionate fair share agreement shall be effective until approved by the City Council.

(Ord. 2006-128, passed 11-14-06)

§ 172.080. DETERMINATION OF PROPORTIONATE FAIR SHARE OBLIGATION.

A. Proportionate fair share mitigation includes, without limitation, separately or collectively, private funds, contributions of land and contribution of transportation facilities.

B. The methodology used to calculate a developer's proportionate fair share obligation shall be as provided in Fla. Stat. § 163.3180(12), and as represented by the following formula:

Proportionate Share = [(Development Trips) / (SV Increase)] x Cost

Where:

Development Trips = Those trips from the development that are assigned to roadway segment;

SV Increase = Service volume increase provided by the improvement to roadway segment

Cost = Adjusted cost of the improvement.

C. For the purposes of determining proportionate fair share obligations, capital improvement costs shall be based upon the actual cost of the improvement as obtained from the CIP, the Brevard MPO Transportation Improvement Program, or the Florida Department of Transportation Work Program. Where such information is not available, the improvement cost shall be determined using one (1) of the following methods:

1. An analysis by the Growth Management Department of costs, adjusted by the Florida Department of Transportation Price Trends Index from the previous year, by cross section type that incorporates data from recent projects; or,
2. The most recent issue of Florida Department of Transportation "Transportation Costs", as adjusted, based upon the type of cross section (urban or rural); locally available data from recent projects on acquisition, drainage, and utility costs; and significant changes in the cost of materials due to unforeseeable events.

D. If the city has accepted an improvement project proposed by the developer, then the value of the improvement shall be determined by using one (1) of the methods provided in this section.

E. If the city accepts any right-of-way dedication for the proportionate fair share payment, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication at one-hundred and twenty percent (120%) of the most recent assessed value of the land, upon which the right-of-way is or will be located, by the Brevard County Property Appraiser or, at the mutual agreement of the city and the developer, by fair market value established by an independent appraisal approved by the city and at no expense to the city. The developer shall supply a certificate of title or title search of the land to the city at no expense to the city. If the estimated value of the right-of-way dedication proposed by the developer is less than the city estimated total proportionate fair share obligation for that development, then the developer must also pay the difference.

(Ord. 2006-128, passed 11-14-06)

§ 172.081. TRANSPORTATION FACILITIES IMPACT FEE CREDIT.

A. Proportionate fair share mitigation shall be applied as a credit against impact fees. Credits will be given for that portion of the impact fees that would have been used to fund the improvements on which the

proportionate fair share contribution is calculated. Additionally, if the proportionate fair share contribution is based on only a portion of the development's traffic, the credit will be limited to that portion of the impact fees on which the proportionate fair share contribution is based.

B. At the time the proportionate fair share obligation is being determined, the city will also compute the transportation facilities impact fee obligation for the proposed development. If the developer's proportionate fair share obligation is less than the development's anticipated total transportation facilities impact fee, then the developer must pay the difference to the city.

(Ord. 2006-128, passed 11-14-06)

§ 172.082. PROPORTIONATE FAIR SHARE AGREEMENTS.

A. Should the developer fail to apply for a building permit within one (1) year of the date of execution of the proportionate fair share agreement, then the agreement shall be considered null and void, and the developer shall be required to reapply in accordance with the provisions of this section.

B. Payment of the proportionate fair share contribution is due in full prior to issuance of the final development order or recording of the final plat and shall be nonrefundable. If the payment is submitted more than one (1) year from the date of execution of the agreement, then the proportionate fair share cost shall be recalculated at the time of payment based on the best estimate of the construction cost of the required improvement at the time of payment, pursuant to the methodology set forth in Section 172.080 and adjusted accordingly.

C. Developer improvements authorized under this Part involving dedications to the city must be completed upon final acceptance of the improvements and receipt of a warranty bond. The form of the warranty bond shall be approved by the City Attorney.

D. Developer improvements authorized under this Part not involving dedications to city must be completed upon recording of a final plat or upon issuance of a certificate of occupancy, whichever event first occurs.

E. Any requested change to a development project subsequent to a development order will be subject to additional proportionate fair share contributions to the extent the change would generate additional traffic.

F. A developer may submit a letter to withdraw from the proportionate fair share agreement at any time prior to the execution of the agreement. The application fee to the city will be nonrefundable.

(Ord. 2006-128, passed 11-14-06)

§ 172.083. APPROPRIATION OF FAIR SHARE REVENUES.

A. All proportionate fair share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the CIP, or for use as otherwise established in the terms of the proportionate fair share agreement.

B. In the event a scheduled transportation facility improvement is removed from the CIP, then the revenues collected for its construction shall be applied toward the construction of another improvement within that same corridor that would mitigate the impacts of development pursuant to the requirements of Section 172.078, as determined by the City Council.

(Ord. 2006-128, passed 11-14-06)