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## 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. 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.

#### § 172.002. BUILDING PERMITS REQUIRED.

- (A) No building or other structure shall be erected, moved, added to, or structurally altered without a permit 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 §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.

#### § 172.003. APPLICATION FOR BUILDING PERMIT.

- (A) All applications for building permits for any structure and its accessory buildings shall be accompanied by scale drawings at a scale acceptable to the Building Official in the appropriate number showing the following:
  - (1) The actual dimensions and shape of the lot or lots to be built upon, including the location and actual boundaries of abutting watercourses and water bodies.
  - (2) The exact sizes and locations on the lot of buildings already existing, if any.
  - (3) The locations and dimensions of the proposed buildings or alterations.
  - (4) The location and layout of the proposed sewage disposal system.
  - (5) When applicable, the required parking spaces, loading and unloading spaces, maneuvering spaces and openings for ingress and egress.
  - (6) When applicable, grading and drainage plans showing any and all cuts, fills and provisions for adequately carrying off surface water on premises plus provisions for any surface water which would naturally flow over or through the area. Such plans shall be reviewed and approved by the Land Development Review Engineer.
  - (7) Such other information as lawfully may be required by the Building Official, including existing or proposed building or alteration; existing or proposed uses of the building and land; the number of

families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this chapter.

- (B) One (1) copy of the plans shall be returned to the applicant by the Building Official after he shall have marked such copy either as approved or disapproved and attested same by his signature on such copy. The original, similarly marked, shall be retained by the Building Official.

**§ 172.004. 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.

**§ 172.005. EXPIRATION OF BUILDING PERMITS.**

- (A) Expiration and extension. A permit for work shall be deemed to be abandoned six (6) months from the date the permit was issued, and the permit shall become void unless satisfactory progress is made. Satisfactory progress shall be evidenced by a requested inspection. One (1) or more ninety (90) day extensions of a permit may be allowed provided the extension is requested in writing. If granted, such extensions shall be in writing by the Building Official. An inspection must be requested within the ninety (90) day extension period, or the permit shall expire.
- (B) Required inspections. If the work described in any permit issued by the Building Official has begun, all required inspections shall be requested. If the work described in a permit has commenced, but the stage of the work does not require an inspection, an inspection shall nonetheless be required and requested by the party to whom the permit was issued, to determine satisfactory progress or an additional permit extension shall be required at least six (6) months.

**§ 172.006. CONSTRUCTION AND USE TO BE AS PROVIDED IN APPLICATIONS, PLANS, PERMITS, CERTIFICATES OF OCCUPANCY.**

Building permits or certificates of occupancy issued on the basis of plans and applications approved by the Building Official authorize only the use, arrangement and construction. Use, arrangement or construction at variance with the authorized, shall be deemed a violation of this chapter.

**§ 172.007. 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 City Manager or designee.

## § 172.008. 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.

- (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 or any permit issued by the United States Fish and Wildlife Service.

§ 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	Planning & Zoning Board	City Council
<b>COMPREHENSIVE PLAN/LDC/ZONING MAP AMENDMENTS:</b>						
Annexation	172.020	Q	Yes	Yes	Yes	<b>Yes</b>
Comprehensive Plan Future Land Use Map Amendment	172.021	L	Yes	Yes	Yes	<b>Yes</b>
LDC text amendments	172.022	L	Yes	Yes	Yes	<b>Yes</b>
Zoning map amendment (City initiated - areawide)	172.022	Q	No	Yes	Yes	<b>Yes</b>
Zoning map amendment (site specific, PUD)	Part 4	Q	Yes	Yes	Yes	<b>Yes</b>
<b>SITE PLANS:</b>						
Site Plan	172.023	A	Yes	<b>Yes</b>	No	No
PUD Preliminary Development Plan (processed in conjunction with PUD rezoning)	172.030	Q	Yes	Yes	Yes	<b>Yes</b>

Application Type	See Section	Approval Type	Pre-Application Meeting	Growth Management	Planning & Zoning Board	City Council
PUD Final Development Plan (processed in conjunction with the preliminary plat)	172.031	Q	Yes	Yes	Yes	<b>Yes</b>
<b>SUBDIVISIONS:</b>						
Preliminary Plat	172.052	Q	Yes	Yes	Yes	<b>Yes</b>
Construction Plans	172.054	A	No	<b>Yes</b>	No	No
Final Plat	172.053	Q	No	Yes	No	<b>Yes</b>
Vacation of Rights-of-way/Plats	Part 7	L	Yes	Yes	No	<b>Yes</b>
Site Work Permit	172.054	A	No	<b>Yes</b>	No	No
<b>OTHER APPLICATIONS:</b>						
Conditional Use	172.024	Q	Yes	Yes	Yes	<b>Yes</b>
Development Agreement	Part 9	Q	No	Yes	Yes	<b>Yes</b>
Variance	172.025	Q	Yes	Yes	Yes	<b>Yes</b>
Administrative Variance	172.026	A	Yes	<b>Yes</b>	No	No
Floodplain Variance	179.007	Q	Yes	Yes	No	<b>Yes</b>

**Legend:** A = Administrative; L = Legislative; Q = Quasi-judicial

(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) *Staff review.*

- (1) After an application is determined to be complete, City staff reviews the application for compliance with the Land Development Code, comprehensive plan, Palm Bay Utilities Department (PBUD) Policies, Procedures & Standards Handbook, and any other regulatory requirements, if applicable.
- (2) City staff shall issue a report listing the requirements that need to be addressed. Staff reserves the right to require additional reviews based on the level of plan changes requested.
- (3) Upon completion of the review, 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) *Established.* The City Council may from time to time, by Resolution, establish fees to be applicable to all regulatory activities authorized by this Title.
- (B) *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.

**§ 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 which requires a public hearing, 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) exempt per §172.030.

*(C) Meeting notice and plan contents.*

- (1) At a minimum, the applicant shall host at least one citizen participation meeting 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 Code. 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 City.
- (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.

#### **§ 172.013. PUBLIC HEARINGS.**

The applicable 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 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 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. APPEALS**

- (A) *Appeals of administrative decisions.* 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 City Manager or designee 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 City Manager or designee 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 City Manager or designee from whom the appeal is taken certifies to the City Council, 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 City Manager or designee whose action is being appealed.

- (B) *Appeals of Quasi-Judicial Decisions.* Any final action, including final order, issued by the approving authority may be appealed pursuant to the Florida Rules of Appellate Procedure.

§ 172.015 through §172.019 RESERVED

## **PART 3. APPLICATION TYPES**

### **§ 172.020. ANNEXATIONS**

See Ch. 171, F.S., for annexation definition and procedures.

### **§ 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 §172.010.
  - (2) *Application submittal.* Applications shall be filed as prescribed in §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 the 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 §163.3187, F.S., or two (2) hearings (transmittal/first reading and adoption) for expedited comprehensive plan amendments per §163.3184(3), F.S.
- (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) Whether the proposed amendment will have a favorable or unfavorable effect on the city's budget, or the economy of the city;
  - (2) Whether the proposed amendment will adversely affect the level of service of public facilities;
  - (3) 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;
  - (4) 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;

- (5) Whether the proposed amendment will promote or adversely impact the public health, safety, welfare, or aesthetics of the region or the city;
- (6) Whether the requested amendment is consistent with all elements of the Comprehensive Plan and established Levels of Service.
- (7) Whether the request maximizes compatibility (consistent with the definition found in §163.31649, F.S.) between uses;
- (8) Whether the request provides for a transition between areas of different character, density or intensity;
- (9) Whether the request relocates higher density and intensity uses in areas which already feature adequate vehicular access and access to public facilities; and
- (10) Whether the request considers land use equity in accordance with Policy FLU – 1.12A of the 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.

(B) *Application.*

- (1) A zoning district map amendment 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 §172.010.
- (2) *Application submittal.* Applications shall be filed as prescribed in §172.010.
- (3) *Planning and Zoning Board.* The Planning and Zoning Board reviews the application at a public hearing and makes a recommendation based on the review criteria stated below.
- (4) *City Council Review.* The City Council reviews the application at a public hearing and makes a decision based on the review standards below.

(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) 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.

(2) 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.

- (3) 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.
- (4) 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;
- (5) Applications to rezone property to non-industrial districts should not encroach into areas designated for industrial use on the Future Land Use Map;
- (6) Location within a prime water recharge area and the potential impact of the allowable uses in the district.

If a request for a district boundary change is for a district more liberal than the existing district, and the Planning and Zoning Board or the City Council determines that the request should be denied, the Planning and Zoning Board may recommend, 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.

- (F) *Rehearing and Administrative Res Judicata*. 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.

#### **§ 172.023. SITE PLANS.**

A site plan shall be required for the construction or expansion of any building, structure, infrastructure, or complex of buildings or structures, unless exempted by this section. Prior to making application for a site plan, the applicant shall request a pre-application meeting with the City to determine whether the proposed project meets the criteria established for a site plan, minor site plan, site plan modification, or is exempt from the site plan process. A building permit shall not be issued unless the construction plans are accompanied by a City approved site plan. A site plan shall be submitted to the City for administrative review. The submittal requirements shall follow the Guidelines for Site and Building Permitting Procedures Manual.

- (A) *Site Plan*: A site plan shall be submitted for all the following development proposals:

- (1) New site development proposals for unimproved real property.
- (2) Any developed site proposing an addition of 50 percent (50%) or greater of the original floor area or seating capacity of the existing structure.
- (3) Any addition of impervious area, or modification of an existing onsite wetland, surface water, or stormwater management system.
- (4) Proposals where existing onsite “natural areas” of any size will be impacted.

- (B) *Minor Site Plan*. A minor site plan shall be submitted for the following site development proposals:

- (1) Changes to existing development which does not exceed 50 percent (50%) of the original floor area or seating capacity of the existing structure.

- (2) Additions or alterations to site infrastructure, stormwater, impervious areas of less than five hundred (500) square feet; or an addition of up to twenty percent (20%) of parking areas on developed sites, or on sites with no existing permit.

(C) *Site Plan Modification*. Site plan modifications shall meet the following criteria:

- (1) All infrastructure required to service the site shall exist on the subject site.
- (2) Parking meets all code requirements, or any approved parking determination, parking rate adjustments or variance requests, in accordance with the Land Development Code.
- (3) The proposed modification does not substantially alter the traffic circulation system or substantially change the use of property, as determined by the City Manager or designee.

(D) *Applicability*.

- (1) All site plans are subject to compliance with the Zoning Code.
- (2) Only the specific work area identified in a site plan, minor site plan, or site plan modification shall be subject to compliance with current code requirements, unless the alteration or modification adversely impacts safety, existing infrastructure, or another code requirement that stipulates the area outside of the work area must comply with the current standards.

(E) *Exemptions*. The following are exempt from the site plan review; however, shall comply with all other development regulations and building code requirements.

- (1) Detached single-family or duplex residence on a fee simple lot.
- (2) Accessory structures to an established principal use meeting the following criteria:
  - (a) The structure does not necessitate the expansion of the existing infrastructure such as parking spaces, stormwater system, etc., or
  - (b) Does not impact the adequacy of the existing infrastructure (e.g., utilize necessary parking spaces, remove/reduce stormwater, etc.), and
  - (c) The scope of work does not require modifying the existing site engineering and can be regulated through the building permit review process.

(F) *Revisions to Approved Plans (RTAP)*. Revisions to approved plans under construction which do not increase the gross square footage of a building or adversely impact compliance with the approved site plan and would not alter the required infrastructure and improvements necessary to serve the site, may be approved in writing provided such additions or modifications fully conform to all existing city regulations. Prior to final acceptance of the site, as-built drawings shall be submitted indicating such revisions, or modifications prior to site acceptance.

#### **§ 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.

(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.

(C) *Submittal requirements.*

- (1) Boundary survey.
- (2) The applicant may submit a full site plan meeting the requirements of the Guidelines for Site and Building Permitting Procedures Manual, or an abbreviated site plan depicting the following.
  - (a) Location of site and surrounding uses;
  - (b) Location of existing and proposed structures;
  - (c) Major access points into the site and internal circulation;
  - (d) Parking and service areas; and
  - (e) Landscape and irrigation plans depicting compliance with tree protection and landscaping regulations.
- (3) Description of the use and performance standards proposed to mitigate potential impacts, including restrictions of the use of property; plans for the provisions of utilities, including water, sewer and drainage facilities; plans for protection of abutting properties; plans for cross access or shared parking areas; hours of operation; and such other plans, tabulations and other data to support the request.

(D) *Public notice.*

- (1) Public notice shall be given as required by state statutes. Notice of such hearing shall be posted on the property for which conditional use is sought.
- (2) A courtesy notice shall be mailed, at the applicant's expense, 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.

(E) *Conditional use review.*

- (1) All applications for conditional uses shall be submitted to the Planning and Zoning Board for study and written, advisory recommendations to the City Council.
- (2) The City Council shall review the application and may either grant conditional uses with such conditions 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.



(3) In granting any conditional use, the City Council may prescribe appropriate conditions in conformity with this chapter. Violation of such conditions, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this chapter.

(F) *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 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 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.

(G) *Effect of conditional use approval.* The conditional use shall commence within two (2) years of the date that the conditional use is granted, as evidenced by the issuance of an approved site plan, certificate of occupancy, certificate of completion or business tax receipt, as applicable. One administrative extension of one year may be approved by the City Manager, or designee, following a written request by the applicant within sixty (60) days prior to the date of expiration.

#### **§ 172.025. VARIANCES.**

(A) *Purpose.* The City Council shall hear petitions for variances from the terms of the Land Development Code, 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. A hardship generally occurs when the physical characteristics of a property are such that it cannot be used for any purpose permitted by the Land Development Code. A hardship may be created by the surroundings,

shape, or topographical conditions particular to that specific property. However, the hardship cannot be self-imposed, or the result of the property owner's own action. 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) *Variance submittal requirements.* The application for variance approval shall be accompanied by the following:

- (1) Boundary survey;
- (2) A site plan depicting existing and proposed development and highlighting the requested variance.
  - (a) An application, on a form provided by the City, completed and signed by the applicant and the owner or owner's agent, or contract purchaser with the owner's written consent.
  - (b) A disclosure statement by the parties with at least five percent interest in the subject property/project signed by the applicant and notarized. The applicant, owner or owner's agent, or contract purchaser with the owner's written consent, shall keep all information current during the processing of the application.
  - (c) The particular provision of the LDRs which prevents the proposed construction on the property.
  - (d) The existing zoning of the property, including any previously approved conditions or modifications.
  - (e) The special circumstances, conditions, or characteristics of the land, building or structure that prevent the use of the land in compliance with the terms of this ordinance.
  - (f) The particular hardship which would result if the specified provisions of the ordinance were to be applied to the subject property.
  - (g) The extent to which it would be necessary to vary the provisions of this ordinance to permit the proposed construction on, or use of, the property.
  - (h) A written response to the variance review criteria.

(C) *Procedures.*

- (1) *Application.* An application for variance shall be made by the fee owner of the property on a form prescribed by the City and shall be submitted with a processing fee which shall be set and may be amended from time to time by City Council in accordance with §172.011.
- (2) *Staff Review.* The City Manager or designee shall review the application in light of the applicant's response to the variance review criteria contained below and forward a recommendation to the Planning and Zoning Board.
- (3) *Planning and Zoning Board Review.* Upon receipt of a recommendation concerning disposition of a requested variance, the Planning and Zoning Board 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.
- (4) *City Council.* 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.

(5) *Conditions.* In granting any variance, appropriate conditions 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.

(D) *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 constitute conclusive evidence of unnecessary and undue hardship nor 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.

#### **§ 172.026. ADMINISTRATIVE VARIANCES.**

(A) *Purpose.* An administrative variance allows for a variation in setbacks, floor area ratios, frontage requirements, subdivision regulations, height limitations, lot coverage/size restrictions, yard requirements, parking, and similar dimensional standards. Administrative variance limitations and exclusions are as follows:

- (1) Administrative variances in conjunction with new construction are limited to ten (10) percent of the dimensional requirement.
- (2) Administrative variances for existing principal or accessory structures are limited to twenty percent (20%) of the applicable code section.
- (3) Administrative variances shall not be used to change the use of the property in question.
- (4) Approval of administrative variances shall not allow encroachments into easements.

(B) *Procedures.*

- (1) Application. An application for an administrative variance shall be made on a form prescribed by the City. 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. The City Manager or designee shall review the request and render a decision either approving, approving with modifications, or denying the request. In granting any administrative variance, the City Manager or designee may prescribe any appropriate conditions necessary to protect and further the interest of the area and abutting properties, including but not limited to:
  - (a) Landscape materials, walls and fences as required buffering.
  - (b) Modification of the orientation or deletion of any openings.
  - (c) Modification of site arrangements.
  - (d) Modification of plans.

(C) *Review criteria.* Administrative variance requests shall be reviewed based on the following standards and criteria:

- (1) The request meets all the following provisions:
  - (a) No more than two sides of the encroaching construction shall be considered for a setback variance (all prior setback variances, administrative variances and alternative site development options shall count toward this limitation);
  - (b) No prior setback, lot coverage or building spacing variance(s), administrative variance(s) or alternative site development option(s) shall be further changed by administrative variance;
  - (c) The architectural design, scale, mass and building materials of any proposed structure or addition shall be aesthetically harmonious with that of other existing or proposed structures or buildings on the property;
  - (d) The plan shall clearly illustrate water runoff solution(s) for the encroaching construction area;
  - (e) The property owner shall certify in writing that any and all easement areas as shown on the recorded plat remain unencumbered by the encroaching construction, unless a release of interest by the easement holder(s) is obtained and submitted;

- (f) The applicant provides written certification from a registered architect or engineer that the existing encroaching construction complies, or can be made to comply with all applicable construction codes, including but not limited to the Florida Building Code, and the applicable Fire Prevention Code;
  - (g) Any reduction in the spacing requirement between a principal building and an accessory building or structure on the same lot shall not result in a situation that causes maintenance difficulty or an unsightly appearance;
  - (h) The proposed accessory building or structure is a normal and customary accessory residential use; and
  - (i) The property owner certifies in writing that the type and placement of any proposed outdoor lighting fixtures shall comply with the City Code and the Florida Building Code.
- (2) Notwithstanding the foregoing, no proposed administrative variance shall be approved where the City Manager or designee determines that the proposed construction or addition:
- (a) Will not be in harmony with the general appearance and character of the subject block face or the block face across the street from the subject property or will result in a significant diminution of value of the adjacent property; or
  - (b) Will be detrimental to the public welfare in that it will have substantial negative impact on public safety due to unsafe traffic movements, heightened pedestrian/vehicular conflicts, or heightened risk of fire; or
  - (c) Creates materially greater adverse privacy impacts on adjacent residences than that permitted by the underlying district regulations.
- (D) *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 or agents as noted on the application.
- (E) *Appeals.* See §172.014.

#### **§ 172.027. MASTER SITE PLAN FOR MIXED-USE DISTRICTS**

- (A) *Purpose/Applicability:* Master Site Plan approval is required in conjunction with rezonings of one hundred (100) acres or more to the CMU and UMU zoning districts. The review of the master plan is intended to ensure coordinated design of mixed-use or phased developments. 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) *Submittal requirements.* the following items shall be submitted:
- (1) *Project description* (narrative) addressing the following:
    - (a) Project description identifying the effect on surrounding land uses and verifying consistency of the proposed development with the city's comprehensive plan and land development code.
    - (b) A description of the applicable concurrency requirements relative to transportation, water, sewer, schools, recreation, open space, stormwater; solid waste, and public safety.

- (c) Proposed development schedule and phasing plan, specifying the number of dwelling units, or the amount of nonresidential square feet to be provided during the various phases of the development.
  - (d) The ability of the subject property or surrounding areas to accommodate any contemplated future expansion of the master site plan, if appropriate.
- (2) *Master Site Plan*, including, but not limited to, the following:
- (a) The location, description, and acreage of all proposed land uses, including the following:
    - 1. Vehicular rights-of-way and dimensions;
    - 2. Pedestrian/bicycle circulation;
    - 3. Common uses;
    - 4. Common open space;
    - 5. Schools;
    - 6. Government/civic;
    - 7. Landscaping and buffers;
    - 8. Stormwater; and
    - 9. Conservation
  - (b) Projected type, location, number, and density of all residential dwelling units to be constructed in the development.
  - (c) Proposed development schedule and phasing plan, showing the number and type of dwelling units, or the amount of nonresidential square feet to be provided during the various phases of the development.
- (3) *Other items* which the City Manager or designee may determine to be pertinent to the review of the application.
- (C) *Process*: The review of the Master Site Plan includes the following steps:
- (1) *Pre-application meeting*: The applicant must attend a pre-application meeting per §172.010.
  - (2) *Staff Review*: City staff shall review the Master Site Plan for conformance with the Comprehensive Plan and this Land Development Code and must submit a recommendation for approval, approval subject to modifications necessary to meet code, or denial.
  - (3) *Planning & Zoning Board*: The Board considers the staff recommendations and the review criteria contained in this section and issues a recommendation to the City Council.
  - (4) *City Council*. The City Council shall, upon receipt of the Planning and Zoning Board and staff 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.

- (D) *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 occurs.
- (E) *Review criteria*. The reviewing authorities shall consider the following factors when reviewing a Master Site Plan:
- (1) Compatibility within the development and relationship with surrounding neighborhoods.
  - (2) The nature, intent, and compatibility of common open space, including the proposed method for the maintenance and conservation of the common open space.
  - (3) The availability and adequacy of internal and external streets and thoroughfares to support traffic to be generated by the proposed development.
  - (4) The availability and adequacy of water and sewer service to support the proposed development.
  - (5) The availability of on- or off-site public education and recreation facilities, drainage, flood control and soil conservation as shown in the Master Site Plan.
  - (6) The benefits within the proposed development and to the general public.
  - (7) The conformity of the development with the city's Comprehensive Plan and Land Development regulations, particularly with the purpose and intent of the districts.
- (F) *Effect of approval*. Approval of the Master Site Plan authorizes the applicant to submit site plans or subdivision plats for the various components of the development, which must be consistent with the approved Master Site Plan. Subsequent development plans shall ensure compliance with the approved Master Site Plan.
- (G) *Expiration*. The applicant shall have three (3) years from the approval of the Master Site Plan in which to file a site plan or subdivision plat application. At the request of the applicant, 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.

§ 172.028 through § 172.029 RESERVED

## **PART 4. ZONING MAP AMENDMENT TO PUD**

PUDs require preliminary and final development plan applications for review by the Planning and Zoning Board and City Council. A Planned Unit Development zoning classification is established when the final application is approved by City Council by Ordinance. See Part 5 of this chapter for rezoning to Regional Activity Center (RAC)-PUD.

### **§ 172.030. PROCEDURE FOR APPROVAL OF A PRELIMINARY DEVELOPMENT PLAN (PDP) AND PUD ZONING.**

The following procedures, applications, and exhibits shall be required when applying for approval of a preliminary development plan:

- (A) *Pre-application meeting*. Prior to submitting a formal application for PUD zoning, the petitioner is required to confer with the city and other county, state or regional agencies having jurisdiction or permitting responsibilities impacting the proposed development. The petitioner is also required to submit a tentative



land use sketch plan for review at the meeting, and to obtain information on any projected plans, programs or other matters that may affect the proposed planned community. This pre-application meeting should address, but not be limited to, such matters as:

- (1) The proposed relationship between the anticipated project and surrounding uses, and the consistency of the proposed development with the City of Palm Bay Comprehensive Plan Goals, Objectives, and Policies as well as other stated planning and development objectives of the city. Prior to receiving any PUD zoning district classification, the applicant may apply for a planned unit development comprehensive plan future land use map amendment for the subject property.
- (2) The adequacy of existing and proposed streets, utilities, and other public facilities to serve the development. The applicant shall be required to submit narrative and graphic information that addresses concurrency management issues pursuant to Part 8 of this chapter (Concurrency Management).
- (3) The nature, design, and appropriateness of the proposed land use arrangement for the size and configuration of property involved.

(B) *PDP application.* The application for the PUD designation shall include a PDP and ~~Development~~ PUD Agreement, and comply with the ~~following~~ standards set forth in Chapter 173, Part 6.:

~~(C)~~ An application shall be submitted to the Land Development Division by the applicant/property owner(s) requesting approval of the site as a planned unit development. The application shall contain the name of the property owner(s), developer, surveyor and engineer who prepared the development plan and topographic data map, and the name of the proposed planned unit development.

~~(D)~~(C) *Required PDP Exhibits.* The following exhibits shall be attached to the application (see Part 5, below, for PUDs within the RAC future land use category):

(1) Preliminary Development Plan. The Preliminary Development Plan shall serve as an instrument providing PUD-specific development standards, maximum densities, intensities, and permitted uses for all lands contained within the Plan. The development plan shall contain, but not be limited to, the following information:

- (a) Proposed name or title of project.
- (b) The name of the engineer, architect, surveyor, and developer.
- (c) North arrow, scale (one (1) inch equals two hundred (200) feet), date, and legal description of the proposed site.
- (d) Existing conditions and vicinity map. Aerial map showing boundaries of tract, all existing easements, section lines and all existing rights-of-way and physical features in and adjoining the project.

(e) Tracts, including parks, school sites or other public or private space, stormwater, open space and landscape.

(f) Off-street parking, loading areas, driveways, and access points; public and private right of ways.



~~(g)~~ 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 residential and nonresidential uses, 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.

~~(e)~~ (2) Existing land use and zoning map.

~~(f)~~ Tracts, including parks, school sites or other public or private space, stormwater, open space and landscape.

~~(g)~~ Off-street parking, loading areas, driveways, and access points; public and private right of ways.

~~(h)~~ (3) Topographic map (2-foot contours) consistent with the requirements of Chapter 5J-17, F.A.C.

~~(i)~~ 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 residential and nonresidential uses, 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.

~~(j)~~ Delineation of phased development, if applicable.

~~1.~~ The order of construction of the proposed stages delineated in the development plan.

~~2.~~ The proposed date for the beginning of construction of such stages.

~~3.~~ The proposed date for the completion of construction on such stages.

~~4.~~ The proposed schedule for the construction and improvement of common recreation and open space and any related amenities.

~~(k)~~ (4) Zoning Factors of aAnalysis in accordance with 172.022(E).

~~(h)~~ (5) Natural Resource Assessment. The preliminary development application shall include an assessment of the property identifying major environmental features of the site and endangered wildlife and vegetation.

~~(m)~~ Tree survey showing the location of tree groupings and exceptional specimen trees.

~~(n)~~ (6) Conceptual stormwater master plan, drainage and outfall.

~~(o)~~ (7) Boundary and topographic survey, include the location, size and type of all trees in accordance with Chapter 175 of the Land Development Code.

~~(p)~~ (8) Traffic Study Memorandum. A traffic study of limited scope meeting generally accepted engineering practices and in accordance with the City of Palm Bay Standardized Traffic Impact Study Guidance Manual examining the impact of the proposed development on the surrounding roadway network.

~~(q)~~ (9) Schematic drawing of the elevation and architectural construction of the proposed primary and secondary residential and nonresidential structures as part of a design workbook.

~~(r)~~ (10) Other studies and documents as required namely: Pre-Application meeting, Citizen Participation Plan, Natural Resource Assessment, and Zoning Analysis.

~~(S)~~(11) Development PUD Agreement. A Development PUD Agreement, ~~in accordance with Part 9 of this chapter,~~ shall be required for the establishment of a PUD and shall be concurrent with the PDP. A PUD Agreement shall establish the district, proposed uses, maximum densities and intensities of uses, statement of unified control, and contain all exhibits contained above~~All conditions provided for in the Development Agreement shall be related in both type and amount to the anticipated impacts of the proposed development on the public and surrounding lands.~~

~~(E)~~(D) Submittal.

- (1) The PUD zoning application and preliminary development plan (PDP) application 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. The PUD PDP application must be complete and accompanied by two (2) copies of the preliminary development plan and all exhibits, as described in these regulations, a filing fee, and a list of all owners of adjacent property or property directly opposite of the proposed subdivision. Such property owner information shall be obtained from the most recent County Tax Appraiser's rolls.
  - (a) City staff will review the application package for completeness and notify the applicant in writing whether the application submitted is sufficient or otherwise specify any deficiencies in the application. The City shall provide this notification in accordance with the timelines set forth in §166.033, F.S.
  - (b) Once the preliminary development plan application package is determined sufficient, the development coordinator will distribute the package to city staff. Pursuant to §166.033(2), F.S., the city will not request additional information from the applicant more than three (3) times, without requesting a meeting with the applicant to discuss outstanding issues, unless the applicant waives this limitation in writing. If not waived, the city will proceed to process the application for approval or denial.
- (2) Once the application is deemed complete, the Land Development Division shall process and coordinate the review 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 and prepared for a regularly scheduled meeting of the Planning and Zoning Board in accordance with the timelines set forth in §166.033, F.S.
- (3) Courtesy notice letters of the meeting shall be sent in accordance with § 51.07, Public Hearing Notices. 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) PUD PDP applications must be approved by City Council. Once plans are ready for the City Council, the applicant shall be notified.

~~(F)~~(E) Application review.

- (1) The PUD PDP application 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.

(2) 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 PUD zoning and preliminary development plan based on 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.

(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 PUD PDP application. The approval shall constitute a PUD zoning enacted by Ordinance and the preliminary development plan and ~~Development PUD Agreement~~ shall be binding upon the lands contained within the plan. ~~Any proposed modifications to the preliminary development plan or Development Agreement shall be submitted to the Growth Management Director for determination of the review criteria stated departure from the approved plan. If determined to be a substantial deviation from the approved development plan, the applicant must receive a new preliminary development plan or Development Agreement approval from City Council for such deviation.~~

~~(G)~~(F) Recordation of PUD, PDP, and ~~Development PUD~~ Agreement. The Ordinance approving the PUD zoning request and the accompanying preliminary development plan and ~~Development PUD~~ Agreement approved by the City Council shall be certified and approved by the City Clerk as a permanent record and recorded in the Public Records of Brevard County, Florida.

~~(H)~~(G) Review criteria. The decision of the Planning and Zoning Board on the PUD PDP 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:

- (1) Degree of departure of proposed planned unit development from surrounding areas in terms of character and density.
- (2) Compatibility within the planned unit 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 recreation and 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, providing for connectivity and walkability between residential and nonresidential uses within the development.
- (7) The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned unit development.
- (8) The availability and adequacy of water and sewer service to support the proposed planned unit development.

- (9) The availability and adequacy of existing police and fire services to support the proposed planned unit development.
- (10) 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.
- (11) The conformity and compatibility of the planned unit development within any adopted plan of the city.
- (12) The conformity and compatibility of the proposed common recreation and open space, residential and nonresidential uses within the proposed planned unit development.
- (13) Consistency of the preliminary development plan with Comprehensive Plan goals, objectives, and policies
  - (a) Internal compatibility. All uses proposed within a preliminary development plan shall be compatible with other proposed uses; that is, no use may have any undue adverse impact on any neighboring use, based on the streetscape, treatment of pedestrian ways and circulation, motor vehicle circulation, and the separation and buffering of parking areas and sections of parking areas; the existence or absence of, and the location of, focal points and vistas, open spaces, plazas, recreational areas and common areas, and use of existing and proposed landscaping; use of the topography, physical environment and other natural features; use and variety of building setback or build-to lines, separations and buffering; use and variety of building groupings, building sizes, architectural styles, and materials; variety and design of dwelling types; particular land uses proposed, and conditions and limitations thereon; and any other factor deemed relevant to the privacy, safety, preservation, protection or welfare of any proposed use within the preliminary development plan.
  - (b) External compatibility. All uses proposed within a preliminary development plan shall be compatible with existing and planned uses of properties for which it surrounds; that is, no internal use may have any avoidable or undue adverse impact on any existing or planned surrounding use, nor shall any internal use be subject to undue adverse impact from existing or planned surrounding uses. An evaluation of the external compatibility of a preliminary development plan should be based on the following factors: adjacent existing and proposed uses, design of the development, traffic circulation, and density and intensity.
  - (c) Intensity of development. The residential density and intensity of use of a preliminary development plan shall be compatible with and shall have no undue adverse impact upon the physical and environmental characteristics of the site and surrounding lands and shall comply with the policies and density limitations set forth in the Comprehensive Plan. Within the maximum limitation of the Comprehensive Plan, the permitted residential density and intensity of use in a preliminary development plan may be adjusted upward or downward in consideration of the following factors: the availability and location of public and utility services and facilities; the trip capture rate of development; and the degree of internal and external connectedness of streets.
  - (d) Usable open spaces, plazas and recreation areas. Usable open spaces, plazas and recreation areas provided within a preliminary development plan shall be evaluated based on conformance with the policies of the Comprehensive Plan and the sufficiency of such areas to provide appropriate

recreational opportunities, protect sensitive environmental areas, conserve areas of unique beauty or historical significance, enhance neighborhood design, and encourage compatible and cooperative relationships between adjoining land uses.

- (e) Environmental constraints. The site of the preliminary development plan shall be suitable for use in the manner proposed without hazards to persons either on or offsite from the likelihood of increased flooding, erosion or other dangers, annoyances or inconveniences. Condition of soil, groundwater level, drainage and topography shall all be appropriate to the type, pattern and intensity of development intended. The conditions and requirements of the protection of resources article shall be met.
- (f) External transportation access. A preliminary development plan shall ensure access is located on, and provides access to, a major street (arterial or collector) unless, due to the size of the preliminary development plan and the type of uses proposed, it will not adversely affect the type or amount of traffic on adjoining local streets. Access shall meet the standards set in Chapter 176 of the Land Development Code. Connection to existing or planned adjacent streets is encouraged. The trip generation report shall be signed by a professional engineer registered in the state when there is a difference between the traffic report provided by the petitioner and the concurrency test.
- (g) Internal transportation access. Every dwelling unit or other use permitted in a preliminary development plan shall have access to a public street directly or by way of a private road, pedestrian way, court or other area that is either dedicated to public use or is a common area guaranteeing access. Permitted uses are not required to front on a dedicated public road. Private roads and other accessways shall be required to be constructed so as to ensure that they are safe and maintainable.
- (h) Provision for the range of transportation choices. Sufficient off-street and on-street parking for bicycles and other vehicles, as well as cars, shall be provided. Parking areas shall be constructed in accordance with such standards as are approved by the city commission to ensure that they are safe and maintainable and that they allow for sufficient privacy for adjoining uses. When there is discretion as to the location of parking in the project, it is strongly encouraged that all motor vehicle parking be located at the rear or interior side of buildings, or both. The design of a PDP should, whenever feasible, incorporate appropriate pedestrian and bicycle accessways so as to provide for a variety of mobility opportunities. Connection to all sidewalks, greenways, trails, bikeways, and transit stops along the perimeter of the PDP is required. Where existing perimeter sidewalks do not exist, sidewalks shall be provided by the development.

(H) *Amendments to the preliminary development plan.* Except as otherwise provided in this section, an amendment to an approved preliminary development plan (except for an extension of a time limit) shall be accomplished only by a new preliminary development plan application. Any proposed modifications to the preliminary development plan shall be submitted to the City Manager or designee for determination of departure in accordance with §172.026, Administrative Variances. If determined to be a substantial deviation from the approved preliminary development plan, the applicant must receive a preliminary development plan approval from City Council for such deviation.

The following types of amendments to the requirements of an approved PDP may be authorized by the appropriate reviewing board during final development plan review, provided such amendments meet the criteria set forth in this subchapter for the development review process.

- (1) Minor adjustments or shifts in the location and siting of buildings, structures, parking bays, and parking spaces.
- (2) Changes in the location of utility tie-ins and solid waste, recycling, and yard trash containers.
- (3) Reductions in the overall density or intensity of structural ground coverage of the development.
- (4) Changes in the location and types of landscape materials, excluding changes in location of buffers.
- (5) Minor changes in the walkway and bikeway systems.
- (6) 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.
- (7) The addition of up to ten new parking spaces.
- (8) 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.
- (9) Modifications that do not entail amendments to specific language included within the PDP ordinance.

**§ 172.031. PROCEDURE FOR SECURING APPROVAL OF A FINAL DEVELOPMENT PLAN (FDP).**

The granting of a rezoning to a planned unit development (PUD) and the approval of its accompanying preliminary development plan by the city council shall constitute authority for the applicant to submit a final development plan (FDP). The final development plan shall be filed, processed and reviewed pursuant to this section. The FDP may include a development plan and a preliminary plat in accordance with § 172.052. The applicant shall have three (3) years from the approval of the preliminary development plan (PDP) for a planned unit development in which to file a final development plan application. At the request of the applicant, 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 phase. If approval is not requested for the entire planned unit development, the applicant 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 phases specified in the preliminary development plan. At the request of the applicant, 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 for final development plan.* In addition to the exhibits identified in §172.030(B) in addition to the following documents shall be attached to the final development plan application.

- (1) *Topographic map.* A boundary and topographic map shall be submitted.
- (2) *Tree survey.* A survey depicting the location, size and type of all trees (per the standards identified in Chapter 175).
- (3) *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.
- (4) *Deed restrictions.* Deed restriction proposals to preserve the character of the required common open space as set forth in §173.070. The deed restrictions shall include a prohibition against partition by any residential property owner.
- (5) *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.
- (6) *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.
- (7) Performance Bond, Impact Fee Credit Agreements, or Proportionate Fair Share agreements, if applicable.
- (8) *Development Agreement.* A development agreement as defined by Chapter 163, Florida Statutes, if applicable, will-shall be required to address impacts to public facilities, such as roads, stormwater, utilities, parks, and public safety infrastructure, for which the applicant will be required to improve as a result. Development agreements, where required, shall be concurrent with the final development plan may also be required to memorialize development standards that do not get specified on the final development plan. See also Part 9 of this Chapter.
- (B) *Required form and content for final development plan and preliminary plat.* A final development plan shall be submitted along with all of the material included in the approved preliminary development plan. No permit for construction of subdivision improvements shall be issued until the preliminary plat and development plan have been duly approved. The final development plan shall include the preliminary plan together with the following:
- (1) Written material.
    - (a) Development schedule. A development schedule indicating the approximate date when construction of the PUD or stages of the PUD can be expected to begin and be completed.
    - (b) Quantitative data.
      - 1. Total number of dwelling units by type.
      - 2. Total parcel size.
      - 3. Proposed lot or building site coverage by building and structure.
      - 4. Proposed lot or building coverage by impervious surfaces, other than buildings and structures.
      - 5. Gross and net residential density.
      - 6. Proposed amount of open space.



7. Proposed acreage of public lands including all dedicated rights-of-way, easements, and other lands dedicated for public facilities and services.
  8. Internal circulation plan depicting all proposed streets, alleys and ingress/egress locations.
- (c) Updated public facility impact statement, including a concurrency management plan. A statement identifying any additional data or information that may have been gathered or calculated since the approval of the preliminary development plan, concerning impacts of the development on public facilities including strategy for meeting Part 8 of this Chapter, Concurrency Management System, requirements for each of the following:
1. Method and design for accommodating anticipated wastewater to be generated by the development;
  2. Planned recreation and open space improvements;
  3. Method and design improvements required to supply anticipated potable water needs;
  4. System design for stormwater management projected improvements;
  5. Traffic generation and traffic assignments together with proposed improvements to accommodate projected trips while maintaining adopted level of service standards;
  6. Planned methods for accommodating projected solid waste generation;
  7. Estimated number of school age children expected within the development and plans for accommodating their educational needs;
  8. Estimated property tax or sales tax revenue generated by the project by phase; and
  9. Any other positive or negative public facility impact.

(2) Graphic element of development plan.

- (a) Plat. If the project involves the subdivision of land, then a preliminary plat prepared by a Florida registered surveyor or engineer shall be submitted in accordance with the provisions of §172.052.
- (b) Site plan. If the project requires site plan approval, a site plan shall be submitted. The site plan shall be submitted in accordance with the provisions of §172.023. The stormwater water management plan meeting criteria of Chapter 177, Part 2, as well as other infrastructure components, including roadway improvements, water and wastewater facilities, and other scheduled infrastructure improvements shall be prepared by a Florida registered engineer. The site plan shall include maps, data and written statements necessary.
- (c) General appearance. Graphic presentation of the general features of proposed structures, excluding single-family detached dwellings, including:
  1. Floor plans and square footage of all multifamily and nonresidential buildings or structures; and
  2. Elevations, sections and/or perspectives as necessary to indicate the basic architectural intent, the height of buildings and structures, and the general window and door arrangements.
- (d) Dedication or reservations of land for public use. The location and size, in acres or square feet, of all areas to be conveyed, dedicated or reserved as open spaces, public parks, recreational areas,



school sites, and similar public uses. The narrative shall demonstrate compliance with concurrency management requirements of Part 8 of this chapter.

- (e) Vehicular, pedestrian and bicycle circulation and parking. The existing and proposed circulation system of arterial, collector, and local streets including off-street parking areas, service areas, loading areas, and major points of access to public rights-of-way (including major points of ingress and egress to the development). Notations of proposed ownership — public or private — shall be included where appropriate. The existing and proposed pedestrian and bicycle circulation system, including its interrelationship with the vehicular circulation system indicating proposed treatments of points of conflict.
- (f) Open space and landscape plan. A general landscape and grading plan indicating the proposed modifications in the topography and ground cover together with a plan for design of open space systems and landscaping. The landscape plan shall comply with open space, landscape and tree preservation requirements of this article and other applicable provisions of this code, especially article XIV.
- (g) Information concerning adjacent lands. Information on adjacent areas sufficient to indicate the relations between the proposed development and the adjoining areas, including:
  - 1. Land ownership within 300 feet of the exterior boundary of the property.
  - 2. Existing land use and designation on the comprehensive plan future land use map.
  - 3. Zoning classification.
  - 4. Circulation system.
  - 5. Density.
  - 6. Public facilities.
  - 7. Unique natural features.
- (h) Additional information. Any additional graphic information required by the planning and zoning commission that is necessary to evaluate the character and impact of the proposed PUD.

(C) *Procedure.*

- (1) A fee, as established by Resolution, shall accompany the final development plan application.
- (2) The Planning and Zoning Board shall recommend the approval, approval subject to conditions, or disapproval of the final development plan based on 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 shall be binding upon the land contained within the plan. Any proposed modifications to the final development plan shall be submitted to the City Manager or designee 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.

(D) *Criteria for review:* The burden of proof shall reside with the applicant/developer to demonstrate compliance.

- (1) Compliance with subdivision regulations.
- (2) Compliance with zoning regulations.
- (3) Compliance with the comprehensive plan.
- (4) Substantial conformity with preliminary development plan required. The final development plan shall be in substantial conformity with the approved preliminary development plan. In achieving substantial conformity, no change authorized by this subsection may cause any of the following:
  - (a) A change in the use or character of the planned unit development;
  - (b) An increase in overall coverage of structures;
  - (c) An increase in the intensity of use, or the density;
  - (d) An increase in the problems of traffic circulation and public utilities;
  - (e) A reduction in approved open space;
  - (f) A reduction in required pavement widths; or
  - (g) A violation of a specific requirement or condition of the land development code.
- (5) Changes in final development plan. If a final PUD plan is submitted which includes changes from the approved preliminary development plan, the planning and growth management director shall review the plan to determine the effect of the PUD and consistency with applicable ordinances and make a recommendation to the planning and zoning commission. The City Manager or designee may approve minor site plan modifications as provided for in 172.030(H)(4). The planning and growth management director may request that the planning and zoning commission determine whether any changes are of such significance that the preliminary development plan should be re-submitted to the planning and zoning commission for review and approval by the city council. In any case of doubt, the revised preliminary development plan shall be re-submitted for a recommendation by the planning and zoning commission and approval of the city council.
- (6) Conditions. In approving a final development plan, the City Council may establish such conditions and may require such modifications as shall assure compliance with the planned unit development standards and regulations.
- (7) Amendments of final development plans. Once a final development plan has been approved, and there is cause for amendment of the same, or any portion thereof, such amendment shall be processed in a like manner as the original submission. However, there shall be no requirement to file an amended preliminary development plan, unless the proposed amendment would so dictate.

(E) *Subdivision construction approval.* Upon approval of the final development plan for a subdivision, the developer may apply to the city engineer for approval of the construction drawings of the proposed

subdivision. The procedures shall be the same as outlined in §172.054, Construction of public improvements.

**§ 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. Failure to comply with the requirements of the approved PUD, any conditions imposed in its approval, including time conditions, shall constitute a violation of this article. Upon finding by the city council that the developer has failed to comply with the conditions of any phasing plans or prescribed time limits, the approval of the PUD shall be automatically terminated. Prior to continuing with the planned unit development, the developer shall reapply to the city council for approval to continue. The city council may authorize the petitioner to continue under the terms of the PUD and site plan approval or may require the developer to re-submit the application in conformance with any step outlined in the procedure for PUD approval. No subsequent plan or re-approval shall effect an increase in the overall project density, intensity or change in use as established in the site plan.

**§ 172.033. BUILDING PERMIT.**

No building permit shall be issued by the city until the final development plan has been approved and duly recorded as provided in this subchapter. Prior to the use or occupancy of any portion of the planned unit development project, the developer must satisfy all the provisions of the final development plan stipulated herein and obtain all necessary permits and a certificate of occupancy.

**§ 172.034. BONDING.**

The PUD shall follow the bonding procedures listed in §172.055.

**§ 172.035. TERMINATION OR EXPIRATION OF A PDP AND PUD ZONING.**

- (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 development plan within which his property is located if construction has not been commenced pursuant to such development plan. The procedure for the termination shall be processed as a zoning district change under this chapter.
- (B) Failure of the developer to obtain building permits and substantially begin construction of the development contained within the approved preliminary development plan within five (5) years from the approval of the preliminary development plan shall cause the plan to expire. At the request of the applicant, and for good cause shown, the City Council may extend the period of approval of a preliminary development plan for a time certain not to exceed one (1) year. The preliminary development plan extension request may include approval for the entire planned unit development plan or any stage. Upon expiration, 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 or expiration, containing a legal description of the site, shall be recorded in the official records of the county.

**§ 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.

§ 172.037 through § 172.039 RESERVED

**PART 5. ZONING MAP AMENDMENT TO RAC PUD**

**§ 172.040. PROCESS.**

Applications to rezone a property to Regional Activity Center (RAC) PUD shall follow the same process as rezoning to PUD (see Part 4 of this chapter) except for the following.

**§ 172.041. RAC-PUD REQUIRED EXHIBITS**

Processing a Preliminary Development Plan and a Final Development Plan for a RAC PUD shall require the same submittals as a PUD, in addition to the following.

(A) *Required Exhibits for RAC-PUDs Preliminary Development Plan.* Application for planned unit developments on sites classified as *Regional Activity Center (RAC) on the future land use map shall include the following.*

- (1) *Concept plan.* A generalized plan that establishes the allowable land uses and the allowable development density or intensity ranges. The concept plan shall include:
  - (a) The general location of residential areas (including maximum density and unit types), open space, parks, passive or scenic areas, and nonresidential areas (including maximum building square footage or other intensity maximums).
  - (b) A plan of vehicular and pedestrian circulation showing the general locations and right-of-way widths of roads, sidewalks, the capacity of the system and major access points to the external and internal thoroughfare network.
  - (c) A summary of allowable development, including:
    1. The total acreage of the district and each phase, as may be proposed;
    2. The acreage of areas proposed for specific land uses proposed to be allowed within the district and phases proposed, as may be applicable;
    3. The acreage of open space or conservation areas within the district and phases proposed;
    4. The minimum and maximum allowable residential density to be allowed within the district and each phase proposed; and
    5. The minimum and maximum allowable nonresidential development intensity to be allowed within the district and each phase.
  - (d) A written analysis identifying consistency with the adopted comprehensive plan and how the proposed development is consistent with the intent of the PUD zoning category.
- (2) *Generalized regulations and development standards.* The application shall contain standards for development within the district and each phase, including the following. Development features not

specifically addressed in the design standards must comply with the LDC. In the event of a conflict, the most stringent requirement shall apply.

- (a) Principles of the development plan;
- (b) An itemized list of uses proposed to be allowed in the district by phase;
- (c) General lot dimensions and size;
- (d) Transit development and mobility standards for streets, bicycle lanes, trails, and sidewalks, including proposed dimensions of internal streets, sidewalks, and other transportation facilities (such standards may be conveyed through annotated diagrams);
- (e) Resource and activity-based open space provisions;
- (f) Infrastructure and engineering development standards;
- (g) Lighting standards;
- (h) Signage standards; and
- (i) Perimeter buffering, and landscaping standards.

The concept plan may establish additional development and design standards for other development and design characteristics and elements so long as these standards are consistent with the comprehensive plan.

- (3) The concept plan shall also include additional items identified at the pre-application conference by city staff that, by their nature, are unique to the specific location of the project or development proposal.
- (4) Site condition maps and data that include:
  - (a) A legal description of the properties included in the application with an associated boundary survey signed and sealed by a registered Florida land surveyor.
  - (b) Name of the RAC PD; the owners of all properties included in the district; the agent for the application, and address and phone number of the agent; and, date of drawing and of any subsequent revision.
  - (c) Scale, north arrow, and general location map showing relationship of the site to external uses, structures, and features.
- (5) *Natural Resource Assessment*. The preliminary development application shall include an assessment of the property identifying major environmental features of the site and endangered wildlife and vegetation.
- (6) *Traffic Study Memorandum*. A traffic study of limited scope meeting generally accepted engineering practices and in accordance with the City of Palm Bay Standardized Traffic Impact Study Guidance Manual examining the impact of the proposed development on the surrounding roadway network.
- (B) *Required exhibits for RAC PUD Final Development Plan*. In addition to the exhibits identified in §172.031(A), the following documents shall be attached to the final development plan application. The final development plan may pertain to an entire RAC-PUD district or one or more phases of the project. The final development plan shall include:

- (1) *Final development plan.* A detailed plan that establishes the specific locations and boundaries for all lots to be developed, rights-of-ways, public easements and provides detailed development standards for all properties within the phase being reviewed.
- (a) A specific plan for the use of all lands within the proposed RAC PUD or phase. Such plans shall indicate the specific location and layout of residential areas (including maximum density and unit types), open space, parks, passive or scenic areas, and nonresidential areas (including maximum building square footage or other intensity maximums).
  - (b) A plan of vehicular and pedestrian circulation showing the specific locations and right-of-way widths of roads, sidewalks, the capacity of the system and major access points to the external and internal thoroughfare network.
  - (c) A summary of allowable development. The summary shall provide:
    - 1. The total acreage of the district and the specific phase for which final development plan approval is being sought;
    - 2. The acreage of areas proposed for specific land uses proposed in the final development plan, as may be applicable;
    - 3. The acreage of open space or conservation areas within the specific phase proposed in the final development plan;
    - 4. The minimum and maximum allowable residential density to be allowed within the phase proposed; and
    - 5. The minimum and maximum allowable nonresidential development intensity to be allowed within the phase.
- (2) Specific regulations and development standards applicable to the phase, including:
- (a) Principles of the development plan;
  - (b) An itemized list of uses proposed to be allowed in the phase.
  - (c) Lot dimensions and size;
  - (d) Dimensions of internal streets, sidewalks, and other transportation facilities (such standards may be conveyed through annotated diagrams);
  - (e) Resource and activity-based open space provisions,
  - (f) Perimeter buffering, and landscaping standards.
  - (g) Lighting standards;
  - (h) Signage standards; and
  - (i) Specific architectural design standards.

The final development plan may establish additional development and design standards for other development and design characteristics and elements so long as these standards are consistent with the comprehensive plan.

(3) Site condition maps and data that include:

- (a) A legal description of the properties included in the application with an associated boundary survey signed and sealed by a registered Florida land surveyor.
- (b) Name of the RAC PD; the owners of all properties included in the district; the agent for the application, and address and phone number of the agent; and, date of drawing and of any subsequent revision.
- (c) Scale, north arrow, and general location map showing relationship of the site to external uses, structures, and features.

(4) *Conservation Area Management Plan (CAMP)*. The preliminary development application shall include a CAMP which shall: An environmental assessment of the property identifying major environmental features of the site and endangered wildlife and vegetation and description of permitting in process or completed.

- 1. Identify all jurisdictionally defined wetlands and environmentally sensitive areas;
- 2. Provide for wildlife corridors;
- 3. Designate the property to be placed in conservation easements;
- 4. Promote interconnected linkage between existing conservation or jurisdictional areas, activity- or resource-based open space, and the land within the RAC; and
- 5. Provide a minimum buffer of 25 feet adjacent to all jurisdictional wetlands.

(5) *Traffic Study*. A traffic study meeting generally accepted engineering practices and in accordance with the City of Palm Bay Standardized Traffic Impact Study Guidance Manual examining the impact of the proposed development on the surrounding roadway network and the proposed improvements necessary to support the phase of development proposed in the final development plan.

(6) *Services*. Specific plans and designs for the provision of potable water and sanitary sewer, electric power, gas and other public utilities and services, as applicable.

(7) *Maintenance*. Identification of planned maintenance responsibility for all aspects of the development. Specifically identify all facilities proposed for maintenance by the city or other governmental entities.

(8) *Exceptions*. Identification of all exceptions to city construction and design standards proposed for the development. Exceptions include, but are not limited to, modification of required street or roadway right-of-way and pavement requirements, signage, location of utilities, design of utilities and drainage facilities, easement widths and locations and modifications proposed to any public improvement.

(9) *Schedule*. Proposed schedule for construction of all infrastructure and estimates of the buildout for the development phase proposed.

(C) *Joint Approvals*.

- (1) Final construction plans are not required to, but may, be submitted concurrently as part of the final development plan application. The applicant shall, however, provide sufficient detail in plans and



proposals to permit the Council to ascertain the feasibility of future construction including infrastructure demand and supply issues.

(2) *Joint RAC concept and final development plan application.* At the option of the applicant, a RAC PUD concept plan may be reviewed simultaneously with a RAC PUD final development plan. In addition, modifications to an approved concept plan may be made as part of the approval process for a final development plan. All applicable requirements for both the concept plan and the final development plan submittal applications must be addressed.

(D) *Administrative process following final development plan approval.* Physical development of the property must be consistent with the approved Concept plan and final development plan for the RAC. Administrative review and approval processes for subdivisions, site plans, building permits and other land development regulations shall ensure such consistency. Substantial changes, as determined by the City Manager or designee, shall require re-submittal for final development plan approval. Minor changes not deemed to be substantial may be approved administratively.

§ 172.042 through § 172.049. RESERVED

## **PART 6. SUBDIVISION APPLICATION AND APPROVAL PROCESS.**

### **§ 172.050. SUBDIVISIONS AND LOT SPLITS**

All future subdivisions of land within the corporate limits of the City shall be classified as either a "lot split" or a "subdivision," as defined herein, and shall be subject to the regulations of this code as they apply.

(A) Lot split. Any division of a lot or tract in a platted subdivision into two parcels that abut an accepted street right-of-way and does not require any off-site improvements to any roads, drainage system, or utilities and conforms to the improvements, design, and construction standards of this Land Development Code. Any tract of land that is divided as a lot split can only be further divided as a subdivision.

(B) Subdivision. Any division not classified as a lot split.

### **§ 172.051. CLASSIFICATION OF SUBDIVISIONS.**

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, or their authorized agent, shall apply for and secure approval of such subdivision in accordance with the following procedure set forth herein.

(A) Pre-application concept plan.

(B) Preliminary plat.

(C) Final subdivision plat.

### **§ 172.052. PRELIMINARY PLAT.**

(A) *Application procedure.* After a preapplication conference has been held, an applicant can submit an application for preliminary plat approval. Such an application must be made on forms prescribed by the City. The application must be complete and accompanied by an electronic copy of the preliminary plat, a



filing fee, and a list of all property owners within 500 feet of the subject property based on the most recent information as provided by the Bravard County Property Appraiser.

- (B) *Submittal requirements.* The preliminary plat shall be at a minimum scale of one inch to 200 feet, with a preferred scale of one inch to 100 feet and shall be designed in conformity with the design standards established in Chapter 177 of the Palm Bay Code of Ordinances. The preliminary plat shall contain the following information:
- (1) 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, which shall not duplicate or closely approximate the name of any other subdivision in the incorporated area of the city. Also the names and addresses of the owners, and a notation stating the approximate acreage and the scale and north arrow;
  - (2) All streets, including their names and right-of-way widths;
  - (3) Other rights-of-way and easements, including their locations, widths and purposes;
  - (4) The location of utilities, if not shown on other exhibits;
  - (5) The lot lines, lot numbers and block numbers;
  - (6) The sites, if any, to be reserved or dedicated for parks, playgrounds or other public uses;
  - (7) The site, if any, for multi-family dwellings, non-residential uses, or other nonpublic uses, exclusive of single-family dwellings.
  - (8) Site data, including but not limited to, the number of lots, typical lot sizes and the approximate number of acres in parks, open space and landscape tracts;
  - (9) A Boundary Survey done less than 12 months from date of application shall be required when submitting the Preliminary Plat.
  - (10) The protective covenants whereby the subdivider proposes to regulate land use in the subdivision and otherwise protect the proposed development, to include responsible parties for maintenance of landscaping, drainage and stormwater facilities, and rights-of-way.
  - (11) 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, the directions and distance to and size of the nearest utilities shall be shown.
  - (12) 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.
  - (13) A vicinity sketch at a scale no smaller than one inch equals 2,000 feet, showing the location of the boundary lines and distance of the land proposed for subdivision in reference to other areas of the city. The section, township, and range of the site and the legal description of the site shall also be included.

- (14) Additional guarantees. Guarantees in the amount equal to 125% of the sum of engineering and construction costs based on the applicant's engineer's estimate or contract bid prices. The guarantee shall be in one of the following forms:
- (a) Cash deposit.
  - (b) Personal bond with irrevocable letter of credit.
  - (c) Surety bond (having a Best's rating of AAA).
- (C) *Application review.* The City Manager or designee shall process and coordinate the review of the preliminary plat application by the appropriate city departments in accordance with §166.033, F.S. The appropriate city departments are to review and comment on the submitted information. Written comments from the city departments are to be returned to the City Manager or designee to be incorporated into a staff report.
- (D) *Public meetings.* Once the application is determined to be sufficiently complete and meets all the regulations required by the City, a preliminary plat application shall be heard by the Planning and Zoning at the next available regular meeting. Courtesy notice letters of the meeting shall be sent to the property owners within 500 feet of the subject property. 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 in accordance with §51.07.
- (E) *Preliminary plat approval.*
- (1) After review of the preliminary plat, the city staff report with its recommendations, testimony, and exhibits submitted at its public meeting, the Planning and Zoning Board shall recommend approval, approval with conditions, or disapproval of the preliminary plat to the City Council in accordance with the timelines set forth in §166.033, F.S.
  - (2) The City Council shall then approve, approve with conditions, or deny the preliminary plat based on the Planning and Zoning Board recommendations, the City staff report, and the testimony and exhibits submitted at its next available public hearing.
- (F) *Effective period of preliminary plat approval.* The approval of a preliminary plat shall be effective for a period of 36 months at the end of which time final plat approval on the subdivision must be obtained from the City Council. Any preliminary plat not receiving final plat approval within the period of time set forth herein shall be null and void, and the applicant shall be required to resubmit a new preliminary plat approval subject to all new zoning and subdivision regulations. At a minimum, the first final plat phase of a multiple phase final engineering plan and preliminary plat shall be recorded within 36 months of the approval date of the final engineering and preliminary plat. Each subsequent phase that is not recorded within the initial 36 months shall be recorded in intervals not greater than 12 months from the previous phase's recording date. Failure to record any subsequent phase within said 12-month timeframe shall null and void the final engineering and preliminary plat, construction permit, and final plat of the remaining unrecorded phase(s) of the final engineering plan and preliminary plat.
- (G) *Extension.* One (1) administrative extension of one year may be approved by the City Manager or designee following a written request by the applicant within 60 days of the date of expiration.

- (H) *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 plat is recorded within the effective period of the preliminary plat.
- (I) *Effect of approval of preliminary plat.* Approval of the preliminary plat shall not constitute approval to file the final plat with the County Clerk of Courts. Additionally, approval of the preliminary plat shall not be construed as authorizing the transfer of ownership of lots in reference thereto but 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 and the administrative review and approval of construction plans. Preliminary plats shall not be recorded with the County Clerk of Courts.
- (J) *Relationship of deeds, covenants, and other private restrictions to the regulations for the subdivision of land.* It is not intended by the provisions of these regulations to repeal, abrogate, annul, or in any way, impair, or interfere with private restrictions placed upon property by deed, covenant, or private agreement, except that where this chapter imposes higher standards than imposed by such deeds, covenants, or private agreements, then the provisions of this chapter shall apply. The city shall not be responsible for enforcement of such deeds, covenants, or agreements.
- (K) *Construction of public improvements.* Upon approval of preliminary plat by City Council, the applicant may submit an application for a Construction / Site Work Permit or post a performance bond to the City in accordance with the procedures established herein.

**§ 172.053. FINAL 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 provided by the City. The application must be complete and accompanied by an electronic copy of the preliminary and final plat, construction plans, construction schedule, a filing fee, and a list of all property owners within 500 feet of the subject property, based on the most recent information as provided by the Brevard County Property Appraiser.
- (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 they propose to record and develop at the time, if such portion conforms to the requirements of this chapter. Substantive changes to the preliminary plat shall only be done with the written consent of the applicant.
- (C) *Submittal requirements.* The final plat and construction plans for the subdivision shall be designed and in conformity with the design standards established in Chapter 177 of the Palm Bay Code of Ordinances and must show the following information:
  - (1) The plat shall be at a minimum scale of one inch to 200 feet, with a preferred scale of one inch to 100 feet, including certified as-built construction drawings, and the legal instruments demonstrating specific performance guarantees. Where necessary, the plat may be on several sheets accompanied by an index sheet.

- (2) The final plat shall be prepared by a licensed Professional Surveyor and Mapper in conformance with the requirements of the applicable Chapter 177, Part 1, F.S., as may be amended from time to time;
- (3) The Primary Control Points (PCP), approved by the City Surveyor, or descriptions and “ties” to such control points to which all dimensions, angles, bearings and similar data on the plat shall be referred;
- (4) 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;
- (5) The name and right-of-way width of each street or other right-of-way;
- (6) The location, dimensions and purpose of any easement;
- (7) Numbers or letters to identify each lot or site. To ensure legibility, all lettering upon the plat shall be at minimum 0.10-inch text height ( $0.10 \times$  scale of the plat). excluding the following plat features:
  - (a) Vicinity map.
  - (b) Index map.
- (8) The purpose for which sites, other than residential lots, are dedicated or reserved;
- (9) The location of Permanent Reference Monuments (PRM). State plane coordinates shall be shown on a minimum of two successive permanent reference monuments and any section corners shown. The coordinates shall be based on the North American Datum 1983, latest adjustment, International Foot;
- (10) Reference to any recorded subdivision plat of adjoining platted land by plat book, page and number;
- (11) A Title Opinion or Property Information Report showing that the applicant is the landowner. Documentation showing signing authority of the managing member (s) and Documentation that paid taxes are current.
- (12) A certification of a surveyor as to the accuracy of the Chapter 177, Part 1, F.S., required Boundary survey and plat;
- (13) All Right of Way tracts are dedicated to the Homeowners’ Association and all maintenance responsibilities shall not be the City of Palm Bay’s.
- (14) Declaration of covenants dedicating streets, rights-of-way and any sites for public uses in accordance with the acceptance and maintenance of such established in this chapter.
- (15) Copies of all other applicable permits granted by external agencies, which shall remain valid during the period of construction and until the Certificate of Completion is issued by the City.
- (16) Acceptance and dedication of public improvements for new right of way items are to be requested by the applicant or applicant in accordance with the process established in this chapter.
- (17) 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 Clerk of the Circuit Court and a copy filed with the city, including any subsequent amendments to the restrictions.

- (18) 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 §172.052. The application shall include digital copies of all closure reports including boundary, lots, tracts, etc. along with three print sets.
- (D) *Public meetings.* The final plat application shall be heard by the City Council at the next available regular meeting. Courtesy notice letters of the meeting are to be sent to the property owners within 500 feet of the subject property. 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 in accordance with §51.07.
- (E) *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.
- (F) *Final approval.* The City Council shall approve, approve with conditions, or deny the final plat based on the staff report and the testimony and exhibits submitted at the public meeting. The Final Plat shall not be signed nor recorded until all conditions are completed to the satisfaction of and inspection by the City. Upon adoption of a resolution approving the plat, the mayor shall execute the plat and the plat shall be presented to the clerk of the circuit court by the city clerk for recording. No final plat shall be approved by the city council and no plat shall be recorded until the required improvements have been installed or performance guarantee posted pursuant to the requirements of this article. No such required improvements including streets, drainage and other required facilities shall be accepted and maintained by the city, unless and until the same, including the final plat, have been duly inspected and recommended for approval by the City's Public Works Director or their designee. In addition, the city attorney shall review all performance guarantees and the legal content of all final plats.
- (G) *Signing of the plat.* The final plat shall be signed and recorded following the issuance of a certificate of completion for construction of all public improvements or upon posting of a performance bond.
- (1) When installation of public improvements is required, the City shall endorse approval on the final plat after all conditions of approval on the plat have been satisfied and all improvements satisfactorily completed and inspected by the City in accordance with the procedures established herein. 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, or designee, and that the necessary dedication of public lands and improvements has been accomplished in accordance with §172.057 of the Palm Bay Code of Ordinances. 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 a bond is required, the City shall endorse approval on the final plat after the performance bond has been approved by the City Attorney and City Engineer, and all the conditions of approval pertaining to the final plat have been satisfied in accordance with the procedures established herein. When installation of improvements is required, city officials (City Clerk and Mayor) shall endorse approval of 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 or their designee and that the necessary dedication of public lands and improvements has been accomplished.
- (3) Completion of improvements prior to issuance of building permit. When the improvements are to be completed prior to the recording of the plat, it shall be expressly understood that no building permits shall be issued for any structure on a lot wherein the final plat has not been approved and recorded in a manner prescribed in this ordinance. The approval to construct required improvements shall not be construed as authority for the sale of lots in reference thereto.
- (4) Surety. When the required improvements are to be completed after recording under guarantees, as provided in this ordinance, the final plat upon submittal shall be accompanied by the following: A certified cost estimate shall be prepared by the applicant's engineer and shall include the cost of all required improvements or shall include contract bid for all work required to complete the required improvements. Such certified costs shall be subject to the approval of the city engineer.
- (5) Additional guarantees. Guarantees in the amount equal to 125% of the sum of engineering and construction costs based on the applicant's engineer's estimate or contract bid prices. The guarantee shall be in one of the following forms:
  - (a) Cash deposit.
  - (b) Personal bond with irrevocable letter of credit.
  - (c) Surety bond (having a Best's rating of AAA).
- (H) *Recording of the subdivision final plat.* Upon the signing of the reproducible mylar of the plat by the appropriate city officials, the subdivider shall file the mylar of the final plat with the County Clerk of Records within 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 the book and page of the recorded plat and three full-size prints of the final plat.
- (I) *Time restriction on development.* The final plat shall be recorded prior to the 36 months expiration date of the final engineering and preliminary plat approval. Unless otherwise stipulated below, failure to record the final plat within this time limitation shall mean the final engineering and preliminary plat, construction permit, and final plat are null and void. At a minimum, the first final plat phase of a multiple phase final engineering plan and preliminary plat shall be recorded within 36 months of the approval date of the final



engineering and preliminary plat. Each subsequent phase that is not recorded within the initial 36 months shall be recorded in intervals not greater than 12 months from the previous phase's recording date. Failure to record any subsequent phase within said 12-month timeframe shall null and void the final engineering and preliminary plat, construction permit, and final plat of the remaining unrecorded phase(s) of the final engineering plan and preliminary plat.

Any preliminary plat not receiving final plat approval within the period of time set forth herein shall be null and void, and the applicant shall be required to resubmit a new preliminary plat for approval subject to all new zoning and subdivision regulations. One administrative extension of one year may be approved by the City Manager or designee following a written request by the applicant within 60 days prior to the date of expiration.

#### **§ 172.054. CONSTRUCTION OF PUBLIC IMPROVEMENTS.**

- (A) *Application procedure.* Concurrently or following the approval of the preliminary plat, the subdivider may submit an application for construction plan review and approval to the City for the purpose of constructing public improvements prior to final plat approval. Such an application must be made on forms provided by the City and shall include construction plans/drawings and a construction schedule.
- (B) *Construction plans to conform to plat.* The construction plans 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 public improvements are desired.
- (C) *Design and contents of the construction plans.* The construction plans shall conform to the technical specifications and design standards contained in Chapter 177 of the Palm Bay Code of Ordinances, where appropriate and applicable.
- (D) *Signed and sealed.* Construction plans shall be reviewed and accepted by the City Engineer and signed and sealed by the Engineer of Record.
- (E) *Approval.* Construction plans shall be administratively reviewed and approved following the final approval of the preliminary plat.
- (F) *Construction authorization.* Following construction plan approval, the subdivider shall submit an application for a site work permit prior to beginning any construction of public improvements. The City Manager or designee will coordinate the review of the site work permit application and the pre-construction / pre-site work meeting prior to the issuance of such permit. The applicant shall be required to submit copies of all outside agency permits, as may be required, with the site work permit application. Commencement of any site work or construction, to include clearing and grading, prior to the issuance of a site work permit is expressly prohibited. All required public improvements shall be made at the applicant's expense, without reimbursement by the city.
- (G) *Inspection of public improvements.* 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 § 172.011. No certificate of completion, building permits, or certificate of occupancies shall be issued until the inspection of public improvements is complete in accordance with the construction plans and to the satisfaction of the City. If the Public Works Department inspector finds that any of the required improvements have not been



constructed in accordance with the construction plans, the applicant shall be responsible for completing the improvements. Whenever 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.

- (H) *Certificate of completion.* Following satisfactory inspection of the improvements, the applicant shall be required to submit as-builts for such improvements to the City. The City's issuance of a certificate of completion shall certify that the subdivider has completed the construction of all necessary public improvements in substantial conformance with the plat. The applicant shall be required to post a maintenance bond in accordance with the procedures established herein.
- (I) *Acceptance and dedication of public improvements.* Following issuance of the certificate of completion, the City shall accept the public improvements in accordance with the procedure and process established in §172.057, procedure for acceptance and maintenance of public improvements.

#### **§ 172.055. PERFORMANCE AND MAINTENANCE BONDS.**

Approval of the preliminary plat and construction plans shall authorize the subdivider to either complete construction of required improvements or bond the required improvements in accordance with the procedures established herein prior to submitting the final plat for approval by City Council.

- (A) *Performance bond.* As a condition for approval of a final plat by the City Council where public improvements have not been constructed and accepted by the City, the subdivider shall be required to deposit with the City Clerk a performance bond or other security binding the subdivider to payment to the city to assure completion of all public improvements both on site and off site as identified on the final plat.
- (1) Where a performance bond is required, the subdivider shall submit to the City a bond agreement for review and acceptance by the City. The subdivider shall submit a non-expiring bond or other security in the amount of one hundred twenty-five percent (125%) of the value of all public improvements to be certified by the Engineer of Record and to the satisfaction of the City Engineer and City Attorney.
- (2) The City Council shall consider the value of the performance bond and the value of all performance bonds held by the City to determine whether to take on additional liability until such time the public improvements are constructed. Upon approval by City Council, the final plat shall be conditioned upon posting a performance bond or other security with the City Clerk. 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. A performance bond not posted with the City Clerk within the effective period of the preliminary plat shall render the approved final plat null and void.
- (B) *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. The applicant shall be required to maintain all improvements in the subdivision until acceptance of such improvements by the city in accordance with the procedures established in §172.057 of the Palm Bay Code of Ordinances. The Public Works Department shall be responsible for the processing and release of maintenance bonds under this section.

- (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 applicant 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) *Release of performance bond.* 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 and City Surveyor, 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 issue the certificate of completion, cause the maintenance bond to be posted, and accept the improvements for dedication in accordance with the process and procedures outlined in §172.057 of the Palm Bay Code of Ordinances.

#### **§ 172.056. 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.

#### **§ 172.057. PUBLIC IMPROVEMENTS ACCEPTANCE AND MAINTENANCE**

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 this section.

(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.* The 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 §172.055.
- (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.

- (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 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 applicant.
  - (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 applicant 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 applicant.
- (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 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.
- (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.
- (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 Subsection (F) below. Such bond or security shall be filed with the City Clerk.
- (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:

1. Recommendation to the City Council that they invoke the posted maintenance bond or security;
2. Direction of the city staff to continue working with the applicant on a correction list to complete the improvement at the applicant's expense;
3. 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 Subsection (A) above.

(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.

(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.

#### **§ 172.058. 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 Clerk of the Circuit Court. The City Engineer shall notify the City Building Department of when a subdivision has received a certificate of completion and thus is open for building.

(B) Model homes, developer owned, and builder owned homes may be permitted prior to the subdivision improvements receiving a certificate of completion provided the model homes or model display group are in compliance with §174.021 of this code and 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 50 percent of structures will be permitted under this section per approved final subdivision plat;
- (6) The final subdivision plan shall be recorded with, and addresses assigned by Brevard County.
- (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.
- (8) Permanent power and sewer shall be 100% functional or an acceptable alternative approved by Building and Fire is provided.
- (9) In no case shall a Certificate of Occupancy be granted for a home until the certificate of completion has been issued.

**§ 172.059. SIMPLE LOT SPLIT/ LOT RECONFIGURATION.**

- (A) *Simple lot split.* The subdividing of a tract, lot or parcel into only two lots (one new lot and the remainder) is allowed if each lot abuts a publicly maintained street which has been duly dedicated and accepted by the city and/ or a privately maintained right- of-way, no new streets are created, and there is no change in the length or alignment of an existing street.
- (1) Simple lot splits do not require the formal platting process but shall be reviewed and approved by the City Manager or designee; and
  - (2) Simple lot splits approved by the city manager' s designee shall be recorded in public records; and
  - (3) If required due to noncompliance or nonconforming conditions, the applicant shall provide the necessary right- of-way to bring the applicable roadway to standards; and
  - (4) No property shall be subdivided pursuant to this section more than once per year; and
  - (5) For purposes of this section, the ownership interest in the portion of the lot which abuts a publicly or privately maintained street must be fee simple ownership.
- (B) *Lot reconfigurations.* Reconfigured lots shall adhere to the following:
- (1) Lot reconfigurations do not require a formal platting process but shall be reviewed by the city manager' s designee; and
  - (2) Lot reconfigurations approved by the city manager' s designee shall be recorded in public records; and
  - (3) The lot lines are reconfigured to be in compliance with current regulations; and
  - (4) The number of reconfigured lots is less than or equal to the number of existing lots; and



- (5) No easements existing on the subject property would need to be modified, unless approval is granted by the city manager; and
- (6) The combined area of the new lots is equal to the combined area of the existing lots; and
- (7) Each new lot abuts a publicly maintained street which has been duly dedicated and accepted (or a privately maintained right- of-way); and
- (8) No new streets are created and there is no change in the length or alignment of an existing street.

(C) *Lot split procedures.*

- (1) *Application.* Application for a lot split shall be in a form prescribed by the City. The application shall contain the following:
  - (a) A legal description and survey of the lot to be divided;
  - (b) A legal description of the two parcels to be created;
  - (c) A legal description and dedication of any easements for the new parcels;
  - (d) A unity of title, in a form approved by the city attorney, unifying adjacent parcels and lots if the division of the original lot results in a nonconforming parcel;

- (2) *Submittal.*

- (a) A cover letter describing the project, identifying the project contact person(s) and any other information relevant for city staff review. If the applicant is other than the legal owner, the applicant's interest shall be indicated and the legal owner's authority to apply shall be included in a certified legal form the lot split application).
  - (b) Completed application form.
  - (c) All applicable fees per as outlined in the fee schedule.
  - (d) Owner authorization (if applicable).
  - (e) Copies of a lot split survey (current property survey, the proposed lot reconfiguration and legal description, signed and sealed, not more than one year old, by a land surveyor registered and licensed in the state, each sheet of the lot split package shall be the same size shall be no larger than 24 inches by 36 inches).
- (3) *Review procedures.* City staff shall review all applications for a lot split to ensure conformance with the comprehensive plan and the City Code of Ordinances. The lot split may not result in the creation of a nonconforming lot. All lots created by a lot split shall have area, frontage, width, and depth required by the zoning district in which said lots are located and shall be reviewed to assure that the lots continue to conform to the requirements of this Chapter.
- (4) *Approval.* Upon determination that the request for a lot split is consistent with the comprehensive plan and the code of ordinances, the City Manager or designee shall approve the application.
- (5) *Recording.* Upon approval of the lot split, the applicant shall record the legal description of the lots created, any unity of title, and any dedication of easement with the clerk of the circuit court.

(D) *Exemptions.*

(1) The following activities shall be exempt from the provisions of this chapter.

(a) Lot creation. Creation of equal or larger building sites from lots of record.

1. The combination or recombination of all or a portion of previously created parcels of record where the newly created or residual parcels comply with all applicable zoning district dimensional criteria or, where applicable, the regulations governing nonconformities.
2. The combination or recombination of all or a portion of previously platted parcels of record are exempt where none of the newly created or residual parcels contain less area, width, or depth than the smallest of the original parcels of record being combined and no streets of any kind or public easements are created, changed or extinguished.

(b) Boundary settlements. Any conveyance between adjoining landowners if:

1. The purpose of the conveyance is to adjust or settle the common boundary line between adjoining landowners;
2. The deed of conveyance or other legal instrument states such purpose and is recorded in the Official Records of Brevard County; and
3. The resulting parcel(s) conform to the applicable zoning district dimensional criteria.

(2) Any division of land for the purpose of conveying land to any federal, state, or local government entity or agency or public utility, provided such conveyance is accepted by the grantee by an instrument recorded in the Public Records of Brevard County.

(3) Any division of land by order of a court of competent jurisdiction.

(4) Any conveyance for the purpose of correcting an error made in the language used in an original conveyance.

**§ 172.060. ENFORCEMENT AND PENALTIES.**

(A) It shall be the duty of the City Manager or designee 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.

**§ 172.061. REPLATTING 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.

§ 172.062 through § 172.069 RESERVED

## PART 7. VACATING PLATS AND RIGHTS-OF-WAY

### § 172.070. 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 Chapter 177, Part I, F.S., as may be amended from time to time, 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.

### § 172.071. 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 right-of-way to be vacated. All Council actions that would create new or change existing right-of-way lines, under this chapter, require public hearings.
- (B) *Conditions governing application; procedures.*
- (1) All requests for creating, improving, altering, and vacating City rights-of-way shall be made by verified written petition, in an application filed with City, including, but not limited to the following:
    - (a) A boundary survey and description of the property to be vacated (Subject Property). The boundary survey needs to show the location of any improvements and encroachments within the property to be vacated. The boundary survey and description must be prepared by a professional surveyor and mapper licensed in the state of Florida.
    - (b) A legal sketch of description.
    - (c) All property owners within five hundred (500) feet of the Subject Property shall be transmitted a courtesy notice by U. S. Mail which shall provide the following: date, time, and location of public hearing; type of petition considered at the public hearing; and location where the petition may be reviewed. Petitioner must request a radius map package from Brevard County.
    - (d) A certification from the petitioner that the proposed change will not deprive other property owners of access to and from their property.
    - (e) Letters or certificates from all public utilities that the vacation of right- of-way will not interfere with services being provided nor encroach on any utility easements.
    - (f) A statement of justification for approval of petition.
    - (g) A letter of authorization when the applicant is not the property owner.
    - (h) All fees have been paid for the application, mailing, and sign cost associated with said request.

- (2) Once a complete application request has been received by City Staff, a review of the petition will be administered verifying that the following steps have been taken prior to being placed on a City Council agenda:
- (a) The requested creation, improvement, alteration, or vacation is consistent with the Transportation Element of the City's Comprehensive Plan.
  - (b) The right-of-way does not provide the sole access to any property. Remaining access shall not be by easement unless otherwise permitted in a planned unit development.
  - (c) The proposed creation, improvement, alteration, or vacation would not jeopardize the current or future location of any utility.
  - (d) The proposed creation, improvement, alteration, or vacation is not detrimental to the public interest.

(C) *Notice of hearing.*

- (1) Before vacating a street, the city shall first hold a public hearing and fifteen (15) days written notice shall be given to all property owners within five hundred ( 500) feet of the subject property.
- (2) 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.
- (3) 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.
- (4) The costs of providing notice of the public hearing shall be the responsibility of the applicant.

(D) *Council action.* The City Council, in its sole discretion, shall make a final determination on the application for vacation subsequent to the public hearing. The action shall be quasi-legislative in nature.

- (1) After the public hearing, the City Council may, by appropriate ordinances, take such action for which notice was previously given.
- (2) When the City Council is acting upon a request for vacation of a public right-of-way, to the extent to which the right-of-way is vacated, 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.

(E) *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 changes 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.

(F) *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.

(G) *Administrative extensions.* When vacating is subject to compliance with conditions, such conditions must be met within two (2) years of the enactment of the ordinance. Failure to meet the conditions within two (2) years from the date of approval for the request shall render the ordinance null and void. The applicant may, under good cause request an extension of the time frames through a formal request to the Office of the City Clerk, no less than sixty (60) days prior to the expiration date.

(H) *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.

- (I) *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 §172.011.

**§ 172.072. FEES.**

- (A) *Preliminary plat fee.* A filing fee as established by resolution pursuant to §172.011 shall accompany the submission of the preliminary plat.

- (B) *Final plat fee.* A filing fee as established by resolution pursuant to §172.011 shall accompany the submission of the final plat.

- (C) *Vacating of plat fee.* A filing fee as established by resolution pursuant to §172.011 shall accompany the submission of a vacating of plat application.

§ 172.073 through § 172.079 RESERVED

## **PART 8. CONCURRENCY MANAGEMENT SYSTEM**

**§ 172.080. PURPOSE AND INTENT.**

The concurrency evaluation system shall measure the potential impact of any development permit proposal upon the established minimum acceptable level of service for transportation, solid waste, potable water, drainage, sanitary sewer, public schools, or park facility or service. The most current available information and data regarding the operating levels of service of such public facilities or services shall be utilized for

concurrency evaluations. Any party pursuing approval of a site plan, subdivision plat, or building permit shall submit a valid concurrency evaluation, approved by the City Manager or designee, along with the application for development permit approval. No final development permit shall be approved unless adequate facilities are available as determined by the concurrency evaluation. A preliminary concurrency evaluation shall be performed on zoning actions.

**§ 172.081. 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 four (4) 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.

#### **§ 172.082. CONCURRENCY EVALUATION FINDINGS.**

The applicant shall request a concurrency evaluation during the PUD Final Development Plan, Site Plan, Final Plat, or building permit process. This evaluation shall certify either a non-deficiency finding or a deficiency finding:

(A) *Non-deficiency finding*. A finding of non-deficiency by the concurrency evaluation shall remain valid for 180 days from the issuance of the finding. . If a building permit is not requested within that time, or the approved building permit expires, the non-deficiency finding expires and a new one will need to be requested.

(B) *Deficiency finding*. A finding of deficiency by the concurrency evaluation shall negate approval of the application or force deferral of this approval.

#### **§ 172.083. 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.

#### **§ 172.084. ADMINISTRATION.**

The City Manager or designee shall administer the provisions of this Part and may develop such administrative rules, forms, applications and fees as may be required to implement the concurrency management system.

§ 172.085 through § 172.089 RESERVED

### **PART 9. DEVELOPMENT AGREEMENTS**

#### **§ 172.090. SHORT TITLE, AUTHORITY, APPLICABILITY.**

(A) This subchapter is adopted pursuant to §163.3220(4), F.S.



- (B) The provisions of this subchapter shall apply to all developments within the City that impacts public facilities, such as road, stormwater, utilities, parks, and public safety infrastructure, for which the applicant shall be required to improve as a result.

**§ 172.091. PURPOSE AND INTENT.**

The purpose and intent of this subchapter is to establish a process whereby the impacts of development on City infrastructure can be mitigated by the cooperative efforts of the public and private sectors.

**§ 172.092. APPLICATION PROCESS.**

- (A) An applicant seeking to commence land development activity requiring public improvements shall make application to the City to establish a Development Agreement with the City.
- (B) The application can be for the entire project or any phase thereof.
- (C) The application shall be on a form prescribed by the City and shall be submitted with the required non-refundable application fee.
- (D) Once the application is determined to be sufficient, City staff shall forward the application to the City Attorney who shall draft a development agreement or review the draft development agreement put forth by the applicant's attorney, for consideration by City Council.

**§ 172.093. DEVELOPMENT AGREEMENT.**

- (A) The development agreement shall include all required components in accordance with §163.3227, F.S.
- (B) A development agreement may include:
- (1) Any relocation of public or other utilities that is anticipated and an agreement as to which party shall bear the cost of the relocation.
  - (2) An agreement as to the type and amount of surety agreements that will guarantee performance, payment or maintenance, as applicable; provided, that all bonds or letters of credit, for any purpose, shall be on forms acceptable to the city and be issued by an entity acceptable to the city.
  - (3) An agreement as to buffers and visual screens for transition between land uses.
  - (4) An agreement as to which party shall maintain stormwater drainage systems and open spaces.
  - (5) A description of any conditions, terms, restrictions or other requirements or third-party agreements such as agreements with homeowner associations or community development districts.
  - (6) A statement regarding how the development will be phased including dates when phases may be commenced or completed.
- (C) No development agreement shall be effective until approved by the City Council following two public hearings in accordance with §163.3225, F.S.
- (D) In determining whether to approve the development agreement, City Council shall consider the following:
- (1) The findings required to be made pursuant to §163.3225, F.S., as may be amended; and
  - (2) Whether the provisions of the development agreement are beneficial to the public health, safety, and general welfare.

- (E) Upon execution of the development agreement by both parties, the City shall record the agreement in accordance with §163.3239, F.S.
- (F) Any changes in federal or state law subsequent to the effective date of the development agreement which may affect the rights of either the city or the developer shall be fully applicable as to the development notwithstanding the provisions of the development agreement; provided, however, that such changes in law do not preclude the ability of the parties to the development agreement to comply with the terms of the development agreement.
- (G) The City Manager or designee shall periodically review each development agreement in compliance with §163.3225, F.S., as may be amended. The City may inspect the land subject to the development agreement to determine compliance with the terms of the development agreement. The development agreement may be revoked or modified in compliance with §163.3235, F.S., as may be amended.
- (H) A request to amend or cancel a development agreement shall be submitted to the City Council for consideration. The request shall contain the following information:
  - (1) An explanation of the reason for seeking cancellation or amendment of the development agreement shall be attached to the request as Exhibit A.
  - (2) A description of the actual amount of development completed, the size and scope of the resulting plan of development (after cancellation or amendment), and
  - (3) A description of development that has occurred on site, including the amount of existing vertical development by land use in gross square feet, dwelling units, or other applicable units of measure; the amount of infrastructure completed at the site; etc. A copy of the approved site development plan, if applicable, shall be attached to the request as Exhibit B.
  - (4) An identification of the amount of development that is planned (after cancellation or amendment), including the amount of vertical development by land use in gross square feet, dwelling units, or other applicable units of measure; the amount of infrastructure to be completed at the site; etc. A copy of the site development plan, if applicable, for the development as proposed after cancellation or amendment shall be attached to the request as Exhibit C.