

City of Fort Pierce
Land Development Ordinance
Module 1: Administration and Procedures

DRAFT

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An introduction and user guide will be included inside the front cover of the new development ordinance. IT will provide a brief description of the overall organization of the document, with suggestions on how to find needed information.

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Chapter 22. Zoning

Article 1 Introductory Provisions

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22-100 Legal Framework

(a) Official Name (Title)

The official name of this chapter (Chapter 22) is the “Land Development Ordinance of the City of Fort Pierce, Florida.” For convenience, it is referred to throughout as the “development ordinance.”

(b) Effective Date

The provisions of this development ordinance become effective on and compliance with its provisions is mandatory beginning [INSERT DATE] except as otherwise expressly stated.

(c) Authority

This development ordinance is adopted pursuant to the requirements and authority of Section 163.3161 et seq., Florida Statutes (the Local Government Comprehensive Planning and Land Development Regulation Act), the Charter of the City of Fort Pierce, and the powers and authority in Chapters 60, 162, 166, 171, 177, 286, 380 and 823, Florida Statutes.

(d) Applicability

The regulations of this development ordinance apply to all development, public or private, within the corporate limits of the City of Fort Pierce unless otherwise expressly stated.

22-110 Purposes

This development ordinance is adopted for the purposes of:

- (a) implementing the *Comprehensive Plan* and ensuring that all actions taken with regard to development orders are consistent with the *Comprehensive Plan*;
- (b) establishing comprehensive and consistent standards and procedures for the review and approval of all proposed development in the City of Fort Pierce; and
- (c) establishing a development review, approval, and permitting process that is efficient (in terms of time and expense), effective (in terms of addressing the natural resource and public facility effects of proposed development), and equitable (in terms of consistency with established regulations and procedures, respect for the rights of landowners, and consideration of the interests of the citizens of the City of Fort Pierce).

22-120 Minimum Requirements; Compliance with other Applicable Regulations

- (a) The provisions of this development ordinance are the minimum requirements deemed necessary to carry out the development ordinance's stated purpose and intent.
- (b) In addition to the requirements of the development ordinance, all uses and development must comply with all other applicable city, state and federal regulations.
- (c) All references in the development ordinance to other city, state, or federal regulations are for informational purposes only and do not constitute a complete list of such regulations. These references do not imply any responsibility for the city to enforce state or federal regulations.

22-130 Compliance Required

Except as otherwise expressly provided in this development ordinance:

- (a) A building or structure may not be erected, moved, reconstructed, extended or structurally altered for any use other than a use that is allowed in the subject zoning district.
- (b) Land may not be used for any purpose other than one that is allowed in the subject zoning district.
- (c) Buildings, structures and land may be used and arranged only in compliance with the requirements specified in this development ordinance.

22-140 Conflicting Provisions

(a) Conflict with State or Federal Regulations

If the provisions of this development ordinance are inconsistent with those of the state or federal government, the more restrictive provision will control, to the extent permitted by law. The more restrictive provision is the one that imposes more stringent controls.

(b) Conflict with Other City Regulations

If the provisions of this development ordinance are inconsistent with one another, or if they conflict with provisions found in other adopted ordinances or regulations of the city, the more restrictive provision will control unless otherwise expressly stated. The more restrictive provision is the one that imposes more stringent controls.

(c) Conflict with Private Agreements and Covenants

This development ordinance is not intended to interfere with, abrogate or annul any easement, covenant, deed restriction or other agreement between private parties. The city does not maintain a record of private agreements and is not responsible for enforcement of private agreements.

22-150 Rules of Language and Ordinance Construction

(a) Meanings and Intent

- (1) The language of the development ordinance must be read literally. Regulations are no more or less strict than stated. Words and terms expressly defined in 0 or other sections of this ordinance have the specific meanings assigned, unless the context expressly indicates another meaning.
- (2) Common words, phrases and punctuation are to be construed and understood according to the common and approved use of the English language.
- (3) Specialized terms that are not defined in this development ordinance but that are defined in the *Comprehensive Plan* have the meaning given in the *Comprehensive Plan*.

(b) Computation of Time

- (1) References to “days” are to calendar days unless otherwise expressly stated. Reference to “working days” are references to regular working days of the City of Fort Pierce, excluding Saturdays, Sundays and holidays observed by the City of Fort Pierce.
- (2) The time in which an act is to be completed is computed by excluding the first day and including the last day. If the last day is a Saturday, Sunday, or holiday observed by the city, that day is excluded.
- (3) A day concludes at the close of business (5:00 p.m.), and any materials received after that time will be considered to have been received the following day.
- (4) A “week” is 7 consecutive calendar days unless otherwise expressly indicated.
- (5) A “year” is calendar year, unless otherwise expressly indicated.

(c) Tenses and Usage

- (1) Words used in the singular include the plural. The reverse is also true.
- (2) Words used in the present tense include the future tense. The reverse is also true.
- (3) The words “must,” “will,” “shall” and “may not” are mandatory.
- (4) The word “may” is permissive, and “should” is advisory, not mandatory or required.
- (5) When used with numbers, “up to x,” “not more than x” and “a maximum of x” all include “x.”

(d) Conjunctions

Unless the context otherwise clearly indicates, conjunctions have the following meanings:

- (1) “and” indicates that all connected items or provisions apply; and
- (2) “or” indicates that the connected items or provisions may apply singularly or in combination.

(e) Headings and Illustrations

Headings and illustrations are provided for convenience and reference only and do not define or limit the scope of any provision of this development ordinance. In case of any difference of meaning or implication between the text of this development ordinance and any heading, drawing, table, figure, or illustration, the text controls.

(f) Current Versions and Citations

All references to other city, county, state, or federal regulations in the development ordinance refer to the most current version and citation for those regulations, unless expressly indicated otherwise. When the referenced regulations have been repealed and not replaced by other regulations, development ordinance requirements for compliance are no longer in effect.

(g) Lists and Examples

Unless otherwise expressly indicated, lists of items or examples that use “including,” “such as,” or similar terms are intended to provide examples only. They are not to be construed as exhaustive lists of all possibilities.

(h) Delegation of Authority

Whenever a provision appears requiring the head of a department or another officer or employee of the city to perform an act or duty, that provision will be construed as authorizing the department head or officer to delegate that responsibility to others over whom they have authority. Delegation of authority is not allowed when the provisions of this development ordinance expressly prohibit such a delegation.

(i) Public Officials and Agencies

All employees, public officials, bodies and agencies to which references are made are those of the City of Fort Pierce unless otherwise expressly stated.

(j) Commentaries

Commentaries are sometimes included in this development ordinance as a means of clarifying certain provisions or providing supplemental information thought to be useful for ordinance users. Text marked as “commentary” has no regulatory effect. It is intended solely as a guide for administrative officials and the public.

Commentary: When commentaries are provided, they will appear in this manner.

22-160 Zoning Map Regulations

(a) Establishment

The location and boundaries of the zoning districts established by this development ordinance are shown on a geographic coverage layer entitled “Zoning” that is maintained as part of the city’s geographic information system (GIS) under the direction of the director of the planning division. This “Zoning” geographic coverage layer constitutes the City of Fort Pierce’s official zoning map. The official zoning map—together with all notations, references, data and other information shown on the map— is adopted and incorporated into this development ordinance. It is as much a part of this development ordinance as if actually depicted within its pages.

(b) Maintenance and Updates

The community development director is responsible for directing revisions to the official zoning map to reflect its amendment as soon as possible after the effective date of zoning map amendments (rezonings). No unauthorized person may alter or modify the official zoning map. The community development director may authorize printed copies of the official zoning map to be produced and maintain digital or printed copies of superseded versions of the official zoning map for historical reference.

(c) District Boundaries

When the zoning map shows a zoning district boundary as following a particular feature, or reflects a clear intent that the boundary follows the feature, the boundary will be construed as following that feature as it actually exists. The official zoning map must note any such relationship between a zoning boundary and other mapped feature on the zoning map when entering the zoning boundary.

(d) Interpretations of District Boundaries

Where any uncertainty exists about a zoning district boundary, the actual location of the boundary will be determined by the community development director using the following rules of interpretation:

- (1)** A zoning district boundary shown on the zoning map as approximately following a river, stream, lake or other watercourse will be construed as following the actual centerline of the watercourse. If, subsequent to the establishment of the boundary, the

centerline of the watercourse should move as a result of natural processes (flooding, erosion, sedimentation, etc.), the boundary will be construed as moving with the centerline of the watercourse.

- (2) A zoning district boundary shown on the zoning map as approximately following a ridge line or topographic contour line will be construed as following the actual ridge line or contour line. If, subsequent to the establishment of the boundary, the ridge line or contour line should move as a result of natural processes (erosion, slippage, subsidence, etc.), the boundary will be construed as moving with the ridge line or contour line.
- (3) A zoning district boundary shown on the zoning map as approximately following a lot line or parcel boundary will be construed as following the lot line or parcel boundary as it actually existed at the time the zoning boundary was established.
- (4) A zoning district boundary shown on the zoning map as approximately following a street or railroad line will be construed as following the centerline of the street or railroad right-of-way.
- (5) A zoning district boundary shown on the zoning map as approximately following the boundary of an adjacent municipality will be construed as following that boundary.
- (6) A zoning district boundary shown on the zoning map as approximately parallel to, or as an apparent extension of, a feature described above will be construed as being actually parallel to, or an extension of, the feature.

22-170 Transitional Provisions

(a) Development Orders Issued Before [insert effective date]

Any development order approved before the effective date specified in 22-100(b) will continue to be valid until the development order expires or it is amended, abandoned, or revoked.

(b) Applications Submitted Before [insert effective date]

Applications for development orders that were submitted in complete form and are pending approval on the effective date specified in 22-100(b) must be reviewed wholly under the terms of the zoning, subdivision and other applicable land development regulations in effect immediately before the effective date specified in 22-100(b). Modifications or amendments to development orders approved under the terms of this section must comply with this development ordinance.

Editor's Note: Need to address amendments to and modifications of previously approved dev't orders

(c) Violations Continue

Any violation of the previous development ordinance will continue to be a violation under this development ordinance. If the use, development, construction or other activity that was a violation under the previous ordinance complies with the express terms of this development ordinance, enforcement action will cease, except to the extent of collecting penalties for violations that occurred before the effective date specified in 22-100(b). The adoption of this development ordinance does not affect nor prevent any pending or future prosecution of, or action to abate, violations of the previous ordinance that occurred before the effective date specified in 22-100(b).

(d) Nonconformities

Any nonconformity under the previous development ordinance will also be a nonconformity under this development ordinance, as long as the situation that resulted in the nonconform-

ing status under the previous regulation continues to exist. If, however, a nonconforming situation under previous zoning regulations becomes conforming because of the adoption of this development ordinance, or any subsequent amendment to it, then the situation will no longer be considered a nonconformity. A situation that did not constitute a (lawful) nonconforming situation under the previously adopted development ordinance does not achieve (lawful) nonconforming status under this development ordinance merely by repeal of the previous development ordinance. See Article 1 for regulations governing nonconformities.

(e) Existing Uses

- (1) When a use classified as a conditional use under this development ordinance exists as a conditional use or permitted use on the effective dates specified in 22-100(b), such use will be considered a lawfully established conditional use.
- (2) When any amendment to this development ordinance changes the classification of a permitted use to a conditional use, any use lawfully established before such amendment will be considered a lawfully established conditional use after the effective date of such amendment.
- (3) A lawfully established existing use that is not allowed as a conditional use or permitted use in the district in which the use is now located will be considered a nonconforming use and will be subject to all applicable regulations of Article 1.

(f) Zoning District Name Conversions

The zoning district names and map symbols in effect before [insert effective date] will be converted as follows:

Previous Name	New Name
RESIDENTIAL	
BUSINESS AND MIXED-USE	
INDUSTRIAL	
OVERLAY AND SPECIAL	

Editor's Note: This "name conversion" section may not be needed.

22-180 Severability

If any portion of this development ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, that portion is to be deemed severed from the development ordinance and in no way affects the validity of the remainder of the development ordinance.

Article 17 Nonconformities

22-1700	General	17-1
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Editor's Note: this article has been reworked fairly significantly to apply a "lighter touch" to nonconformity regulations, allowing limited expansions and additional flexibility, compared to the city's existing ordinance.

22-1700 General

(a) Scope

The regulations of this article govern nonconformities, which are lots, uses and structures that were lawfully established but—because of annexation or the adoption of new or amended regulations—no longer comply with one or more requirements of this development ordinance.

(b) Intent

Occasionally, lots, uses, and structures that were lawfully established (i.e., in compliance with all regulations in effect at the time of their establishment) have been made nonconforming because of changes in the zoning regulations that apply to the subject property (e.g., through annexations, zoning map amendments, or amendments to the text of this development ordinance). The regulations of this article are intended to clarify the effect of such nonconforming status and avoid confusion with "illegal" buildings and uses (those established in violation of applicable zoning regulations). The regulations of this article are also intended to:

- (1) recognize the interests of landowners in continuing to use their property for uses and activities that were lawfully established;
- (2) promote maintenance, reuse and rehabilitation of existing buildings; and
- (3) place reasonable limits on nonconformities that have the potential to adversely affect surrounding properties.

(c) Authority to Continue

Any nonconformity that existed on the effective date specified in 22-100(b) or any situation that becomes nonconforming upon adoption of any amendment to this development ordinance may be continued in accordance with the regulations of this article unless otherwise expressly stated.

(d) Determination of Nonconformity Status

- (1) The community development director is authorized to determine whether adequate proof of nonconforming status has been provided by the subject landowner.
- (2) The burden of proving that a nonconformity (as opposed to a violation) exists rests entirely with the subject landowner.
- (3) A preponderance of the evidence must be provided and be sufficient to show that the nonconformity was lawfully established prior to annexation or prior to the adoption of the subject regulations. Evidence must also indicate that the nonconformity has been continuous and that it has not lost its nonconforming status. Examples of reliable evi-

dence include: business licenses; building permits; city/county billing records; utility billing records; and assessment, tax or rental records.

- (4) The community development director must maintain a record of known nonconformities as such information becomes available.
- (5) Appeals of the community development director's decision on nonconforming status determinations may be appealed in accordance with 22-1870.

(e) Repairs and Maintenance

- (1) Nonconformities must be maintained to be safe and in good repair.
- (2) Incidental repairs and normal maintenance necessary to keep a nonconformity in sound condition are permitted unless otherwise expressly prohibited by this development ordinance.
- (3) Nothing in this article is intended to prevent nonconformities from being structurally strengthened or restored to a safe condition in accordance with an order from a duly authorized city official.

(f) Change of Tenancy or Ownership

Nonconforming status runs with the land and is not affected by changes of tenancy, ownership, or management.

22-1710 Nonconforming Lots

(a) Description

- (1) A nonconforming lot is a lawfully created lot, shown on a plat or survey recorded in the [INSERT OFFICE] that does not comply with all applicable lot area, lot width and street frontage standards of the zoning district in which the lot is located.
- (2) All nonconforming lots are subject to nonconformity determination provisions of 22-1700(d).

(b) Use of Nonconforming Lots

- (1) Any nonconforming lot in an R district may be used as a building site for a single detached house, except as expressly stated in 22-1710(b)(3).
- (2) In nonresidential zoning districts, a nonconforming lot may be used as a building site and developed with a use allowed in the subject zoning district, except as expressly stated in 22-1710(b)(3). If the zoning allows a variety of uses or a variety of intensities of uses and one or more uses or intensities would comply with applicable lot area, width and frontage standards, while others would not, then only the uses or intensities that comply with applicable standards are permitted.
- (3) When multiple contiguous nonconforming lots are under common ownership, such lots will be deemed a single lot for the purpose of meeting applicable lot area, width and frontage requirements of the zoning district in which they are located. This provision treats contiguous lots under common ownership as merged for the purposes of zoning regulations governing lot area, lot width and lot frontage standards.

(c) Lot and Building Standards

- (1) Development on nonconforming lots must comply with the lot and building standards of the subject zoning district unless otherwise expressly stated.

- (2) Nonconforming lots may not be adjusted in size or shape to create nonconformity or increase the degree of nonconformity for lot area, lot width, lot frontage, setbacks or other applicable lot and building standards. Lot area or shape adjustments that decrease the extent of nonconformity are allowed.

22-1720 Nonconforming Structures

(a) Description

- (1) A nonconforming structure is any building or structure, other than a sign, that was lawfully established but no longer complies with the lot and building standards of the zoning district in which it is located.
- (2) All nonconforming structures are subject to nonconformity determination provisions of 22-1700(d).

(b) General

Nonconforming structures may remain, subject to the regulations of this section.

(c) Enlargements and Expansions

- (1) Enlargements and expansions of nonconforming structures are permitted if the proposed enlargement or expansion complies with all applicable lot and building standards. A building with a nonconforming front setback, for example, may be expanded to the rear as long as the rear expansion complies with applicable rear setback standards and all other applicable lot and building standards.

Editor's Note: the preceding provision has been substantially revised. Current ordinance allows expansion only through the special exception process.

- (2) Enlargements and expansions of nonconforming structures that increase the extent of nonconformity are allowed only if reviewed and approved as a conditional use in accordance with 22-1840. In order to approve a conditional use for enlargement or expansion of a nonconforming use, the planning board must find that the proposal meets the normal conditional use approval criteria of 22-1840(h) and the following:
 - a. the enlargement or expansion would not adversely affect traffic flow, safety and control, pedestrian safety and convenience or visibility at any street intersections, drives, rights-of-way, curb cuts or crosswalks;
 - b. such enlargements or alteration will be compatible with adjacent properties;
 - c. the enlargement or expansion will not increase gross floor area of the principal structure by more than 50%; and
 - d. the use within the structure before and after approval of conditional use is an allowed use within the subject district.

Editor's Note: the preceding provision has been substantially revised. Current ordinance allows expansion only through the special exception process administered by board of adjustment.

(d) Use

A nonconforming structure may be used for any use allowed in the zoning district in which the structure is located.

(e) Moving

A nonconforming structure may be moved in whole or in part to another location only if the movement or relocation eliminates or reduces the extent of nonconformity.

(f) Loss of Nonconforming Status

(1) Intentional Damage or Destruction

When a nonconforming structure is intentionally destroyed or damaged by causes within the control of the property owner or tenant, all nonconforming structure rights are lost and re-construction of the nonconforming structure is prohibited.

(2) Accidental Damage or Destruction

When a nonconforming structure is accidentally destroyed or damaged by causes that are not within the control of the owner, the structure may be restored or repaired provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit to reconstruct a destroyed or damaged structure must be obtained within 2 years of the date of occurrence of such damage.

Editor's Note: the preceding provision has been substantially revised—no longer based on extent of damage (i.e., 50% of replacement cost).

22-1730 Nonconforming Uses

(a) Description

- (1)** A nonconforming use is a land use that was lawfully established in accordance with all zoning regulations in effect at the time of its establishment but that is no longer allowed by the use regulations of the zoning district in which the use is now located. Lawfully established uses that do not comply with any applicable separation (or spacing) distance requirements (e.g., those that require one land use to be located a certain minimum distance from another land use) are also deemed nonconforming uses.
- (2)** All nonconforming uses are subject to nonconformity determination provisions of 22-1700(d).

(b) Change of Use

- (1)** A nonconforming use may be changed to any conforming use. Once changed to a conforming use, a nonconforming use may not be re-established.
- (2)** The community development director is authorized to approve a nonconforming use substitution—substituting one nonconforming use for another nonconforming use that is no more intensive and creates no greater adverse impacts than the previous nonconforming use. In order to approve a zoning compliance permit for a nonconforming use substitution, the community development director must determine, based on information provided by the applicant, that the substituted use will cause no net increase in adverse impacts on the surrounding area than the previous nonconforming use of the property. In making such a determination, the community development director must consider all of the following factors, as applicable:
 - a.** traffic to and from the site;
 - b.** on-street parking availability;
 - c.** hours of operation,
 - d.** outdoor display, storage and work activities; and
 - e.** other factors likely to substantially affect the immediate area in which the use is located.

- (3) A nonconforming open-air use may not be changed to any other nonconforming open-air use.

Editor's Note: Proposed open land provision [above] is new. "Open-air use" means storage yards, vehicle impound yards, auto wrecking, junkyards, and similar open-air land uses when the only buildings on the lot are incidental and accessory to the open-air use of the lot.

(c) Expansion of Use

- (1) Except as otherwise expressly stated, the community development director is authorized to approve expansion of a nonconforming use into another part of the same building, provided that the community development director determines that such expansion:
- a. will not result in a violation of off-street parking or loading requirements;
 - b. will not violate any applicable lot or building standards of the subject zoning district;
 - c. is not an expansion of a nonconforming use of open land; and
 - d. is not an expansion of a nonconforming industrial or manufacturing use in an R district.
 - e. Nonconforming use expansions other than those authorized under 22-1730(c)(1), may only be approved as a variance in accordance with 22-1860.

(d) Remodeling and Improvements

A building in which a nonconforming use is located may be remodeled or otherwise improved as long as the remodeling or improvements do not violate the other regulations of this article.

(e) Moving

A nonconforming use may be moved in whole or in part to another location only if the movement or relocation eliminates or reduces the extent of nonconformity.

(f) Loss of Nonconforming Status

(1) Abandonment

- a. Once a nonconforming use is abandoned, its nonconforming status is lost and any new, replacement use must comply with the regulations of the zoning district in which it is located.
- b. A nonconforming use is presumed abandoned when the use is discontinued or ceases for a continuous period of one year or more.
- c. A nonconforming use of open land is presumed abandoned when the use is discontinued for a continuous period of 6 months or more.
- d. The presumption of abandonment may be rebutted upon showing, to the satisfaction of the community development director, that during such period the owner of the land or structure has been:
 - 1. maintaining the land and structure in accordance with all applicable municipal ordinance requirements and did not intend to discontinue the use;
 - 2. actively and continuously marketing the land or structure for sale or lease for that particular nonconforming use; or

3. engaged in other activities that affirmatively prove there was not intent to abandon.
- e. Any period of discontinued use caused by government action, unintended fire or natural disaster will not be counted in calculating the length of discontinuance.

(2) Change to Conforming Use

If a nonconforming use is changed to a conforming use, no matter how short the period of time, all nonconforming use rights are lost and re-establishment of the nonconforming use is prohibited.

(3) Intentional Destruction

When a building containing a nonconforming use is intentionally damaged by causes within the control of the owner, re-establishment of the nonconforming use is prohibited.

(4) Accidental Damage or Destruction

When a building containing a nonconforming use is accidentally destroyed or damaged by causes that are not within the control of the property owner or tenant, the building may be restored or repaired provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit to reconstruct a destroyed or damaged structure must be obtained within 2 years of the date of occurrence of such damage.

Editor's Note: the preceding provision has been substantially revised—no longer based on extent of damage (i.e., 50% of replacement cost).

22-1740 Nonconforming Signs

Nonconforming signs are addressed in [insert reference to signs chapter].

Article 18 Review and Approval Procedures

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Editor's Note: This chapter will include all of the new development ordinance's review and approval procedures. This draft includes most of the basic zoning and subdivision-related procedures. It will be expanded as work proceeds to address historic preservation and concurrency-related procedures as well as other specialized review procedures needed to address ordinance requirements and current practices, including PUD provisions.

22-1800 Provisions of General Applicability

(a) Preapplication Consultations

- (1) Preapplication consultations are required whenever the provisions of this development ordinance expressly state that they are required. Preapplication consultations are encouraged in all cases.
- (2) Required preapplication consultations must be scheduled with planning division staff before submitting an application for the matter that is the subject of the preapplication consultation.
- (3) Preapplication consultations are intended to provide an opportunity to discuss application submittal requirements, other information pertinent to the development review and approval process (such as other approvals that may be required) and information pertaining to the subject property.

(b) Ongoing Violations

No application may be accepted, and no approval may be granted for the subject lot if the business, enterprise, occupation, trade, profession, property or activity on the lot is the subject of an ongoing enforcement action, a state law or county violation or a violation of other city ordinances. This provision is not intended to prohibit the filing of applications that are required to rectify the violation or to redevelop the property to eliminate the violation.

(c) Form of Application

- (1) Applications required under this development ordinance must be submitted in a form and in such numbers as required by the community development director or other authorized city staff. The community development director must develop checklists of application submittal requirements and make those checklists available to the public.

Application forms and checklists of required submittal information are available in the planning division.

- (2) All applications must include the names and addresses of the record owners of the subject property, the applicant, and evidence of authority from the record owners for submission of the application.

(d) Application Filing Fees

- (1) No application may be accepted as complete until all required application processing fees have been paid in full. Application fees are nonrefundable 5 working days after application filing. If an application is withdrawn within 10 days of filing, 80% of the filing fee must be refunded.
- (2) The city commission may, upon request and for proper cause, waive any of the fees required by this development ordinance.
- (3) Fees are not required with applications initiated by the city.
- (4) A schedule of application processing fees must be established concurrently or after the effective date of this development ordinance and amended from time to time by resolution of the city commission. A copy of the resolution establishing fees must be on file in the planning division.
- (5) The city manager is authorized to recommend a fee schedule for adoption by the city commission and may recommend amendments, updates, additions, corrections and other appropriate modifications to the fee schedule from time to time or as may be requested by the city commission.

(e) Application Completeness, Accuracy and Sufficiency

- (1) An application will be considered complete and ready for processing only if it is submitted in the required number and form, includes all required information and is accompanied by the required filing fee.
- (2) The community development director must make a determination of application completeness within 10 working days of application filing.
- (3) If an application is determined to be incomplete, the community development director must provide paper or electronic written notice to the applicant along with an explanation of all known deficiencies in the application that will prevent competent review of the application. No further processing of the application will occur until the deficiencies are corrected. If the deficiencies are not corrected by the applicant within 60 days, the application will be considered withdrawn.
- (4) No further processing of incomplete applications will occur, and incomplete applications will be pulled from the processing cycle. When the deficiencies are corrected, the application will be placed in the next available processing cycle.
- (5) Applications deemed complete will be considered to be in the processing cycle and will be reviewed by staff and other review and decision-making bodies in accordance with applicable review and approval procedures of this development ordinance.
- (6) The community development director may require that applications or plans be revised before being placed on the agenda of a review or decision-making body if the community development director determines that:
 - a. the application or plan contains one or more significant inaccuracies or omissions that hinder timely or competent evaluation of the plan's/application's compliance with development ordinance standards; or

- b. the application contains multiple minor inaccuracies or omissions that hinder timely or competent evaluation of the plan's/application's compliance with development ordinance standards.

(f) Application Processing Cycles

The community development director, after consulting with review and decision-making bodies, is authorized to promulgate processing cycles for applications. Processing cycles may establish:

- (1) deadlines for receipt of complete applications;
- (2) dates of regular meetings;
- (3) the scheduling of staff reviews and staff reports on complete applications; and
- (4) time-frames for review and decision-making.

(g) Public Hearings

- (1) Parties in interest and citizens must be given an opportunity to appear and be heard at required public hearings, subject to reasonable rules of procedure.
- (2) A public hearing for which proper notice was given may be continued to a later date without providing additional notice as long as the continuance is set for specified date and time and that date and time is announced at the time of the continuance.
- (3) If a public hearing is tabled or deferred for an indefinite period of time or postponed more than 3 months from the date of the originally scheduled public hearing, new public notice must be given before the rescheduled public hearing. If the applicant requests a postponement, the applicant is responsible for paying any costs of re-notification.

(h) Public Hearing Notices

(1) Newspaper Notice

a. General

- 1. Except as otherwise expressly stated in this development ordinance, whenever the provisions of this ordinance require that newspaper notice be provided, the notice must be published at least once in a newspaper of general paid circulation within Fort Pierce at least 10 days before the public hearing. The city is responsible for coordinating required newspaper notices.
- 2. The notice must state the date, time, and place of the meeting; the title or titles of the proposed ordinances or a description of the subject matter being considered; and the place within the city where the proposed ordinances or other materials may be inspected by the public. The notice must also advise that interested parties may appear at the meeting and be heard with respect to the matter. A copy of the notice must be available for public inspection at city hall during the regular city business hours.
- 3. Failure to provide advertised notice as set forth in the newspaper notice provisions of this section does not affect any action or proceedings taken, unless such notice is required by Florida Statutes.

b. Use-related Development Ordinance Text Amendments and Zoning Map Amendments Covering More than 10 Acres

Notice for development ordinance text amendments that change the list of permitted, conditional, or prohibited uses within a zoning district and or ordinances initiated by the city that change the zoning map designation of a contiguous area of 10 acres or more, must be published at least 10 days before the planning board public hearing, again at least 7 days before the first city commission public hearing and again at least 5 days before the second city commission adoption hearing. Such notice must be provided as described in the following paragraphs.

1. The required newspaper notices must be at least 2 columns wide by 10 inches in length in a standard size or tabloid size newspaper, and the headline in the advertisement must be in a type no smaller than 18 point. The notice may not be placed in that portion of the newspaper where legal notices and classified advertisements appear.
2. The notice must be in substantially the following form:

*“Notice of (insert type of) Change
The City of Fort Pierce proposes to adopt the following ordinance: (title of ordinance)...
A public hearing on the ordinance will be held ... (date and time)... at ... (meeting place)...”*

Except for amendments that change the list of permitted, conditional, or prohibited uses within a zoning district, the notice must also contain a geographic location map that clearly indicates the area covered by the proposed ordinance. The map must include major street names as a means of identification of the general area.

3. In lieu of publishing the advertisement set out in this section, the city may elect to mail a notice to each person owning real property within the area covered by the proposed ordinance. Such notice must clearly explain the proposed ordinance and must notify the persons of the time, place, and location of any public hearing on the proposed ordinance.

c. Zoning Map Amendments

Notice of proposed zoning map amendments other than described in 22-1800(h)(1)b must be published at least 10 days before the planning board public hearing, and again at least 10 days before the city commission adoption hearing. Ordinances amending the zoning map must be read by title, in full, at 2 separate city commission hearings.

d. Small-scale Comprehensive Plan Amendments

Notice of small-scale amendments to the *Comprehensive Plan*, initiated by other than the city, must be published at least 10 days before the planning board public hearing, and again at least 5 days before the city commission adoption hearing.

e. Comprehensive Plan Amendments, Other than Small-scale

Notice of all *Comprehensive Plan* amendments, other than small-scale amendments, must be published at least 10 days before the planning board public hearing, and again at least 7 days before the first city commission meeting, and again at least 5 days before the city commission adoption hearing.

f. Development Agreements

Notice of proposed development agreements must be published at least 7 days before each public hearing.

(2) Mailed Notice

- a.** Whenever the provisions of this development ordinance require mailed notice, the planning division is responsible for providing such notice.
- b.** Unless otherwise expressly stated, the notices must be sent by U.S. first class mail at least 10 days before the scheduled hearing date.
- c.** Notices must be mailed to the applicant and all property owners within 500 feet, as measured from the property line of the subject property and include:
 - 1.** all owners of real property, whose names and addresses are known by reference to the latest published ad valorem tax records;
 - 2.** condominium associations and all real property owners when real property consists of a condominium;
 - 3.** all property owners associations, homeowners associations and cooperatives within the required notice area; and
 - 4.** St. Lucie County.
- d.** If the entire area within 500 feet is owned by the applicant, the 500-foot notification radius must be extended from the outer boundary of the area owned by the applicant.
- e.** The notice must:
 - 1.** indicate the date, time and place of the public hearing or date of action that is the subject of the notice;
 - 2.** describe any property involved in the application by street address or by general description;
 - 3.** describe the general nature, scope and purpose of the application or proposal;
 - 4.** indicate where additional information on the matter can be obtained; and
 - 5.** advise that interested parties may appear at the meeting and be heard with respect to the matter.
- f.** Failure to receive mailed notice does not affect any action or proceedings taken or constitute grounds to challenge the validity of any action taken.

(3) Posted Notice

- a.** Whenever the provisions of this development ordinance require that posted notice be provided, the applicant is responsible for providing such notice in accordance with the requirements of this section.
- b.** Signs must be posted and maintained in unobstructed legible condition for at least 10 consecutive days before the public hearing and must be removed within 10 days of the close of the public hearing.
- c.** Signs must be in a location and form (e.g., sign color, sign area, type face/size, message content, etc.) specified by the community development director.

- d. The applicant must present affidavit proof of posting in accordance with this section at the time of the public hearing.
- e. Failure to post specific property or failure of any posted notice to remain in place after it has been posted does not affect any action or proceedings taken or constitute grounds to challenge the validity of any action taken.

(i) Burden of Proof or Persuasion

In all cases, the burden is on the applicant to show that an application complies with applicable review or approval criteria.

(j) Review by Technical Review Committee

- (1) The TRC must review all applications that are required to be heard by the planning board and all applications that expressly require review by the TRC.
- (2) After an application is determined to be complete, the Technical Review Committee (TRC) must review the application in accordance with rules and procedures adopted by the TRC and any procedures applicable to the application for development approval.
- (3) The community development director must coordinate the TRC review, identify concerns, and inform the applicant of any changes that need to be made to the applications to allow further review of the application to proceed.

(k) Action by Review Bodies and Decision-Making Bodies

- (1) Review and decision-making bodies may take any action that is consistent with:
 - a. the regulations of this development ordinance;
 - b. any by-laws that may apply to the review or decision-making body; and
 - c. the notice that was given.
- (2) Review and decision-making bodies are expressly authorized to defer action or continue a public hearing to a specified date and time in order to receive additional information or further deliberate on the matter. Review and decision-making bodies are authorized to require that parties requesting continuances pay all costs of or provide for renotification if the matter will be delayed for more than 30 days.

(l) Conditions of Approval

When decision-making bodies approve applications with conditions, the conditions must relate to a situation created or aggravated by the proposed development, and they must be roughly proportional to the impacts of the proposed development.

(m) Notification of Decision

The city must provide notification of a decision on an application for development approval under this article, by First Class mail within 15 days of a final decision on the application. A copy of the decision must also be made available to the public in the planning division during normal business hours within a reasonable period of time after the decision.

(n) Technical Consultants

- (1) The city is authorized to retain independent technical consultants and experts that it deems necessary to competently evaluate an application requiring review of matters for which in-house expertise is not available.

- (2) Pursuant to this authority, the city may require that the applicant enter into a contract with the city that obligates the applicant to reimburse the city for consultant fees charged to review the application, or require that the applicant post a fee deposit to cover consultant fees. If technical consultants are not retained by the city before issuance of the applicable development order the full amount of such deposit is refundable.
- (3) Fee deposits, when required, must be placed in a separate, non-interest bearing account. All fees must be paid by cash, certified check or bank draft made payable to the city. The applicant is liable to the city for 100% of the actual and verifiable costs of the independent technical consultants. The city must notify the applicant when any consultant fees exceed the initial deposit. The notice must indicate whether the city estimates the consultants' fees to exceed the existing deposit and, if so, will request an additional deposit sufficient to cover the estimated remaining costs. The applicant must make an additional deposit with the city in an amount specified in the notice within 15 days of receipt of the notice.
- (4) If the applicant disputes any expenses incurred by the city, the applicant must notify the city, in writing, of the specific expenses in dispute and the reasons why these expenses should not be considered reasonable and necessary for the review of the project. The applicant's response must be received within 15 days of receipt of the final bill. Failure to do so will be considered as a waiver of the applicant's right to dispute any expenses. Within 30 days of receipt of this dispute response, the city must submit to the city commission the applicant's notice of disputed expenses, including any other documentation or information that the city deems appropriate to show that the disputed expenses were reasonable and necessary. Within 30 days, the city commission must render a determination on whether the disputed expenses were reasonable and necessary. The city commission's determination constitutes final action. Within 15 days of the city commission's determination regarding disputed expenses, the applicant must pay any amount remaining outstanding or must be refunded any amount deemed unreasonable or unnecessary.

22-1810 Amendments to the Comprehensive Plan and Development Ordinance

(a) Intent

The amendment procedures of this section are intended to provide a generally uniform, transparent, and efficient public review process for amending the text of the *Comprehensive Plan*, the future land use map of the *Comprehensive Plan*, the zoning map, and the text of this development ordinance.

(b) Applicability

Amendments to the text of the *Comprehensive Plan*, the future land use map of the *Comprehensive Plan*, the zoning map, or the text of this development ordinance must follow applicable procedures of state law and this development ordinance.

(c) Initiation

The city may initiate amendments to the *Comprehensive Plan's* future land use map, the zoning map, the text of the *Comprehensive Plan* and the text of this development ordinance. Amendments to the *Comprehensive Plan's* future land use map and amendments to the zoning map may be initiated by the owner of the subject property.

(d) Notice of Hearing

(1) Newspaper Notice

Notice of planning board and city commission public hearings on all *Comprehensive Plan* and development ordinance amendments, including amendments to the future land use map and amendments to the zoning map, must be published in accordance with the requirements of 22-1800(h)(1).

(2) Mailed Notice

Notice of planning board and city commission public hearings on future land use map and zoning map amendments must be mailed in accordance with the requirements of 22-1800(h)(2). Mailed notice is not required for city-initiated map amendments covering a contiguous area of 10 acres or more.

(3) Posted Notice

Notice of planning board and city commission public hearings on future land use map and zoning map amendments must be posted mailed in accordance with the requirements of 22-1800(h)(3). Posted notice is not required for city-initiated map amendments covering a contiguous area of 10 acres or more.

(e) Amendments to the *Comprehensive Plan* Text

(1) Applicability

The procedures of this subsection apply to proposed text amendments to the *Comprehensive Plan*.

(2) Staff Review and Recommendation

The community development director must submit a written report with recommendations on the proposed *Comprehensive Plan* amendment to the planning board before the meeting of the planning board at which the matter will be heard.

(3) Planning Board Review and Recommendation

- a. After receipt of the community development director's report, the planning board, acting as the local planning agency, must hold a public hearing on the proposed comprehensive plan amendment.
- b. Following the close of the hearing, at the same or subsequent meeting, the planning board must take action to recommend approval, approval with conditions or denial of the comprehensive plan amendment.

(4) City Commission Review and Decision

- a. Upon receipt of the recommendation from the planning board, the city commission must conduct any required readings and public hearings on the proposed amendment and approve, approve with amendments or conditions or deny the requested *Comprehensive Plan* amendment.
- b. The proposed ordinance must be transmitted to the appropriate county, regional and state agencies, as required by law.
- c. Upon receipt of the Department of Community Affairs, Objections, Recommendations and Comments Report, if required, and recommendations from other external agencies, the city commission must conduct any required readings and public hearings on the application and approve, approve with modifications or deny the requested amendment.

(5) External Agency Review and Decision

The adopted amendment must be transmitted to appropriate county, regional and state agencies, as required by law.

(6) Review Criteria

Decisions on *Comprehensive Plan* text amendments must be guided by the following criteria:

- a. whether the text amendment specifically advances any objective or policy of the *Comprehensive Plan*;
- b. whether the text amendment is internally consistent with other provisions of the *Comprehensive Plan*;
- c. the effect of the text amendment on public facility levels of service;
- d. the text amendment's effect on natural and environmental resources; and
- e. the text amendment effect on the availability of housing that is affordable to people who live or work in the City of Fort Pierce.

(f) Development Ordinance Text Amendments

(1) Applicability

The procedures of this subsection apply to proposed development ordinance text amendments, including those that change the list of permitted, conditional, or prohibited uses within a zoning district.

(2) Staff Review

The community development director must submit a written report with recommendations on the proposed development ordinance text amendment to the planning board before the meeting of the planning board at which the application will be heard. A copy of the report must be made available to the applicant upon request.

(3) Planning Board Review and Recommendation

- a. After receipt of the community development director's report, the planning board must hold a public hearing on the proposed development ordinance text amendment.
- b. Following the close of the hearing, at the same or subsequent meeting, the planning board must take action to recommend approval, approval with modifications or denial of the development ordinance text amendment, based on the approval criteria of 22-1810(f)(5).
- c. If the planning board does not make a recommendation within 30 days of the close of the public hearing, the application must be forwarded to the city commission with no recommendation.

(4) City Commission Review and Decision

- a. After action by the planning board, the city commission must convene a public hearing on the proposed text amendment.
- b. Following the public hearing, the city commission must act to approve the proposed development ordinance text amendment, approve the proposed text amendment with modifications or deny the proposed text amendment. The city

commission is also authorized to return the application to the planning board for further consideration, together with an explanation of the reasons for doing so.

(5) Review Criteria

Decisions on development ordinance text amendments must be guided by the following criteria:

- a. whether the proposed amendment promotes the public health, safety and general welfare;
- b. whether the proposed amendment will cause the level of service of public facilities that are subject to concurrency requirements to drop below levels of service established by the *Comprehensive Plan*;
- c. whether the proposed amendment will allow uses, densities or development intensities that are prohibited by the *Comprehensive Plan*; and
- d. whether the proposed amendment conflicts with an objective or policy of the *Comprehensive Plan*.

(g) Amendments to the Future Land Use Map and Official Zoning Map

(1) Applicability

The procedures of this subsection apply to proposed amendments to the future land use map of the *Comprehensive Plan* and amendments to the zoning map, regardless of the land area proposed to be reclassified.

(2) Staff Review and Recommendation

a. Sufficiency Review

Upon receipt of a map amendment application, the community development director must determine if the application is complete and sufficient for review and processing in accordance with 22-1800(e).

b. Report to Planning Board

The community development director must submit a written report with recommendations on the proposed map amendment to the planning board before the meeting of the planning board at which the application will be heard. A copy of the report must be made available to the applicant upon request.

(3) Planning Board Review and Recommendation

- a. After receipt of the community development director's report, the planning board must hold a public hearing on the proposed map amendment.
- b. Following the close of the hearing, at the same or subsequent meeting, the planning board must take action to recommend approval, approval with conditions or denial of the map amendment.

(4) City Commission Review and Decision

- a. After action by the planning board, the city commission must convene a public hearing on the proposed map amendment.
- b. Following the public hearing, the city commission must act to approve the proposed map amendment, approve the proposed map amendment with conditions or deny the proposed map amendment. The city commission is also au-

thorized to return the application to the planning board for further consideration, together with an explanation of the reasons for doing so.

(5) External Agency Review and Decision

If required by law, the proposed ordinance must be transmitted to the appropriate county, regional and state agencies. Upon receipt of objections, recommendations or comments from a reviewing agency, the city commission must conduct any required readings and public hearings and approve, approve with conditions or deny the requested amendment. The adopted ordinance must be transmitted to the appropriate county, regional and state agencies, as required by law.

(6) Review Criteria

Decisions on map amendments must be guided by the following criteria:

- a. compliance with the goals, objectives, and policies of the *Comprehensive Plan*;
- b. whether the proposed amendment would adversely affect environmentally sensitive lands;
- c. whether the proposed amendment will cause the level of service of public facilities that are subject to concurrency requirements to drop below levels of service established by the *Comprehensive Plan*;
- d. the amount and availability of vacant land or land suitable for redevelopment for similar uses in the city or on contiguous properties;
- e. whether the proposed change is consistent with the established land use pattern of the areas in reasonable proximity;
- f. whether the existing district boundaries are logically drawn in relation to existing conditions on the property proposed for change; and
- g. other pertinent facts.

22-1820 Subdivisions and Platting

(a) Intent

The procedures of this section are intended to provide a uniform, transparent, and efficient process for the subdivision of land in the city. The procedures are also intended to help ensure that:

- (1) the approval of subdivisions is based on the provision and availability of adequate public facilities and services commensurate with the impact of the proposed development; and
- (2) the subdivision is compatible and coordinated with existing and proposed development in the surrounding area.

(b) Applicability

The subdivision regulations of this section must be followed for the:

- (1) division or redivision of land into 3 or more lots; or
- (2) the dedication of streets or easements to the City of Fort Pierce.

(c) Exemptions

- (1)** The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots comply with all applicable zoning regulations is exempt from the subdivision procedures of this section.
- (2)** The division of land into 5 or fewer lots is exempt from the preliminary plan procedures of 22-1820(e). Such minor subdivisions must comply with the final plat procedures of 22-1820(f).

(d) Authority to File

Applications for approval of a subdivision may be initiated only by petition of the owner of the subject property.

(e) Preliminary Subdivision Plan

(1) Preapplication Consultation

Before filing an application for preliminary subdivision plan approval, the applicant must attend a preapplication consultation. (See 22-1800(a))

(2) Application

Complete applications for approval of a preliminary subdivision plan must be filed with appropriate personnel in the planning division, in a form established by the community development director.

(3) Staff Review

a. Sufficiency Review

Upon receipt of a preliminary subdivision plan application, the community development director must determine if the application is complete and sufficient for review and processing in accordance with 22-1800(e).

b. Report to Planning Board

The community development director must submit a written report with recommendations on the proposed preliminary subdivision plan to the planning board before the meeting of the planning board at which the application will be heard. A copy of the report must be made available to the applicant upon request.

(4) Notice of Hearing

a. Newspaper Notice

Notice of planning board public hearings on preliminary subdivision plan applications must be published in accordance with the requirements of 22-1800(h)(1).

b. Mailed Notice

Notice of planning board public hearings on preliminary subdivision plan applications must be mailed in accordance with the requirements of 22-1800(h)(2).

c. Posted Notice

Notice of planning board public hearings on preliminary subdivision plan applications must be posted mailed in accordance with the requirements of 22-1800(h)(3).

(5) Planning Board Review and Recommendation

- a. After receipt of the community development director's report, the planning board must hold a public hearing on the proposed preliminary subdivision plan and the review the plan to determine if it complies with all applicable regulations.
- b. Following the close of the hearing, at the same or subsequent meeting, the planning board must take action to approve, approve with conditions or disapprove the preliminary subdivision plan based on the approval criteria of [INSERT XREF]. No further action is required on the preliminary plan unless the applicant elects to request review by the city commission in accordance with [INSERT XREF].

(6) Optional Review by City Commission

Applicants for preliminary plan approval may elect to request informal review by the city commission before preparing the final subdivision plat. Requests for city commission review must be submitted to appropriate personnel in the planning division. As part of its informal review the city commission must evaluate the preliminary plan for conformance with this development ordinance. In addition, the city commission may issue an advisory opinion regarding the desirability of any requests for conditions or modifications that were requested by staff or the planning board.

(7) Effect of Approval

Approval of a preliminary subdivision plan (or approval with conditions or modifications) constitutes acceptance of the overall general planning concepts for the subdivision and is a prerequisite for the filing of a final plat. After approval of the preliminary plan the applicant may proceed to the final plat stage of the subdivision approval process.

(8) Phasing

For subdivisions to be developed in phases, phase limits must be shown on the preliminary plat. The planning board may impose conditions upon the phasing plan for the subdivision it deems necessary to ensure the orderly development of the subdivision.

(9) Lapse of Approval

Applicants have 2 years from the date the preliminary plan is recommended for approval to submit a final subdivision plat for the subdivision or for an approved phase of the subdivision. If a final plat is not submitted within the required 2 year period, the preliminary plat approval will lapse and be of no further effect. The community development director is authorized to grant a one-time extension for not to exceed 6 months. This extension may be granted only if the applicant requests the extension before the preliminary plan approval lapses.

(f) Final Plat

(1) Application

Complete applications for final plat approval must be filed with appropriate personnel in the planning division, in a form established by the community development director.

(2) Staff Review

a. Sufficiency Review

Upon receipt of a final plat application, the community development director must determine if the application is complete and sufficient for review and processing in accordance with 22-1800(e).

b. Report to City Commission

1. Upon receipt of a complete application for final plat approval, the community development director must distribute the plat to appropriate reviewers. The final plat must be reviewed to ensure that it is consistent with the approved preliminary plan that it complies with all applicable development ordinance regulations and the *Comprehensive Plan*.
2. The community development director must submit a written report with recommendations on the final subdivision plat to the city commission before the meeting of the city commission at which the application will be heard. A copy of the report must be made available to the applicant upon request.

(3) Notice of Hearing

a. Newspaper Notice

Notice of city commission hearings on final plat applications must be published in accordance with the requirements of 22-1800(h)(1).

b. Mailed Notice

Notice of city commission hearings on final plat applications must be mailed in accordance with the requirements of 22-1800(h)(2).

c. Posted Notice

Notice of city commission hearings on final plat applications must be posted mailed in accordance with the requirements of 22-1800(h)(3).

(4) City Commission Action

- a. After receipt of the community development director's report, the city commission must hold a public hearing on the final plat and review the plat for conformance with these regulations and the *Comprehensive Plan*.
- b. Following the close of the hearing, at the same or subsequent meeting, the city commission must take action to approve, approve with conditions, or deny the final plat by resolution. The resolution must include any acceptance of public dedications made on the plat.
- c. The city commission may approve, approve with conditions, or deny a subdivision variance before approving or denying the final plat.
- d. When the final plat is approved, the Mayor, city clerk and city engineer must affix their signatures to the plat together with number of the resolution approving it.
- e. If a plat is disapproved, the city clerk must attach to the plat a statement setting forth the reasons for such action, and return it to the applicant.

(5) Revisions Prior to Recordation

- a. Changes or revisions to an approved plat after the plat is approved and before it is recorded may be made only by the city engineer to correct scrivener's errors; reflect accurate legal descriptions; or locate rights-of-way dedications, drainage ways or easements. No changes may be made by the city engineer unless an application for such change is made by the preparer of the plat.

- b. No other changes or revisions to an approved plat prior may be made before it is recorded unless resubmitted for new approval.

(6) Recording

- a. Following approval of the final plat by the city commission, the applicant must record the final plat in the public records of St. Lucie County. The final plat must be recorded within 30 days of final approval by the city commission. After recording of the final plat, the applicant must submit 5 certified copies of the recorded final plat to the city clerk's office.
- b. If the applicant fails to record the final plat within the required timeframe, the city commission's final plat approval will lapse and be of no further effect, in which case the final plat approval process must be repeated before recording the plat.

(7) Certificates of Occupancy

No certificate of occupancy may be issued until all subdivision improvements required in [INSERT XREF] (e.g. monuments, streets, sidewalks, fire hydrants) have either been installed (completed) or guaranteed in a form to be reviewed and approved by the city attorney.

(8) Withholding of Public Improvements

No public services or improvements may be provided by the city (e.g., maintenance of streets, the furnishing of sewer or water service) to any subdivision that has not been approved in accordance with this development ordinance.

22-1830 Subdivision Variances

(a) Intent

The subdivision variance procedures of this section are intended to provide a uniform, transparent, and efficient process for granting variances from the subdivision-related provisions of this development ordinance [INSERT XREF] when requiring strict compliance with such regulations would create an undue and unnecessary hardship on the subject property owner. By doing so, the procedures are intended to help ensure that the public health, safety and welfare are protected.

(b) Applicability

The subdivision variance procedure of this section may be used to request relief from strict compliance with the subdivision-related regulations of [INSERT XREF].

(c) Procedure

Subdivision variances must be requested as part of the preliminary subdivision plan application must be considered as part of the subdivision review and approval process.

(d) Review Criteria

To approve a subdivision variance, the city commission must determine that the variance complies with the following standards:

- (1) that special conditions and circumstances exist that are unique to the land involved;
- (2) the special conditions and circumstances are not the result of the actions of the applicant;
- (3) the requested variance, if approved, will not confer on the applicant any special privilege that is denied by the provisions of this development ordinance to other similarly situated lands;

- (4) literal interpretation of the provisions of the development ordinance would deprive the applicant of rights commonly enjoyed by other similarly situated properties under the terms of this development ordinance and would result in unnecessary and undue hardship on the applicant;
- (5) the variance granted is the minimum variance that will make possible the reasonable use of the land; and
- (6) granting the variance will be in keeping with the general purpose and intent of this development ordinance and will not be injurious to the area involved or otherwise detrimental to the public welfare.

22-1840 Conditional Uses

Editor's Note: An entirely new process has been proposed. It authorizes the planning board to make final decisions on conditional uses. Under this proposal, planning board decisions would be appealable to the city commission.

(a) Intent

The purpose of the conditional use review process is to allow, when desirable, uses that would not be appropriate generally or without restriction throughout the subject zoning district, but that if controlled in number, intensity, location or relationship to the surrounding area, would not adversely affect the public health, safety, comfort, appearance, convenience and general welfare.

(b) Applicability

The conditional use procedure of this section applies only when expressly authorized or required under this development ordinance.

(c) Authority to File

Applications for conditional use approval may be initiated only by the owner of the subject property or by the owner's authorized agent.

(d) Application

Complete applications for conditional use approval must be filed with appropriate personnel in the planning division, in a form established by the community development director.

(e) Staff Review

(1) Sufficiency Review

Upon receipt of a conditional use application, the community development director must determine if the application is complete and sufficient for review and processing in accordance with 22-1800(e).

(2) Report to Planning Board

The community development director must submit a written report with recommendations on the proposed conditional use to the planning board before the meeting of the planning board at which the application will be heard. A copy of the report must be made available to the applicant upon request.

(f) Notice of Hearing

(1) Newspaper Notice

Notice of all public hearings on conditional uses must be published in accordance with the requirements of 22-1800(h)(1).

(2) Mailed Notice

Notice of all public hearings on conditional uses must be mailed in accordance with the requirements of 22-1800(h)(2).

(3) Posted Notice

Notice of all public hearings on conditional uses must be posted mailed in accordance with the requirements of 22-1800(h)(3).

(g) Planning Board Review and Decision

(1) After receipt of the community development director's report, the planning board must hold a public hearing on the proposed conditional use.

(2) Following the close of the hearing, at the same or subsequent meeting, the planning board must take action to approve, approve with conditions or deny the conditional use based on the approval criteria of 22-1840(h).

(3) Any conditions imposed on the approval of a conditional use must be expressly described and must serve as the basis for any subsequent development agreement or development order associated with the conditional use.

(h) Approval Criteria

The planning board may approve an application for a conditional use or approve an application with conditions only when they find that all of the following criteria are met:

(1) the proposed conditional use is consistent with the *Comprehensive Plan*;

(2) the proposed conditional use will not cause the level of service of public facilities that are subject to concurrency requirements to drop below levels of service established by the *Comprehensive Plan*;

(3) the proposed conditional use at the proposed location will not result in adverse impacts to adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety, and general welfare, either as they now exist or as they may exist in the future;

(4) the proposed conditional use meets all of the requirements of this development ordinance that apply to it; and

(5) existing regulations are in place to mitigate potential adverse impacts of the proposed conditional use, or reasonable conditions can be imposed and enforced to mitigate potential adverse impacts.

(i) Appeals

(1) Any person aggrieved by a conditional use decision of the planning board may appeal the board's decision to the city commission by filing a written appeal with appropriate personnel in the planning division.

- (2) In the case of such appeal, the city commission may act on the conditional use as a new matter (de novo) and, by simple majority vote, approve, approve with conditions or deny the conditional use application based on the approval criteria of 22-1840(h).
- (3) At least one public hearing is required, and appellants must pay the applicable appeal fee to cover the costs of public notice and additional application processing.

(j) Lapse of Approval

- (1) An approved conditional use will lapse and have no further effect 2 years after it is approved by the planning board, unless:
 - a. a building permit has been issued and construction diligently pursued;
 - b. a certificate of occupancy has been issued;
 - c. the building or use has been established; or
 - d. the planning board extends the expiration period by no more than one year.
- (2) Requests for extensions must be submitted to the community development director before the conditional use approval expires and must be processed in accordance with the procedures for approval of a conditional use, including applicable fees, notices and hearings.
- (3) A conditional use also lapses upon revocation of a building permit for violations of conditions of approval or upon expiration of a building permit.

(k) Transferability

Conditional use approval runs with the land. Its status is not affected by changes of tenancy, ownership, or management.

(l) Amendments

(1) Minor Amendments

The community development director is authorized to approve the following minor amendments to approved conditional uses, provided that the requested amendment is consistent with *Comprehensive Plan* and the regulations of this development ordinance and the amendment is the minimum amendment necessary to overcome a particular site planning difficulty:

Editor's Note: These criteria are based on those in use in St. Lucie County.

- a. increasing any dimension of a single structure by not more than 25%;
- b. altering the location of any single structure or group of structures by not more than 100 feet;
- c. altering the residential density of development in any single stage or phase of development by not more than 10 percent, provided that the overall density is not increased);
- d. altering the location of any motorized or non-motorized vehicle circulation feature (e.g., driveway, parking lot, sidewalk, trail) by not more than 50 feet;
- e. altering the location of any motorized or non-motorized traffic circulation feature by more than 50 feet if it results in a reduction of impervious surface;
- f. altering the location of any open space by not more than 50 feet;

- g.** reducing the total amount of open space by not more than 5% or reducing the yard area or open space associated with any single structure by not more than 5%;
- h.** altering the location or type of landscaping elements; or
- i.** reducing the intensity of development by reducing the amount of building area, impervious surface area, or residential density.

(2) Major Amendments

Major amendments to approved conditional uses must be reviewed and approved in accordance with the conditional use procedures of this section. Major amendments include any proposed modifications other than those expressly identified as allowed minor amendments under 22-1840(l)(1) and any modifications of conditions of approval imposed at the time of conditional use approval. The requirements for fees, notices, hearings, actions and approval criteria for major amendments are the same as required of the original action.

22-1850 Site Plan Review

(a) Intent

Site plan review is a procedure that allows for review of development plans to determine if such plans comply with city regulations and policies. The process is intended to ensure compliance with the regulations of this development ordinance and promote development reflecting the goals, objectives and policies of the Comprehensive Plan. The site plan review procedures of this section are intended to help ensure that the site plan review process is uniform, transparent, and efficient.

(b) Applicability

(1) Major Site Plan Review

Major site plan review is required whenever the provisions of this development ordinance expressly state that it is required and for all proposed developments that:

- a.** include 50 or more dwelling units;
- b.** include 10 or more lodging units;
- c.** include 25,000 square feet or more nonresidential (gross) floor area on a single floor;
- d.** include 50,000 square feet or more nonresidential (gross) floor area in cumulative total;
- e.** include 25,000 square feet or more impervious surface area on a lot with no principal building;
- f.** include at-grade or above-grade (structured) parking for 25 or more vehicles; or
- g.** expand existing development in a way that any of the preceding major site review thresholds would be met.

(2) Minor Site Plan Review

Minor site plan review is required whenever the provisions of this development ordinance expressly state that it is required and for all proposed developments that:

- a.** include one or more drive-through windows or the service of food to customers in motor vehicles;

- b. include more than 15 and fewer than 50 dwelling units;
- c. include more than 4 and fewer than 10 lodging units;
- d. include more than 5,000 square feet but less than 25,000 square feet of non-residential (gross) floor area on a single floor;
- e. include more than 5,000 square feet but less than 50,000 square feet of non-residential (gross) floor area in cumulative total;
- f. include more than 2,500 square feet but less than 25,000 square feet of impervious surface area on a lot with no principal building;
- g. include above-grade parking for more than 5 but fewer than 25 vehicles; or
- h. expand existing development in a way that any of the preceding minor site review thresholds would be met.

(c) Exemptions

The site plan review procedures of this section do not apply to developments consisting solely of detached houses or to any developments for which a valid, unexpired site plan approval exists.

(d) Authority to File

Applications for site plan review approval may be initiated only by the owner of the subject property or by the owner's authorized agent.

(e) Application

Complete applications for site plan review approval must be filed with appropriate personnel in the planning division, in a form established by the community development director.

(f) Decision-Making Authority

(1) Minor Site Plan Review

The community development director has final decision-making authority on minor site plan applications. No public hearing is required.

(2) Major Site Plan Review

The planning board has final decision-making authority on major site plan applications. At least one public hearing is required.

(g) Notice of Hearing

(1) Newspaper Notice

Notice of all public hearings on site plan review must be published in accordance with the requirements of 22-1800(h)(1).

(2) Mailed Notice

Notice of all public hearings on site plan review must be mailed in accordance with the requirements of 22-1800(h)(2).

(3) Posted Notice

Notice of all public hearings on conditional uses must be posted mailed in accordance with the requirements of 22-1800(h)(3).

(h) Review and Action

(1) Minor Site Plan Review

The community development director must review each complete application for minor site plan approval and take one of the following actions:

- a. approve the application;
- b. approve the application with conditions;
- c. disapprove the application and identify those revisions or modifications that would allow it to be approved; or
- d. at the discretion of the community development director, forward the application to the planning board for review and action in accordance with the major site plan review procedures.

(2) Major Site Plan Review

a. The community development director must review each complete application for major site plan approval and recommend that the planning board take one of the following actions:

1. approve the application;
2. approve the application with conditions; or
3. disapprove the application and identify those revisions or modifications that would allow it to be approved.

b. The planning board must hold a public hearing on the major site plan application and take one of the following actions:

1. approve the application;
2. approve the application with conditions;
3. disapprove the application and identify those revisions or modifications that would allow it to be approved; or
4. act to continue the matter to a time certain for further deliberation.

(i) Approval Criteria

In order to be approved, a major or minor site plan must comply with all of the following criteria:

- (1) the development proposed on the site plan must comply with all regulations of this development ordinance that apply to it and with all other applicable city ordinances and policies (Note: this provision is not intended to prohibit an applicant from seeking a variance or other form of relief authorized under this development ordinance, but the variance or other relief must be obtained before site plan approval);
- (2) the development proposed on the site plan must be consistent with the *Comprehensive Plan*;
- (3) the development proposed may not cause the level of service of public facilities that are subject to concurrency requirements to drop below levels of service established by the *Comprehensive Plan*;
- (4) all federal and state permit approvals required for the proposed development have been issued by the authorized regulatory agency or the subject agency has indicated

its intent to issue the permit or the development order conditions approval on the receipt of all necessary state and federal permits before commencement of development on the subject property; and

- (5) the development proposed on the site plan will not have an undue adverse effect upon surrounding lands, the character of the neighborhood in which the development is proposed to be located, (motorized and non-motorized) traffic conditions, parking, utility facilities, and other matters affecting the public health, safety, and general welfare.

(j) Appeals

- (1) Appeals of the community development director's decision on a minor site plan application may be taken to the planning board by filing a notice of appeal with the community development director. Appeals must be filed within 15 calendar days of the date of the decision.
- (2) Appeals of the planning board's decision, in the case of major site plan applications or minor site plan applications appealed to the planning board, may be appealed to the city commission by filing a notice of appeal with the community development director. Appeals must be filed within 15 calendar days of the planning board's decision.
- (3) The following persons and entities have standing to appeal the action of the community development director or planning board on an application for site plan approval:
 - a. the applicant; or
 - b. any other party aggrieved by the decision.
- (4) In the case of appeals, the planning board or city commission, as applicable, must act on the site plan as a new matter (de novo), using the approval criteria of 22-1850(i). At least one public hearing is required, and appellants must pay the applicable appeal fee to cover the costs of public notice and additional application processing.

(k) Lapse of Approval

- (1) An approved major or minor site plan will lapse and have no further effect 2 years after its date of approval unless a certificate of zoning compliance and building permit (if required) has been issued or a phasing plan with different lapse of approval provisions is expressly approved as part of the site plan approval, in which case the phasing plan governs.
- (2) A lapse of approval period of less than 2 years may be established at the time of major or minor site plan approval if a certificate of public facility capacity guarantees the necessary public facility capacity for less than 2 years, in which case the site plan will lapse and have no further effect within the period of time for which the service provider guarantees that the necessary public facility capacity will be available to serve the development shown on the site plan.
- (3) An approved site plan will also lapse and be of no further effect upon expiration or revocation of a building permit.

(l) Transferability

Site plan approval runs with the land. Its status is not affected by changes of tenancy, ownership, or management.

(m) Amendment of Approved Site Plans

(1) Minor Amendments

- a. The community development director is authorized to approve the following minor amendments to approved site plans:

Editor's Note: These criteria are based on those in use in St. Lucie County.

- b. increasing any dimension of a single structure by not more than 25%;
- c. altering the location of any single structure or group of structures by not more than 100 feet on the same property;
- d. altering the residential density of development in any single stage or phase of development by not more than 10 percent, provided that the overall density is not increased);
- e. altering the location of any motorized or non-motorized traffic circulation feature (e.g., driveway, parking lot, sidewalk, trail) by not more than 50 feet;
- f. altering the location of any motorized or non-motorized traffic feature element by more than 50 feet if it results in a reduction of impervious surface;
- g. altering the location of any open space by not more than 50 feet;
- h. reducing the total amount of open space by not more than 5% or reducing the yard area or open space associated with any single structure by not more than 5%;
- i. altering the location or type of landscaping elements; or
- j. reducing the intensity of development by reducing the amount of building area, impervious surface area, or residential density.
- (2)** Applications for minor site plan amendments must be submitted to appropriate personnel in the planning division. The application must be submitted in a form approved by the community development director and include at least the enough information for the community development director to determine whether the approval criteria have been met.
- (3)** Upon receipt of a complete application for a minor site plan amendment, the community development director must review the application, consult with other city staff, appropriate, and take action to approve, approve with conditions or deny the minor amendment. In order to approve a minor amendment or approve a minor amendment with conditions, the community development director must determine that all of the following criteria are met:
- a. the amendment is an authorized minor amendment
- b. the amendment is consistent with *Comprehensive Plan* and the regulations of this development ordinance;
- c. the amendment is the minimum amendment necessary to overcome a particular site planning difficulty or the minimum necessary to improve functionality or operation of the proposed development; and
- d. does not negatively impact neighboring properties in terms of noise, traffic, environmental resources and appearance.

(4) Major Amendments

Major amendments to approved site plans must be reviewed and approved in accordance with the same procedures used for approval of the original site plan. Major amendments include any proposed modifications other than those expressly identified as allowed minor amendments under 22-1850(m)(1) and any modifications of conditions of approval imposed at the time of site plan approval. The requirements for fees, notices, hearings, actions and approval criteria for major amendments are the same as required of the original action.

22-1860 Zoning Variances

(a) Intent

The zoning variance procedures of this section are intended to provide a uniform, transparent, and efficient public review process for granting variances from the zoning-related provisions of this development ordinance when requiring strict compliance with such regulations would create an undue and unnecessary hardship on the subject property owner. By doing so, the procedures are intended to help ensure that the public health, safety and welfare are protected and that substantial justice be done.

(b) Variances on Designated Historic Sites

Variances involving properties designated by the city commission as historic sites—either as individual sites or buildings within districts—must be heard and decided by the historic preservation board rather than the board of adjustment. In carrying out this authority, the historic preservation board must follow the same procedures specified for the board of adjustment in this section, and may grant variances only when necessary to promote preservation, rehabilitation or restoration.

(c) Applicability

The zoning variance procedure of this section may be used to request relief from strict compliance with any provision of this development ordinance except that the variance procedures may not be used to:

- (1)** permit a use in a zoning district that is not otherwise allowed in that zoning district (i.e., “use variances” are prohibited);
- (2)** waive, modify or amend any use classification;
- (3)** waive, modify or otherwise vary any of the review and approval procedures of this article;
- (4)** waive, vary, modify or otherwise override a condition of approval or requirement imposed by another duly authorized board or commission; or
- (5)** waive, modify or otherwise vary any provision of [INSERT X-REFERENCE TO SUBDIVISION AND OTHER REGULATIONS OF THE DEV’T ORD THAT MAY NOT BE VARIED THROUGH ZONING VARIANCE PROCEDURE].

(d) Authority to File

Applications for zoning variances may be initiated only by the owner of the subject property or by the owner’s authorized agent.

(e) Application

Complete applications for zoning variances must be filed with appropriate personnel in the planning division, in a form established by the community development director. The application must contain or be accompanied by a written summary describing the proposed use

of the property and the justification for the requested variance describing how the proposed zoning variance meets the approval criteria of 22-1860(i).

(f) Staff Review

(1) Sufficiency Review

Upon receipt of a zoning variance application, the community development director must determine if the application is complete and sufficient for review and processing in accordance with 22-1800(e).

(2) Report to Board of Adjustment

The community development director must submit a written report with recommendations on the proposed zoning variance to the board of adjustment before the meeting of the board of adjustment at which the application will be heard. A copy of the report must be made available to the applicant upon request.

(g) Notice of Hearing

(1) Newspaper Notice

Notice of board of adjustment public hearings on zoning variances must be published in accordance with the requirements of 22-1800(h)(1).

(2) Mailed Notice

Notice of board of adjustment public hearings on zoning variances must be mailed in accordance with the requirements of 22-1800(h)(2).

(3) Posted Notice

Notice of board of adjustment public hearings on zoning variances must be posted mailed in accordance with the requirements of 22-1800(h)(3).

(h) Board of Adjustment Review and Decision

(1) After receipt of the community development director's report, the board of adjustment must hold a public hearing on the proposed zoning variance.

(2) Following the close of the hearing, at the same or subsequent meeting, the board of adjustment must take action to approve, approve with conditions or deny the zoning variance based on the approval criteria of 22-1860(i).

(3) Any conditions imposed on the approval of a zoning variance must be expressly described and must serve as the basis for any subsequent development agreement or development order associated with the zoning variance.

(i) Approval Criteria

The board of adjustment may approve an application for a zoning variance only when they find that all of the following criteria are met:

(1) special conditions and circumstances exist that are unique to the land or structure involved and that are not applicable to other land or structures in the same zoning district;

(2) the special conditions and circumstances are not the result of the actions of the applicant;

- (3) the requested variance, if approved, will not confer on the applicant any special privilege that is denied by the provisions of this development ordinance to other lands or structures in the same zoning districts;
- (4) literal interpretation of the provisions of the development ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this development ordinance and would result in unnecessary and undue hardship on the applicant;
- (5) the variance granted is the minimum variance that will make possible the reasonable use of the land or structure; and
- (6) granting the variance will be in keeping with the general purpose and intent of this development ordinance and will not be injurious to the area involved or otherwise detrimental to the public welfare.

(j) Appeals

Any person aggrieved by a decision of the board of adjustment may appeal the board's decision by filing an appeal within 30 days of the board of adjustment's decision, in the manner provided for by the Florida Rules of Appellate Procedure.

(k) Lapse of Approval

- (1) An approved zoning variance will lapse and have no further effect 2 years after it is granted by the board of adjustment unless:
 - a. a building permit has been issued;
 - b. a certificate of occupancy has been issued;
 - c. the building or use has been established (if no building permit or certificate of occupancy was required); or
 - d. the board of adjustment extends the expiration period by no more than one year.
- (2) Requests for extensions must be submitted to the planning division before the variance lapses and must be processed in accordance with the procedures for approval of a zoning variance, including applicable fees, notices and hearings.
- (3) A zoning variance also lapses upon revocation of a building permit for violations of conditions of approval or upon expiration of a building permit.

(l) Transferability

Zoning variances run with the land. Their status is not affected by changes of tenancy, ownership, or management.

(m) Amendments

A request for changes in conditions of approval of a zoning variance must be processed as a new variance application, including the requirements for fees, notices and hearings.

22-1870 Appeals of Administrative Decisions

(a) Applicability; Authorized Appeals

The board of adjustment is authorized to hear and decide appeals where it is alleged there has been an error in any order, requirement, decision or determination made by the community development director or other city administrative official in the administration, interpretation or enforcement of this development ordinance.

(b) Right to Appeal

Appeals of administrative decisions may be filed by any person aggrieved by the administrative official's decision or action.

(c) Application Filing

- (1) Complete applications for appeals of administrative decisions must be filed with appropriate personnel in the planning division, in a form established by the community development director.
- (2) Appeals of administrative decisions must be filed within 30 days of the date of the decision being appealed.

(d) Effect of Filing

The filing of a complete notice of appeal stays all proceedings in furtherance of the action appealed, unless the administrative official whose decision is being appealed certifies to the board of adjustment, after the appeal is filed, that, because of facts stated in the certification, a stay would cause immediate peril to life or property. Filing of such certification dissolves any stay otherwise in place, unless the stay is subsequently reinstated by the board of adjustment.

(e) Record of Decision

Upon receipt of a complete application of appeal, the administrative official whose decision is being appealed must transmit to the board of adjustment all papers constituting the record upon which the action appealed is taken.

(f) Notice of Hearing

(1) Newspaper Notice

Notice of board of adjustment public hearings on zoning variances must be published in accordance with the requirements of 22-1800(h)(1).

(g) Hearing and Final Decision

- (1) The board of adjustment must hold a public hearing on the appeal.
- (2) Following the close of the hearing, at the same or subsequent meeting, the board of adjustment must take action on the appeal.
- (3) In exercising the appeal power, the board of adjustment has all the powers of the official from whom the appeal is taken, and the board of adjustment may reverse the appeal or affirm the appeal, in whole or in part, or modify the decision being appealed.
- (4) In acting on the appeal the board of adjustment must grant to the official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant.

(h) Review Criteria

An appeal may be sustained only if the board of adjustment finds that the administrative official erred.

(i) Appeals

Any person aggrieved by a decision of the board of adjustment may appeal the board's decision by filing an appeal within 30 days of the board of adjustment's decision, in the manner provided for by the Florida Rules of Appellate Procedure.

22-1880 Abandonment and Vacations

(a) Intent

The abandonment and vacation procedures of this section are intended to provide a uniform, transparent, and efficient public review process for reviewing proposals to abandon and vacate non-fee property interests of the city.

(b) Applicability

The procedures of this section apply to city streets, alleys, easements and other similar non-fee property interests of the city.

(c) Staff Review

The community development director must submit a written report with recommendations on the proposed abandonment and vacation to the city commission before the meeting of the city commission at which the application will be heard.

(d) Notice of Hearing

(1) Newspaper Notice

Notice of city commission public hearings on abandonment/vacation requests must be published in accordance with the requirements of 22-1800(h)(1).

(2) Mailed Notice

Notice of city commission public hearings on abandonment/vacation requests must be mailed in accordance with the requirements of 22-1800(h)(2).

(3) Posted Notice

Notice of city commission public hearings on abandonment/vacation requests must be posted mailed in accordance with the requirements of 22-1800(h)(3).

(e) City Commission Review and Decision

After receipt of the community development director's report, the city commission must hold a public hearing on the proposed abandonment/vacation request. The city commission in its sole discretion may approve, approve with conditions or deny an application for the abandonment or vacation of city streets, alleys, easement and other non-fee interests which the city may have in real property.

(f) Approval Criteria

Applications for abandonment and vacation of city streets, alleys, easements and other non-fee interests that the city may have in real property may be approved provided that the city commission determines that:

(1) The non-fee property interest sought to be abandoned:

a. does not provide a benefit to the public health, safety, welfare, or convenience, in that:

1. it is not being used by the city for any of its intended purposes and
2. the *Comprehensive Plan* or capital improvement program does not anticipate its use; or

b. provides some benefit to the public health, safety, welfare, or convenience, but the overall benefit anticipated to result from the abandonment outweighs the specific benefit derived from the non-fee property interest, in that:

1. the vacation or abandonment will not frustrate any *Comprehensive Plan* or capital improvement program of the city; and
2. the vacation or abandonment will not interfere with any planning effort of the city that is underway at the time of the application but is not yet completed.

22-1890 Development Agreements

(a) Intent

- (1) The procedures of this section are intended to enable the city, in its sole discretion, to invoke the provisions of the “Florida Local Government Development Agreement Act” while also retaining all home rule authority granted pursuant to Article VIII of the Constitution of the State of Florida and Chapters 163 and 166, Florida Statutes, to enter into other, similar agreements outside the provisions of the “Florida Local Government Development Agreement Act.”
- (2) Development agreements made pursuant to this section are intended to protect and promote the public health, safety and welfare by providing certain guarantees to land developers in exchange for their agreement to provide specified public facilities or services that are related to and consistent with the city’s capital improvement planning and financing.

(b) Eligible Parties

Only owners of the subject property and vendees under an enforceable contract for the sale of the subject property are recognized as having a sufficient equitable interest and legal capacity to be a party to a development agreement made pursuant to this section. Persons merely having an option to purchase real property may not be party to a development agreement.

(c) Application

Development agreements must be submitted to appropriate personnel in the city manager’s office.

(d) Review, Recommendation and Action

- (1) The city manager must recommend to the planning board and city commission whether the city should become, or decline to become, a party to the agreement, or a modified form of the agreement, with such information as the city manager deems necessary to support a recommendation.
- (2) The planning board, after a public hearing, must provide a recommendation to city commission regarding whether the city should become a party to the development agreement and what, if any, modifications should be made to the agreement.
- (3) The city commission, upon the recommendation of the city manager and the planning board and after a public hearing, must make a final determination on whether the city should become a party to the development agreement. The city commission’s decision must be based on whether the development agreement is consistent with and helps to ensure implementation of the goals, policies and objectives of the *Comprehensive Plan*.

(e) Contents

A development agreement must contain, at a minimum, the following information:

- (1) a legal description of the land subject to the development agreement;

- (2) the names of all persons having legal or equitable ownership of the land;
- (3) the duration of the development agreement;
- (4) the uses proposed for the land, including density, intensity and building heights;
- (5) a description of the public facilities and services that will serve the development, including
 - a. a description of who is responsible for providing such public facilities and services;
 - b. the date any new public facilities and services, if needed, will be constructed;
 - c. a description of who is responsible for bearing the expense of construction of any new public facilities and services; and
 - d. a schedule to assure that the public facilities and services are available concurrent with the impacts of the development.;
- (6) a description of any reservation or dedication of land for public purposes;
- (7) a description of all local development approvals approved or needed to be approved for the development;
- (8) a statement indicating that the failure of the development agreement to address a particular permit, condition, term or restriction does not relieve the developer of the necessity of complying with the law governing such permitting requirements, conditions, terms or restrictions;
- (9) an express statement that subsequently adopted ordinances and codes of the city that are of general applicability not governing the development of land will be applicable to the lands subject to the development agreement, and that such modifications are specifically anticipated in the development agreement; and
- (10) other such conditions, terms, restrictions or other requirements to which the parties to the agreement may desire to include and that are not otherwise prohibited by law or exceed the authority vested in the parties.

(f) Notice

(1) Newspaper Notice

Notice of all public hearings on development agreements must be published 7 days before each public hearing. See also the requirements of 22-1800(h)(1).

(2) Mailed Notice

Notice of all public hearings on development agreements must be mailed in accordance with the requirements of 22-1800(h)(2).

(3) Posted Notice

Notice of all public hearings on development agreements must be posted mailed in accordance with the requirements of 22-1800(h)(3).

(g) Amendment and Cancellation of Development Agreements

A development agreement adopted pursuant to the procedures of this section may be amended or cancelled by mutual consent of the parties or by their successors in interest by utilizing the same public hearing and notice requirements as are prescribed for the adoption of development agreements, as set forth in this section.

(h) Appeals

No person may challenge the validity of a development agreement on the grounds that the agreement conflicts with the *Comprehensive Plan*, except pursuant to the procedures set forth in Section 163.3215, Florida Statutes. A party or a successor in interest to a party to a development agreement may bring suit to challenge the city's administration of a development agreement only after the party or successor has exhausted the appeal provisions of 22-1870.

22-1900 Vested Rights Determinations

(a) Intent

The vested rights determination procedure is intended to provide an administrative remedy for applicants who allege that their vested rights have been abrogated by a final action of the city.

(b) Applicability

The procedures of this section set out a process for obtaining an official and binding determination of vested rights to use or develop property in a particular manner.

(c) Authority to File

Applications for vested rights determinations may be initiated only by the owner of the subject property or by the owner's authorized agent.

(d) Application

- (1)** Complete applications for vested rights determinations must be filed with appropriate personnel in the planning division, in a form established by the community development director.
- (2)** Applications must be submitted within 30 days of the date of the final action taken that allegedly abrogate rights the applicant claims to be vested.

(e) Staff Review

(1) Sufficiency Review

Upon receipt of an application for vested rights determination, the community development director must determine if the application is complete and sufficient for review and processing in accordance with 22-1800(e).

(2) Report to City Commission

The community development director must submit a written report with recommendations to the city commission before the meeting of the city commission at which the matter will be heard.

(f) Notice of Hearing

(1) Newspaper Notice

Notice of all public hearings on vested rights determination requests must be published in accordance with the requirements of 22-1800(h)(1).

(2) Mailed Notice

Notice of all public hearings on vested rights determination requests must be mailed in accordance with the requirements of 22-1800(h)(2).

(3) Posted Notice

Notice of all public hearings on vested rights determination requests must be posted mailed in accordance with the requirements of 22-1800(h)(3).

(g) City Commission Review and Decision

- (1)** The city commission must convene a public hearing on the vested rights determination request.
- (2)** Following the public hearing, the city commission must act to approve the vested rights determination request, approve the request with conditions or deny the request.

(h) Approval Criteria

The city commission must grant a determination of vested rights if it is demonstrated that all of the following criteria are satisfied:

- (1)** a valid, unexpired governmental act of the City of Fort Peirce authorizes the specific development for which the vested rights determination is sought;
- (2)** expenditures or obligations were made or incurred by the property owner in good faith reliance on the authorizing act that are not reasonably usable in a development that is permitted by applicable regulations of this development ordinance;
- (3)** it would be inequitable to deny the applicant the opportunity to complete the previously approved development, in that:
 - a.** actual construction has commenced;
 - b.** the injury suffered by the applicant outweighs the public cost of allowing the applicant's development to proceed;
 - c.** the development was economically viable at the time it was approved;
 - d.** the expenses or obligations incurred in good faith, and without notice of a pending change in regulations that would prohibit the development for which vested rights are sought; and
 - e.** the applicant cannot make a reasonable return on previous project expenditures by developing in accordance with the current regulations; and
- (4)** the relief to be granted is the minimum relief necessary to provide the applicant with a reasonable rate of return on their investment made before the effective date of the regulations that the applicant alleges to have abrogated their vested rights.

(i) Effect of Vested Rights Determination

A vested rights determination must be set out in writing, specifically describing the rights that have been recognized by the city commission as vested.

(j) Lapse of Approval

Vested rights must be utilized within 2 years of the date that the vested rights determination is rendered. If physical construction of buildings has not commenced or is not on-going and continuous pursuant to a valid building permit, the vested rights will lapse and be of no further effect.

22-1910 Relief from Inordinate Burdens

(a) Intent

The procedures of this section establish a process that is intended to help avoid expensive, uncertain, unnecessary, and protracted litigation regarding the application of the regulations of this development ordinance to individual properties. The procedures are specifically intended to provide a process for property owners to notify the city of potential litigation and invoke the exercise of the city's authority and discretion pursuant to Article VIII, Sections 2(b) and 6(e) of the Florida Constitution and the Charter of the City of Fort Pierce.

(b) Authority to File

Applications for relief under the procedures of this section may be initiated only by the owner of the subject property or by the owner's authorized agent.

(c) Application

- (1) Applications for relief under this section must be submitted to appropriate personnel in the city manager's office.
- (2) Applications must be filed within 30 days of the date a final development order is rendered that the applicant alleges unfairly, disproportionately, and inordinately burdens their property. Applications must be in a form established by the community development director.
- (3) The application must include, at a minimum, all of the following information:
 - a. a description of the specific regulations that the applicant alleges unfairly, disproportionately and inordinately burdens the property, together with all appraisals, studies, any other supporting evidence, and any actions taken by the city related to the property;
 - b. documentation of the purchase date and price of the property;
 - c. a description of the property's physical features, total acreage, and present use; and
 - d. a description of the action that the landowner believes to represent the minimum relief necessary to relieve the property of the inordinate burdens alleged.

(d) City Manager's Review and Recommendation

(1) Sufficiency Review

Upon receipt of an application for relief under the procedures of this section, the city manager must determine if the application is complete and sufficient for review and processing in accordance with 22-1800(e).

- (2) After determining that the application is complete, the city manager must review that application and consult with relevant staff concerning the application. Based on this review, the city manager must provide the city commission with a report and recommendation on the application and, if applicable, a proposed dispute resolution agreement.

(e) Notice of Hearing

(1) Newspaper Notice

Notice of all public hearings on vested rights determination requests must be published in accordance with the requirements of 22-1800(h)(1).

(2) Mailed Notice

Notice of all public hearings on vested rights determination requests must be mailed in accordance with the requirements of 22-1800(h)(2).

(3) Posted Notice

Notice of all public hearings on vested rights determination requests must be posted mailed in accordance with the requirements of 22-1800(h)(3).

(f) City Commission Review and Decision

- (1)** The city commission must convene a public hearing on the request for relief.
- (2)** Following the public hearing, the city commission must decide whether to make an offer to resolve the dispute.
- (3)** The city commission is authorized to approve, approve with conditions or modifications, or reject the proposed dispute resolution agreement.
- (4)** When the City Commission has approved a proposed dispute resolution agreement or approved a proposed dispute resolution agreement with conditions or modifications, the city manager is authorized to execute the dispute resolution agreement (as modified, if applicable).
- (5)** Once executed by the city manager, the dispute resolution agreement must be placed on the next available consent agenda of the city commission for ratification.

(g) Criteria and Guidelines

- (1)** The decision to grant relief to an applicant pursuant to the procedures of this section rests in the sound discretion of the city commission in the exercise of its powers to settle legitimate disputes. The policy of the city is to fashion a proposal for resolving the dispute based on a considered balance of the following factors:
 - a.** the degree of burden suffered by the applicant;
 - b.** the nature and significance of the public interest that is served by the application of the regulation to the applicant's property; and
 - c.** the likelihood of litigation, and its likely cost, the city's potential exposure, the uncertainty of outcome, the timetable for resolving the issues, and whether there is a perceived need for a judicial determination of the issues raised by the application.
- (2)** If the city commission finds that an applicant has demonstrated that they have suffered an unfair, disproportionate and inordinate burden as a result of the application of these regulations to their property, the city commission may grant appropriate relief. Proposed terms may include, but are not limited to:
 - a.** relief from the application of particular provisions of these regulations; or
 - b.** the transfer of developmental rights from one parcel to another within the city;
 - c.** approval of the original application with or without conditions; or
 - d.** modifications of any previously imposed conditions of approval.
- (3)** In general, it is the policy of the city to resolve disputes in a manner that does not require significant financial expenditures by the city.

- (4) All relief granted pursuant to the procedures of this section must be consistent with the *Comprehensive Plan* and may not violate any controlling federal law or state statute.
- (5) All relief granted pursuant to the procedures of this section is conditioned upon the execution of a release of all claims that may arise from or relate to the application of the regulations of this development ordinance that allegedly created the unfair, disproportionate and inordinate burden. The release of claims must be in a form that is acceptable to the city attorney and must be recorded at the applicant's expense.

(h) Effect of Dispute Resolution Agreement

- (1) Dispute resolution agreements that are executed pursuant to the procedures of this section will not be effective until the later of:
 - a. the date executed by the applicant;
 - b. the date ratified by the city commission; or
 - c. such other date that is set by the parties to the agreement.
- (2) When relief is provided in a dispute resolution agreement pursuant to the procedures of this section, no further procedures are necessary to give effect to the relief unless:
 - a. the additional procedures are specifically required by the dispute resolution agreement; or
 - b. the city agreed to consider a district boundary change or text amendment to this development ordinance.

(i) Recording of Dispute Resolution Agreement

All dispute resolution agreements that are executed pursuant to the procedures of this section must be recorded in the public records of St. Lucie County. If the agreement is silent with regard to who bears the cost of recording, the cost must be borne by the applicant.

(j) Transferability

Approved dispute resolution agreements run with the land. Their status is not affected by changes of tenancy, ownership, or management.

22-1920 Planned Unit Developments

Editor's Note: PUD procedures will be included in the development ordinance. They are forthcoming.

