Chapter 90 ADMINISTRATION [1]

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ARTICLE I. IN GENERAL

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ARTICLE II. BOARDS, COMMITTEES, COMMISSIONS

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Sec. 90-51. Established; designated as local planning agency; authority and responsibilities generally.

(a) Pursuant to and in accordance with F.S. § 163.3174 of the Local Government Comprehensive Planning and Land Development Regulation Act, the city commission finds that planning of land use and continuing growth management evaluation within the city is a public purpose benefiting the safety, economic and cultural welfare of the citizens of the city. The city commission further finds that this public purpose can best be achieved by establishing the planning board, which is established and designated as the local planning agency (LPA) for the city.

(b) Pursuant to and in accordance with F.S. § 163.3175(5) and F.S. § 163.3177(1) of the Local Government Comprehensive Planning and Land Development Regulation Act, the city commission finds that there is a public purpose in coordinating the planning of the city with the Monroe County School Board and the U.S. Military in Key West and adjacent areas.

(c) The planning board shall have the authority and responsibility to review land use in the city and evaluate planning and regulatory techniques for resolving physical, economic, social, environmental

and fiscal issues. The city commission directs the planning board to carry out functions and powers identified in the land development regulations. The planning board shall use the power and authority conferred upon it by the land development regulations to further its stated public purpose.

(Ord. No. 97-10, § 1(1-2.4(A)), 7-3-1997; Ord. No. 06-10, § 1, 5-2-2006)

Sec. 90-52. Membership, terms and removal.

(a) The planning board shall consist of seven members. The five members serving on the board upon adoption of this ordinance shall continue in office, subject to the other provisions in this code, until the expiration of their term. The five members serving on the planning board upon adoption of this ordinance and the two additional members shall be assigned to individual commission members via a lottery system. The two commission members drawing the two new board seats shall expeditiously appoint a member to comprise the new seven person board. Thereafter the appointments shall be as specified in paragraph (b) below. All planning board members must be residents of the city and shall remain city residents for the duration of their memberships on the board.

(b) The mayor and each city commissioner shall appoint one member of the board. The term of the board member shall be for a period of three years except that appointments to replace a member vacating before the expiration of the term shall be for the unexpired term of that member. Board members may be reappointed at the expiration of their term.

(c) All planning board members shall serve at the pleasure of the city commission and may be removed by majority vote of its full membership. If a member is absent from two of three consecutive regular meetings without cause and without prior approval of the chairperson, the planning board shall declare the member's office vacant, and the chairperson shall notify the city commission that the member's office is vacant.

(Ord. No. 97-10, § 1(1-2.4(B)), 7-3-1997; Ord. No. 04-06, § 1, 4-6-2004; Ord. No. 08-04, § 1, 5-20-2008)

Sec. 90-53. Compensation.

All members of the planning board shall serve without compensation but, as authorized by the city commission, may be reimbursed for actual expenses incurred in connection with their duties.

(Ord. No. 97-10, § 1(1-2.4(C)), 7-3-1997)

Sec. 90-54. Liaisons.

(a) The city commission shall appoint one of its members to maintain a liaison with the planning board.

(b) There shall be a nonvoting ex-officio member of the planning board appointed by the Monroe County School District.

(c) The base commander of the Naval Air Station Key West or designee shall be a nonvoting ex-officio member of the planning board.

(Ord. No. 97-10, § 1(1-2.4(D)), 7-3-1997; Ord. No. 06-10, § 2, 5-2-2006)

Sec. 90-55. Functions and powers.

(a) The planning board shall have the power and authority to carry out the duties and responsibilities conferred upon it by the land development regulations consistent with F.S. § 163.3174 and shall perform these duties in the best interests of the health, safety, and welfare of the citizens of the city. The planning board shall have the following functions:

(1) Be responsible for preparation and review of the comprehensive plan. During preparation of the plan prior to any recommendations to the city commission, the planning board shall hold at least one public hearing with due public notice on the proposed plan or element or portion thereof, pursuant to F.S. § 163.3174(4)(a), and make recommendations to the city commission concerning enactment;

(2) Monitor and oversee the effectiveness and status of the comprehensive plan, review any proposed amendments to the comprehensive plan, prepare periodic reports required pursuant to F.S. § 163.3191, and make recommendations to the city commission concerning enactment;

(3) Review proposed land development regulations and amendments thereto and make recommendations to the city commission as to the consistency of proposed land development regulations with the adopted comprehensive plan or element or portion thereof, pursuant to F.S. § 163.3174(4)(c);

(4) Review major development plans submitted pursuant to article II of chapter 108 and make recommendations to the city commission regarding such plans;

(5) Review minor development plans submitted pursuant to article II of chapter 108

(6) Review conditional uses as provided in article III of chapter 122, which may be part of a minor or major development plan;

(7) Review and authorize in specific cases a variance from the terms of the land development regulations where the requirements of section 90-394 are met;

(8) Review subdivision proposals submitted pursuant to chapter 118 and street dedication and reconfiguration proposals and make recommendations to the city commission regarding compliance with applicable laws and ordinances;

(9) Conduct such public hearings as may be required to carry out the functions set forth in this subsection; and

(10) Pursuant to F.S. § 163.3174(4)(d), perform any other duties which are assigned to the planning board by the city commission or by general or special law.

(b) In performing functions set forth in subsections (a)(1) through (5) and (8) of this section, the planning board shall act only in an advisory capacity to the city commission and shall not render final determinations. When the planning board reviews and recommends actions regarding a conditional use which is part of a major development plan as referenced in subsection (a)(7) of this section, the recommendation of the planning board is advisory only, and the city commission shall render the final determination. Any appeal available by provisions of the land development regulations, where the planning board is acting only in an advisory capacity, shall be taken from the final determination of the city commission, and not from the recommendation of the planning board. For minor development plan review and conditional uses under subsections (a)(6) and (7) of this section, the decision of the planning board shall be final, unless the decision is appealed to the city commission within ten days of the decision.

(Ord. No. 97-10, § 1(1-2.4(E)), 7-3-1997; Ord. No. 08-04, § 2, 5-20-2008)

Sec. 90-56. Appropriation of funds.

The city commission shall appropriate funds necessary for expenses incurred by the planning board in its performance of the functions listed in section 90-55. The planning board shall not have the power to contract with private or governmental persons or entities or to commit or expend city funds.

(Ord. No. 97-10, § 1(1-2.4(F)), 7-3-1997)

Sec. 90-57. Rules of procedure.

The planning board shall establish and adopt rules of procedure, which shall include but are not limited to the following:

(1) Election and duties of officers;

(2) Meeting schedule, time, and place;

(3) Establishing the order of business and the method of transaction;

(4) Procedure for action and voting by members;

(5) Conduct of public hearings;

(6) Rules of conduct;

(7) Parliamentary procedure;

(8) Maintenance of records; and

(9) Method of amending the rules.

(Ord. No. 97-10, § 1(1-2.4(G)), 7-3-1997)

Sec. 90-58. Officers.

From among its voting members the planning board annually shall elect a chairperson and a vice-chairperson.

(Ord. No. 97-10, § 1(1-2.4(G)(1)), 7-3-1997; Ord. No. 06-10, § 3, 5-2-2006)

Sec. 90-59. Regular meetings.

The planning board shall attempt to convene on a regularly scheduled basis at least once each month, or more frequently if necessary, and at a designated place to be determined by the planning board. The planning board may meet at such other times as the chairperson or planning board may determine.

(Ord. No. 97-10, § 1(1-2.4(G)(2)), 7-3-1997)

Sec. 90-60. Notice of meetings.

All meetings of the planning board shall be open to the public, and notice of such meetings shall be published in a newspaper of general circulation in the city at least five days in advance thereof. At any special or regular meeting the planning board may set a future meeting date.

(Ord. No. 97-10, § 1(1-2.4(G)(3)), 7-3-1997)

Sec. 90-61. Special meetings.

Special meetings of the planning board may be called by the chairperson or by written notice signed by three voting members. No official action shall be taken during any special meeting unless three members concur.

(Ord. No. 97-10, § 1(1-2.4(G)(4)), 7-3-1997)

Sec. 90-62. Quorum.

Three voting members of the planning board shall constitute a quorum for the transaction of business, but a smaller number may act only to adjourn meetings for lack of a quorum. The affirmative vote of a majority of the quorum shall be required to pass any action of the planning board.

(Ord. No. 97-10, § 1(1-2.4(G)(5)), 7-3-1997; Ord. No. 06-10, § 4, 5-2-2006)

Sec. 90-63. Preparation of agenda, minutes and other records.

(a) All meetings of the planning board shall be open to the public. Except for emergencies so designated by a majority of the full membership, notice of all meetings shall be published as for a regular meeting, and an agenda shall be available to the public at city hall 48 hours in advance thereof.

(b) Minutes shall be kept of all meetings of the planning board or committees thereof.

(c) The planning board shall adopt rules for the transaction of its business and shall keep a properly indexed record of its resolutions, transactions, findings and determinations. Such record shall be a public record.

(Ord. No. 97-10, § 1(1-2.4(G)(6)), 7-3-1997)

Sec. 90-64. Schedule for comprehensive plan review.

The planning board rules of procedure shall establish a schedule for the review of the comprehensive plan pursuant to F.S. § 163.3191 to determine whether comprehensive plan amendments are desirable.

(Ord. No. 97-10, § 1(1-2.4(G)(7)), 7-3-1997)

Sec. 90-65. Public participation.

The planning board shall provide for effective citizen participation in the comprehensive planning process to the fullest extent possible consistent with F.S. § 163.3181. These procedures shall include but are not limited to the following:

(1) Broad dissemination of detailed proposals and alternatives;

(2) The opportunity for written public comments;

(3) Public meetings after reasonable notice;

(4) Provisions for open discussion at all meetings;

(5) Development of communication programs;

(6) Informational services;

(7) Reasonable consideration of and response to public input; and

(8) Assurance that real property owners are provided with notice of all official actions which will regulate the use of their property.

(Ord. No. 97-10, § 1(1-2.4(G)(8)), 7-3-1997)

Sec. 90-66. Updates and other revision to rules of procedure.

From time to time, and by October 1 of each year, the planning board shall recommend to the city commission regulations for the conduct of its business, which recommendation shall govern the planning board upon approval or amendment by the city commission or upon the expiration of 45 days without final city commission action thereon. The rules are at all times subject to amendment by the city commission.

(Ord. No. 97-10, § 1(1-2.4(G)(9)), 7-3-1997)

Sec. 90-67. Personnel.

The city manager shall provide staff support necessary to the planning functions of the planning board and shall provide secretarial support for the planning board in the execution of its duties and in order to record and transcribe in summary form, subject to planning board approval, the minutes of all planning board meetings. The city attorney shall serve as legal counsel to the planning board.

(Ord. No. 97-10, § 1(1-2.4(H)), 7-3-1997)

Sec. 90-68. Appeal of final actions.

Provisions for appeal of final actions of the planning board are stated in division 4 of article V of this chapter.

(Ord. No. 97-10, § 1(1-2.4(I)), 7-3-1997)

Secs. 90-69—90-95. Reserved.

FOOTNOTE(S):

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Cross reference— Committees, boards and commissions, § 2-251 et seq. (Back)

DIVISION 3. BOARD OF ADJUSTMENT [3]

Sec. 90-96. Established; composition.

Sec. 90-97. Powers.

Sec. 90-98. Officers; rules of procedure; meetings; oaths.

Sec. 90-99. Appeals of decisions.

Secs. 90-100—90-125. Reserved.

Sec. 90-96. Established; composition.

The city commission shall serve as the board of adjustment. The board of adjustment shall be a quasi-judicial body consisting of the members of the city commission.

(Ord. No. 97-10, § 1(1-2.5(A)), 7-3-1997)

Sec. 90-97. Powers.

The board of adjustment may authorize in specific cases a variance from the maximum height requirements of the land development regulations and Article 1.05 of the Charter of the City of Key West where the requirements of section 90-394 are met. In addition, the city commission shall hear all appeals to the final orders and administrative and enforcement decisions of the chief building official.

(Ord. No. 97-10, § 1(1-2.5(B)), 7-3-1997; Ord. No. 08-04, § 3, 5-20-2008)

Sec. 90-98. Officers; rules of procedure; meetings; oaths.

(a) The board of adjustment shall elect a chairperson and a vice-chairperson from among its regular members. The administrative official shall appoint a secretary to serve the board of adjustment.

(b) The board of adjustment shall adopt rules for transaction of its business and shall keep a record of its resolutions, transactions, findings and determinations, which shall be a public record and shall be maintained in the office of the administrative official.

(c) Meetings of the board of adjustment shall be held at the call of the chairperson and at such times as the board of adjustment may determine. All meetings shall be open to the public. The chairperson or, in his absence, the acting chairperson may administer oaths. The board of adjustment shall carry out and comply with procedures and public hearing notice requirements cited in division 2 of article VIII of this chapter 90 and section 90-393, together with all other applicable laws and ordinances.

(Ord. No. 97-10, § 1(1-2.5(C)), 7-3-1997; Ord. No. 00-04, § 2, 2-1-2000)

Sec. 90-99. Appeals of decisions.

Any person, jointly or severally, aggrieved by any decision of the board of adjustment may apply, in the manner provided by law, to the county circuit court in the 16th judicial circuit for judicial relief within 30 days after rendition of the written decision.

DIVISION 3. BOARD OF ADJUSTMENT

(Ord. No. 97-10, § 1(1-2.5(D)), 7-3-1997)

Secs. 90-100—90-125. Reserved.

FOOTNOTE(S):

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Cross reference— Committees, boards and commissions, § 2-251 et seq. (Back)

DIVISION 4. HISTORIC ARCHITECTURAL REVIEW COMMISSION [4]

Sec. 90-126. Established.

Sec. 90-127. Membership, terms and removal.

Sec. 90-128. Vacancies.

Sec. 90-129. Compensation.

Sec. 90-130. Powers and functions.

Sec. 90-131. Rules of Procedure.

Sec. 90-132. Officers.

Sec. 90-133. Regular meetings.

Sec. 90-134. Special meetings.

Sec. 90-135. Quorum.

Sec. 90-136. Preparation of agenda and minutes.

Sec. 90-137. Application for action.

Sec. 90-138. Notice and ability to be heard.

Sec. 90-139. Authority to approve or disapprove work.

Sec. 90-140. Revisions to rules of procedure.

Sec. 90-141. Personnel.

Sec. 90-142. Historic Architectural Commission Design Guidelines adopted.

Sec. 90-143. Notice.

Secs. 90-144—90-170. Reserved.

Sec. 90-126. Established.

The city commission finds that the preservation of the character and appearance of the historic preservation districts of the city, as well as buildings, structures, and properties listed in the local register of historic places and the National Register of Historic Places, and buildings, structures, archaeological sites, or districts classified as "contributing" or "contributing but altered" on the city historic preservation survey is a public purpose benefiting the educational, cultural, and economic welfare of the citizens of the city. The city commission further finds that this public purpose can be best achieved through a city agency having the authority and responsibility to review and regulate certain changes in such areas. The city commission hereby creates the historic architectural review commission (HARC), which shall use the power and authority conferred upon it by this Code to further such public purpose.

(Ord. No. 97-10, § 1(1-2.7(A)), 7-3-1997; Ord. No. 00-04, § 4, 2-1-2000)

Sec. 90-127. Membership, terms and removal.

(a) The historic architectural review commission shall consist of seven residents of the city or who shall have a business, employment or profession located in the city and reside in the lower keys from Key West to Big Coppitt Key. Members of the historic architectural review commission shall maintain their qualifications consistent with this section for the duration of their membership. The members serving on the historic architectural review commission upon adoption of this ordinance shall continue in office, subject to the other provisions in this Code until the expiration of their term. Except for the mayoral architectural appointment, the four current remaining regular seats and the two current alternate seats shall be assigned to the six remaining city commission members by lottery system administered by the city clerk. Thereafter, the appointments shall be as specified in paragraph (b) below. Appointments shall be made for a term of two years. Appointments to replace a vacating member shall be for the unexpired term of the member. Historic architectural review commission members may be reappointed at the expiration of their term.

(b) The mayor and each city commissioner shall appoint one member of the historic architectural review commission. The mayor shall appoint an architect registered in the United States, preferably retired or not practicing in the city. Three members in addition to the mayor's architectural appointment shall be professionals in historic preservation related disciplines. More than two professionals in the same discipline in historic preservation can be members of the commission. Preference in all appointments shall be given to professionals or laymen who have demonstrated interest, competence or knowledge in historic preservation. Professional members shall be from the historic preservation related disciplines of architecture, history, architectural history, planning, archaeology, or other related disciplines such as urban planning, American studies, American civilization, cultural geography or cultural anthropology. The city commission may evaluate applicants by using the Florida Certified Local Government Guidelines, a copy of which shall be maintained in the office of the city clerk. Additionally, the mayor shall designate a liaison to the historic architectural review commission from among the city commissioners.

(c) All members shall serve at the pleasure of the city commission and may be removed by majority vote of its full membership. If a member is absent from two of three consecutive regular meetings without cause and without prior approval of the chairperson, the historic architectural review commission shall declare the member's office vacant, and the chairperson shall notify the city commissioner responsible for that seat that the member's office is vacant. All provisions of division 2 of article V of chapter 2 are applicable to members of the historic architectural review commission.

(Ord. No. 97-10, § 1(1-2.7(B)), 7-3-1997; Ord. No. 06-14, § 1, 8-1-2006; Ord. No. 11-10, § 1, 8-2-2011)

Sec. 90-128. Vacancies.

Vacancies in the membership of the historic architectural review commission, including those representing expired terms, shall if possible be filled within 60 days by relevant appointing city commissioner or mayor. If the vacancy is not filled within the period, the city may apply to the state historic preservation officer for an extension of up to an additional 60 days.

(Ord. No. 97-10, § 1(1-2.7(C)), 7-3-1997; Ord. No. 11-10, § 2, 8-2-2011)

Sec. 90-129. Compensation.

All members of the historic architectural review commission shall serve without compensation but, as authorized by the city commission, may be reimbursed for actual expenses incurred in connection with their duties.

(Ord. No. 97-10, § 1(1-2.7(D)), 7-3-1997)

Sec. 90-130. Powers and functions.

The historic architectural review commission shall have the power to carry out the duties and responsibility conferred upon it by the Code of Ordinances and land development regulations.

(Ord. No. 97-10, § 1(1-2.7(E)), 7-3-1997; Ord. No. 00-04, § 4, 2-1-2000; Ord. No. 00-21, § 1, 9-20-2000)

Sec. 90-131. Rules of Procedure.

The historic architectural review commission shall establish and adopt rules of procedure, which shall include but not limited to the following:

(1) Election and duties of officers;

(2) Meeting schedule, time, and place;

(3) Establishing the order of business and the method of transaction;

(4) Procedure for action and voting by members;

(5) Conduct of public hearings;

(6) Rules of conduct;

(7) Parliamentary procedure;

(8) Maintenance of records; and

(9) Method of amending the rules of procedure.

(Ord. No. 97-10, § 1(1-2.7(F)), 7-3-1997)

Sec. 90-132. Officers.

From among its members the historic architectural review commission annually shall elect a chairperson and such other officers as it deems necessary.

(Ord. No. 97-10, § 1(1-2.7(F)(1)), 7-3-1997)

Sec. 90-133. Regular meetings.

The historic architectural review commission shall attempt to convene on a regularly scheduled basis at least once each month. Notice of all meetings will be provided pursuant to section 90-143. At any special or regular meeting the historic architectural review commission may set a future meeting date; however, that meeting must be noticed pursuant to section 90-143.

(Ord. No. 97-10, § 1(1-2.7(F)(2)), 7-3-1997; Ord. No. 00-04, § 4, 2-1-2000; Ord. No. 11-11, § 1, 8-2-2011)

Sec. 90-134. Special meetings.

Special meetings of the historic architectural review commission may be called by the chairperson or by written notice signed by three voting members. No official action shall be taken during any special meeting unless three members concur.

(Ord. No. 97-10, § 1(1-2.7(F)(3)), 7-3-1997)

Sec. 90-135. Quorum.

Four members of the historic architectural review commission shall constitute a quorum for the transaction of business.

(Ord. No. 97-10, § 1(1-2.7(F)(4)), 7-3-1997; Ord. No. 11-10, § 3, 8-2-2011)

Sec. 90-136. Preparation of agenda and minutes.

Minutes shall be kept of all meetings of the historic architectural review commission or committees thereof. All meetings shall be open to the public and, except for emergencies so designated by a majority of the full membership, notice of all meetings shall be published as for a regular meeting pursuant to section 90-143.

(Ord. No. 97-10, § 1(1-2.7(F)(5)), 7-3-1997; Ord. No. 00-04, § 4, 2-1-2000; Ord. No. 11-11, § 2, 8-2-2011)

Sec. 90-137. Application for action.

Applications for historic architectural review commission action shall be filed with the historic architectural review commission. Within 30 days of receipt of the application, the historic architectural review commission shall vote at its meeting to approve or disapprove such application. The 30-day time period shall not include the following:

(1) Periods of plan redrafting or compilation of additional information, where requested by the applicant or by the historic architectural review commission.

(2) Application deferrals where the applicant is not present at one or more the historic architectural review commission meetings or where the meeting is canceled.

(Ord. No. 97-10, § 1(1-2.7(F)(6)), 7-3-1997)

Sec. 90-138. Notice and ability to be heard.

Notice of the date upon which the vote of the historic architectural review commission will be taken shall be provided to the applicant, as shall written notice of the total vote. Applicants shall be given reasonable opportunity to be heard prior to the vote. The historic architectural review commission shall not accept or take action on any application for a certificate of appropriateness for work requiring planning board approval of a major development plan pursuant to sections 108-165 and 108-166, unless the

historic architectural review commission first finds that the applicant has meet the terms of all the requirements of section 90-143.

(Ord. No. 97-10, § 1(1-2.7(F)(7)), 7-3-1997; Ord. No. 11-11, § 3, 8-2-2011)

Sec. 90-139. Authority to approve or disapprove work.

The historic architectural review commission shall have authority to disapprove work which does not augment or preserve the character and appearance of the historic districts. The historic architectural review commission shall have authority to approve work which is deemed to augment or preserve the character and appearance of the historic districts. If approved, the certificate of appropriateness shall be issued by signature of the presiding member of the historic architectural review commission. If disapproved, the applicant may modify and resubmit the application according to the historic architectural review commission regulations or may appeal as provided in division 4 of article V of this chapter.

(Ord. No. 97-10, § 1(1-2.7(F)(8)), 7-3-1997)

Sec. 90-140. Revisions to rules of procedure.

From time to time and by October 1 of each year, the historic architectural review commission shall recommend to the city commission regulations for the conduct of its business which guide the historic architectural review commission decisions, which recommendation shall govern the historic architectural review commission upon approval or amendment by the city commission or upon the expiration of 45 days without final city commission action thereon. The rules are at all times subject to amendment by the city commission.

(Ord. No. 97-10, § 1(1-2.7(F)(9)), 7-3-1997; Ord. No. 09-05, § 1, 4-7-2009)

Sec. 90-141. Personnel.

(a) The city manager shall provide sufficient funds within the general fund that will provide a professional historic preservation planner, a clerk and one full-time inspector for the historic architectural review commission and shall cause the minutes of all meetings of the historic architectural review commission to be recorded and transcribed in summary form, subject to historic architectural review commission approval.

(b) The city attorney shall serve as legal counsel to the historic architectural review commission on all matters.

(c) When the historic architectural review commission considers applications for certificates of appropriateness or other formal actions that impact properties which are normally evaluated by a professional in a specific discipline, and that discipline is not represented on the historic architectural review commission, the historic architectural review commission shall seek input from a professional in this discipline before rendering a decision. Failure to obtain such advice shall not invalidate its decision.

(Ord. No. 97-10, § 1(1-2.7(G)), 7-3-1997; Ord. No. 06-14, § 2, 8-1-2006)

Sec. 90-142. Historic Architectural Commission Design Guidelines adopted.

The Historic Architectural Commission Design Guidelines, as amended from time to time per the procedures specified in sections 90-516 through 90-524, are hereby incorporated by reference. The guidelines shall be kept on file at both the city clerk's office and the building department.

(Ord. No. 02-12, § 1, 5-7-2002; Ord. No. 09-05, § 2, 4-7-2009)

Sec. 90-143. Notice.

(a) *Scope.* The city shall provide notice for all projects that will be reviewed by the historic architectural review commission during their regular meetings in accordance with this section, except as otherwise required or provided by state statute.

(b) *Newspaper notice.* The city shall publish five days in advance the agenda for all meetings in a newspaper of general paid circulation in the city and of general interest and readership in the city, not one of limited subject matter.

(c) *Posted notice.*

(1) For all projects that are scheduled for review during a public meeting, with the exception of major development plans and building relocations, the city shall provide a completed public notice form to the applicant or the applicant's representative. The notice shall be posted on the subject property, at least five days prior to the relevant scheduled meeting. The notice shall be posted in a location that is visible from the adjacent public street. The notice shall contain block lettering on a high contrast background color with the words "public notice" in letters three inches or more in height. The applicant or the applicant's representative shall provide a sworn affidavit together with photographic evidence to the historic preservation planner that posting of the notice has been accomplished consistent with this section. Submission shall be made at least three days prior to the relevant scheduled meeting of the historic architectural review commission.

(2) For major development plans and building relocation projects the city shall provide a completed public notice form to the applicant or the applicant's representative. The notice shall be posted on the subject property at least 14 days prior to the relevant scheduled meeting. The notice shall be posted in a location that is visible from the adjacent public street. The notice shall contain block lettering on a high contrast background color with the words "public notice" in letters three inches or more in height. The applicant or the applicant's representative shall provide a sworn affidavit together with photographic evidence to the historic preservation planner that posting of the notice has been accomplished consistent with this section. Submission shall be made at least ten days prior to the relevant scheduled meeting of the historic architectural review commission.

(d) *Content of posted notice.* The posted notice required by this section shall contain the date, time and place of the public meeting and a common description of the location of the subject site and the nature of the project.

(Ord. No. 11-11, § 4, 8-2-2011)

Secs. 90-144—90-170. Reserved.

FOOTNOTE(S):

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Cross reference— Committees, boards and commissions, § 2-251 et seq. (Back)

DIVISION 5. TREE COMMISSION [5]

Sec. 90-171. Created.
Sec. 90-172. Composition.
Sec. 90-173. Terms of office.
Sec. 90-174. Removal of members.
Sec. 90-175. Compensation.
Sec. 90-176. Quorum.
Sec. 90-177. Officers.
Sec. 90-178. Schedule of meetings.
Sec. 90-179. Special meetings.
Sec. 90-180. Record of activities.
Sec. 90-181. Reserved.
Sec. 90-182. Powers and duties.
Secs. 90-183—90-210. Reserved.

Sec. 90-171. Created.

There is created the tree commission, as mandated by State Bill 5197, Laws of Fla. ch. 70-765, filed June 24, 1970, which shall have power and authority to accomplish the public purpose.

(Ord. No. 97-10, § 1(1-2.7.1(A)), 7-3-1997)

Sec. 90-172. Composition.

The tree commission shall consist of seven residents of the city who shall be appointed by the mayor with the advice and consent of the city commission.

(Ord. No. 97-10, § 1(1-2.7.1(B)(1)), 7-3-1997; Ord. No. 04-20, § 1, 11-3-2004)

Sec. 90-173. Terms of office.

Appointments to the tree commission shall be for a term of three years and shall be made on staggered basis with no more than two appointments per year, except that an appointment to replace a vacating member shall be for the unexpired term of the member.

(Ord. No. 97-10, § 1(1-2.7.1(B)(2)), 7-3-1997)

DIVISION 5. TREE COMMISSION

Sec. 90-174. Removal of members.

All members of the tree commission serve at the pleasure of the city commission and may be removed by majority vote of its full membership. If a member is absent from two of three consecutive regular meetings without cause and without prior approval of the chairperson, the tree commission shall declare the member's office vacant.

(Ord. No. 97-10, § 1(1-2.7.1(B)(3)), 7-3-1997)

Sec. 90-175. Compensation.

All members of the tree commission shall serve without compensation but, as authorized by the city commission, may be reimbursed for actual expenses incurred in connection with their duties.

(Ord. No. 97-10, § 1(1-2.7.1(B)(4)), 7-3-1997)

Sec. 90-176. Quorum.

Four members of the tree commission shall constitute a quorum for the transaction of business.

(Ord. No. 97-10, § 1(1-2.7.1(C)(1)), 7-3-1997)

Sec. 90-177. Officers.

From among its members, the tree commission annually shall elect a chairperson and such other officers as it deems necessary.

(Ord. No. 97-10, § 1(1-2.7.1(C)(2)), 7-3-1997)

Sec. 90-178. Schedule of meetings.

The tree commission shall convene on a regularly scheduled basis at least once each month. Notice of all meetings including the agenda with the address and description of each project shall be published in a newspaper of general circulation in the city at least five days in advance thereof. At any special or regular meeting the tree commission may set a future meeting date.

(Ord. No. 97-10, § 1(1-2.7.1(C)(3)), 7-3-1997; Ord. No. 00-04, § 5, 2-1-2000; Ord. No. 04-20, § 2, 11-3-2004)

Sec. 90-179. Special meetings.

Special meetings of the tree commission may be called by the chairperson or by written notice signed by three members. No official action shall be taken during any special meeting unless four members concur.

(Ord. No. 97-10, § 1(1-2.7.1(C)(4)), 7-3-1997)

DIVISION 5. TREE COMMISSION

Sec. 90-180. Record of activities.

Minutes shall be kept of all meetings of the tree commission or committees thereof. All such meetings shall be open to the public and, except in emergencies so designated by a majority of the full membership, notice of such meetings shall be published as for a regular meeting, and an agenda for each meeting shall be available to the public at city hall 48 hours in advance thereof. Copies of tree commission records shall be available to the public for a fee set forth in the tree commission regulations.

(Ord. No. 97-10, § 1(1-2.7.1(C)(5)), 7-3-1997)

Sec. 90-181. Reserved.

Editor's note—

Section 4 of Ord. No. 04-20, adopted Nov. 3, 2004, repealed § 90-181, which pertained to recommended rules governing operations, and derived from Ord. No. 97-10, adopted July 3, 1997.

Sec. 90-182. Powers and duties.

The tree commission shall have the power and responsibility to carry out the duties conferred upon it by this Code of Ordinances and shall perform the duties in order to protect and enhance the health, growth, and planting of trees in the city. Findings of the tree commission regarding destruction or damage to trees are enforced through the special master. The only appealable decisions of the tree commission concern permits. These decisions may be appealed to the city commission.

(Ord. No. 97-10, § 1(1-2.7.1(D)), 7-3-1997; Ord. No. 08-04, § 4, 5-20-2008)

Secs. 90-183—90-210. Reserved.

FOOTNOTE(S):

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Cross reference— Committees, boards and commissions, § 2-251 et seq. (Back)

ARTICLE III. LEGISLATIVE AND QUASI-JUDICIAL ACTIONS

DIVISION 1. - GENERALLY

DIVISION 2. - LEGISLATIVE OR QUASI-LEGISLATIVE ACTIONS AND PROCEEDINGS

DIVISION 3. - QUASI-JUDICIAL RULINGS AND PROCEEDINGS

DIVISION 1. GENERALLY

Sec. 90-211. Classification of legislative and quasi-judical actions.
Secs. 90-212—90-240. Reserved.

Sec. 90-211. Classification of legislative and quasi-judical actions.

The following table defines the nature of city rulings affecting land use, planning and zoning:

CLASSIFICATION OF LEGISLATIVE AND QUASI-JUDICIAL RULINGS*

Type of Ruling	Legislative (Creates Uniform Policy)	Quasi-judicial (Effectuates or Applies Adopted Policy)
Comprehensive plan adoption	✓	
Amendment to the comprehensive plan	✓	
Change in future land use map designation	✓	
Adoption of land development regulations	✓	
Amendment of land development regulations	✓	
Generic change in zoning districts	✓	
Rezoning for a specific site		✓
Conditional use		✓
Planned redevelopment and development		✓
Variance		✓
Dedication/vacation of right-of-way or easement		✓

Subdivision plat approval		✓
Site or development plan approval		✓
Appeal of administrative decisions		✓
Vesting determination		✓
Concurrency management determination		✓
Tree removal permit		✓
Sign permit		✓
Building permit		✓

*Current as of the effective date of the ordinance from which this subpart B derives. This table shall automatically be revised to conform to changes in the laws affecting legislative and quasi-judicial decisions of local governments in the state.

(Ord. No. 97-10, § 1(1-2.1(A)), 7-3-1997)

Secs. 90-212—90-240. Reserved.

DIVISION 2. LEGISLATIVE OR QUASI-LEGISLATIVE ACTIONS AND PROCEEDINGS

Sec. 90-241. Scope.

Sec. 90-242. General procedures for review.

Sec. 90-243. Required city proceedings and action.

Sec. 90-244. Applicant's responsibilities.

Secs. 90-245—90-270. Reserved.

Sec. 90-241. Scope.

Legislative or quasi-legislative actions result in formulation of a general public rule or policy that is uniformly applicable to a large area or a large number of individuals, interests, or activities.

(Ord. No. 97-10, § 1(1-2.1(B)), 7-3-1997)

Sec. 90-242. General procedures for review.

The standard of judicial review for legislative or quasi-legislative actions is the "fairly debatable rule." The following procedure will be used during the review of all legislative or quasi-legislative actions before the city commission:

(1) Presentation by staff.

(2) Public comment in favor of the request.

(3) Public comment in opposition of the request.

(4) Motion by city commission.

(5) Discussion and/or cross examination by city commission.

(6) Action by city commission.

(Ord. No. 97-10, § 1(1-2.1(B)(1)), 7-3-1997)

Sec. 90-243. Required city proceedings and action.

Under the "fairly debatable rule" as provided in this division, the city's function is to weigh the advantages and disadvantages of the land use, planning or zoning issue—especially whether or not the action is consistent with public health, safety, or welfare. Such acts are generally presumed valid unless they are clearly shown not to have a reasonable relationship to the public health, safety, or welfare or are shown to be unreasonably and arbitrarily applied to property. The test used to determine this is whether the resolution is "fairly debatable."

(Ord. No. 97-10, § 1(1-2.1(B)(2)), 7-3-1997)

DIVISION 2. LEGISLATIVE OR QUASI-LEGISLATIVE ACTIONS AND PROCEEDINGS

Sec. 90-244. Applicant's responsibilities.

On review of a legislative or quasi-legislative procedure in circuit court, as provided in this division, the applicant shall carry the burden of proving that the challenged action of the city was not "fairly debatable."

(Ord. No. 97-10, § 1(1-2.1(B)(3)), 7-3-1997)

Secs. 90-245—90-270. Reserved.

DIVISION 3. QUASI-JUDICIAL RULINGS AND PROCEEDINGS

Sec. 90-271. Scope.

Sec. 90-272. General procedures for review.

Sec. 90-273. Required city proceedings and action.

Sec. 90-274. Applicant's responsibilities.

Sec. 90-275. Standard of judicial review by certiorari.

Secs. 90-276—90-300. Reserved.

Sec. 90-271. Scope.

Quasi-judicial rulings entail the application of a general public rule or policy to a limited number of specific individuals, interests, or activities.

(Ord. No. 97-10, § 1(1-2.1(C)), 7-3-1997)

Sec. 90-272. General procedures for review.

A stricter review procedure is required in quasi-judicial action as opposed to legislative action. In quasi-judicial procedure the "fairly debatable rule," applicable in legislative action, is not the standard of review. In quasi-judicial proceedings, the standard of review is "substantial competent evidence." The following procedures will be used during city commission review of quasi-judicial actions:

(1) Presentation by applicant.

(2) Presentation by staff.

(3) Public comment in favor of the request.

(4) Public comment in opposition of the request.

(5) Motion by city commission.

(6) Discussion and/or cross examination by city commission.

(7) Action by city commission.

(Ord. No. 97-10, § 1(1-2.1(C)(1)), 7-3-1997)

Sec. 90-273. Required city proceedings and action.

(a) In a quasi-judicial action, the city shall bear the burden of carrying out the following proceedings and responsibilities:

(1) State the reasons for the action that denies the petition of an applicant;

(2) State the substantial competent evidence to substantiate that a ruling accomplishes a legitimate public purpose;

(3) State what legitimate public purpose is accomplished; and

(4) Maintain a record of its proceedings sufficient for judicial review.

(b) If the city determines that a petition is inconsistent with the adopted comprehensive plan and land development regulations as well as other applicable ordinances and laws and does not fulfill a legitimate public purpose, the application should be denied. If the applicant's petition is found consistent with the adopted comprehensive plan and land development regulations as well as other applicable laws and ordinances and fulfills a legitimate purpose, the petition should be approved.

(Ord. No. 97-10, § 1(1-2.1(C)(2)), 7-3-1997)

Sec. 90-274. Applicant's responsibilities.

(a) In a quasi-judicial procedure the initial burden shall be on the applicant to demonstrate that the petition or application for use of privately owned lands (i.e., rezoning, special exception, conditional use permit, variance, site plan approval, or other quasi-judicial procedure):

(1) Complies with the reasonable procedural requirements of the land development regulations; and

(2) The action sought is consistent with applicable provisions of the adopted comprehensive plan and land development regulations.

(b) Upon such a showing, the applicant is entitled to use the subject property in the manner sought unless the city proves by competent substantial evidence that a specifically stated public purpose requires a more restrictive use.

(Ord. No. 97-10, § 1(1-2.1(C)(3)), 7-3-1997)

Sec. 90-275. Standard of judicial review by certiorari.

The city responsibilities stated in this division must be executed and recorded in a manner sufficient for judicial review, including:

(1) Legal sufficiency of the evidence to support the findings of fact made; and

(2) Legal adequacy under applicable law of the reasons given for the action taken.

(Ord. No. 97-10, § 1(1-2.1(C)(4)), 7-3-1997)

Secs. 90-276—90-300. Reserved.

ARTICLE IV. ADMINISTRATIVE OFFICIAL

Sec. 90-301. Enforcement authority.

Sec. 90-302. Application, purpose and conflict.

Sec. 90-303. General procedures for violations.

Sec. 90-304. Complaints regarding violations.

Sec. 90-305. Appeals of decisions.

Secs. 90-306—90-330. Reserved.

Sec. 90-301. Enforcement authority.

(a) The chief building official, under the supervision of the city manager, shall administer and enforce the land development regulations. The chief building official may be provided with the assistance of such other city officers and employees as the city manager may direct.

(b) The city planner shall have the administrative responsibility to interpret the land development regulations. Such interpretations shall be in writing and accompanied by review and written consent by the city attorney.

(Ord. No. 97-10, § 1(1-2.2), 7-3-1997; Ord. No. 00-04, § 1, 2-1-2000)

Sec. 90-302. Application, purpose and conflict.

The chief building official shall apply the provisions of the land development regulations as minimum requirements for the promotion of the public health, safety, or the general welfare of the public. The land development regulations are not intended to interfere with, abrogate or annul requirements of other lawfully adopted rules, regulations, ordinances, deed restrictions or any lawful easements or other agreements between parties; provided, however, that where the land development regulations impose a greater restriction, the land development regulations shall prevail.

(Ord. No. 97-10, § 1(1-2.2(A)), 7-3-1997)

Sec. 90-303. General procedures for violations.

Whenever the chief building official shall find that any of the sections of the land development regulations is being violated, written notification shall be directed to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. The chief building official shall:

(1) Order discontinuance of the illegal use of land, buildings, or structures or of additions, alterations, or structural changes thereto;

(2) Order the removal of illegal buildings or discontinuance of any illegal work to be done; or

(3) Take any other action authorized by the land development regulations to ensure compliance with or to prevent violations of its provisions.

(Ord. No. 97-10, § 1(1-2.2(B)), 7-3-1997)

ARTICLE IV. ADMINISTRATIVE OFFICIAL

Sec. 90-304. Complaints regarding violations.

(a) Whenever a violation of the land development regulations occurs or is alleged to have occurred, any person may file a written complaint or a verbal complaint as described in this section.

(b) A written complaint shall fully explain the causes and basis of the complaint and shall be filed with the building official. The building official shall properly record such complaint and notify the appropriate city personnel who shall investigate and take action thereon as provided for in article VI of chapter 2 pertaining to code enforcement.

(c) A verbal complaint, which reports an alleged violation, may be directed to the administrative official. A verbal report of violation received by the administrative official shall be processed by informing the complainant as to the written procedures described in subsection (b) of this section. When a person does not subsequently submit a written report concerning a violation, the administrative official shall ensure that a field inspection is carried out to verify the oral report concerning the alleged violation. Complaint investigations may also be based upon field inspections performed by the administrative official or other designated personnel.

(Ord. No. 97-10, § 1(1-2.2(C)), 7-3-1997)

Sec. 90-305. Appeals of decisions.

Provisions for appeal of decisions, including final orders, issued by the chief building official in administering and enforcing the land development regulations are stated in division 4 of article V of this chapter.

(Ord. No. 97-10, § 1(1-2.2(D)), 7-3-1997)

Secs. 90-306—90-330. Reserved.

ARTICLE V. PERMITS, CERTIFICATE OF OCCUPANCY, VARIANCES, APPEALS [6]

DIVISION 1. - GENERALLY

DIVISION 2. - PERMITS AND CERTIFICATE OF OCCUPANCY

DIVISION 3. - VARIANCES

DIVISION 4. - APPEALS

FOOTNOTE(S):

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Cross reference— Impact fees, § 54-56 et seq. (Back)

DIVISION 1. GENERALLY

Secs. 90-331—90-355. Reserved.

Secs. 90-331—90-355. Reserved.

DIVISION 2. PERMITS AND CERTIFICATE OF OCCUPANCY

Sec. 90-356. Building permits required.

Sec. 90-357. Application for building permit.

Sec. 90-358. Building permit time limitations.

Sec. 90-359. Expiration of building permits.

Sec. 90-360. Notice requirement for expired building permits.

Sec. 90-361. Phased projects.

Sec. 90-362. Temporary certificates of occupancy.

Sec. 90-363. Certificate of occupancy—Required.

Sec. 90-364. Same—Restrictions and limitations.

Sec. 90-365. Violations and penalties.

Secs. 90-366—90-390. Reserved.

Sec. 90-356. Building permits required.

(a) No building or other structure shall be erected, demolished, moved, added to, or structurally altered without a building permit issued by the chief building official.

(b) In accordance with F.S. § 380.04, changes in use classification of a building or structure shall also require a development permit issued by the chief building official.

(c) All building permits issued shall be in conformity with the provisions of the fire codes, the building codes, and the land development regulations, except after written order in the form of an administrative review or a variance from the board of adjustment as provided for in the land development regulations. No building permit shall be granted unless the developer has submitted all requisite plans and permits required by the city and other entities having jurisdiction. No building permit shall be issued until concurrency management program requirements in chapter 94 are met.

(d) Any required supportive written documentation from other essential public facility and service agencies must be submitted and shall demonstrate that sufficient capacity exists to supply the proposed development.

(Ord. No. 97-10, § 1(1-2.3(A)), 7-3-1997)

Sec. 90-357. Application for building permit.

(a) All applications for building permits for any structure shall be accompanied by a development plan, if required pursuant to article II of chapter 108. Where development plan approval is required, the approved development plan, including a construction management plan and schedule as provided in section 108-248, if the construction period is anticipated to exceed one year, and all other required components, shall be submitted with the building permit application. If no development plan is required pursuant to article II of chapter 108, the application for a building permit shall include a scale drawing at one inch to 20 feet, in triplicate, showing the following:

(1) A survey prepared and certified by a state-registered land surveyor showing the actual dimensions and shape of the lot to be built upon.

(2) The exact sizes and locations on the lots of buildings already existing, if any.

(3) The location and dimensions of the proposed building or alteration.

(4) When applicable, the required parking spaces, loading and unloading spaces, maneuvering space and openings for ingress and egress.

(5) When applicable, grading and drainage plans meeting the South Florida Water Management District requirements and showing any and all cuts, fills and provisions for adequately carrying off surface water on premises plus provisions for any surface water which would naturally flow over or through the area. Such plans shall be reviewed and approved by the city engineer.

(6) All applications shall contain written documentation from the Florida Keys Aqueduct Authority and the city, including but not limited to the city engineering department, which states that the respective public facilities have sufficient existing capacity to supply the proposed development or that capacity will exist upon completion of the proposed development.

(7) Such other information as required by the city planner, city engineer or chief building official, including but not limited to the following:

a. Existing or proposed building construction or alteration;

b. Existing or proposed uses of the building and land;

c. The number of families, housekeeping units, or rental units the building is designed to accommodate;

d. Conditions existing on the lot; and

e. Such other matters as may be necessary to determine conformance with and provide for the enforcement of the land development regulations.

(b) One copy of the plans shall be returned to the applicant by the chief building official, after the chief building official shall have marked such copy either as approved or disapproved as attested to by signature of the chief building official on the copy. The original and one copy of the plans, similarly marked, shall be retained by the building department.

(Ord. No. 97-10, § 1(1-2.3(B)), 7-3-1997)

Sec. 90-358. Building permit time limitations.

(a) After a building permit has been issued, the permittee must commence construction within 90 days following issuance of the permit. A building permit shall expire if construction activity is dormant for a period of six months. Similarly, a building permit shall expire if the developer fails to call for and achieve approved inspections within planned 120-day intervals as shall be evidenced in the construction schedule.

(b) Large scale developments may be phased. However, no single phase of development shall exceed a period of two years. Prior to commencing each phase of a phased development, the permittee shall be required to obtain a new building permit unless the multiphased project has a construction span less than two years.

(c) No building permit shall be valid for a period longer than two years.

(Ord. No. 97-10, § 1(1-2.3(C)), 7-3-1997)

Sec. 90-359. Expiration of building permits.

(a) A building permit shall be declared null and void if any of the following conditions fail to occur:

(1) The construction shall commence within 90 days from the time the building permit was released;

(2) The structures accommodating the principal use shall be entirely completed within two years following the release of the building permit or within the period identified in the development plan's construction management plan and schedule;

(3) The construction activity shall be continuous, and no period of dormancy shall exist for six months or more; and

(4) The developer shall call for and achieve approved inspections within a 120-day interval as required pursuant to the building code or the approved construction management plan and schedule.

(b) Barring force majeure, no extension shall be granted once a building permit has expired.

(Ord. No. 97-10, § 1(1-2.3(D)), 7-3-1997)

Sec. 90-360. Notice requirement for expired building permits.

If any conditions identified in section 90-359 fail to occur, the chief building official shall cancel the permit and give written notice to the permittee. If construction has commenced, the notice shall also be sent of the contractor. The notice shall describe the nature of the violation and/or the condition causing the permit expiration and shall state that no further work described in the canceled permit shall proceed unless and until a new building permit has been obtained. Notwithstanding, if the development was the subject of a construction management plan which included a city-approved schedule for construction activity beyond a one-year period, the terms of the construction schedule shall be used as the basis for rendering decisions regarding permit expiration. Barring force majeure, no extension shall be granted once a building permit has expired.

(Ord. No. 97-10, § 1(1-2.3(E)), 7-3-1997)

Sec. 90-361. Phased projects.

Large scale developments may be phased. However, no single phase of development shall exceed a period of two years. Prior to commencing each phase of a phased development, the permittee shall be required to obtain a new building permit unless the multiphased project has a construction span less than two years. No building permit shall be valid for a period longer than two years.

(Ord. No. 97-10, § 1(1-2.3(F)), 7-3-1997)

Sec. 90-362. Temporary certificates of occupancy.

A temporary certificate of occupancy may be issued by the chief building official to accommodate extraordinary conditions for a period not exceeding 90 days during alterations or partial occupancy of a building pending its completion, provided that such temporary certificate may require special conditions and safeguards which the city deems necessary to protect the safety of the occupants and the public. Violations of provisions contained in the temporary certificate of occupancy or other related violations occurring on properties operating pursuant to a temporary certificate of occupancy shall be a violation of

the building code and/or land development regulations, as applicable, and shall be punishable as provided in article VI of chapter 2.

(Ord. No. 97-10, § 1(1-2.3(G)), 7-3-1997)

Sec. 90-363. Certificate of occupancy—Required.

No land or building or part thereof erected or altered in its use or structure after the effective date of the ordinance from which this section derives shall be used until the chief building official shall have issued a certificate of occupancy stating that such land, building, or part thereof and the proposed use thereof are found to be in conformity with the provisions of the land development regulations. Development permits shall also be required as provided in section 90-356. It shall be the duty of the chief building official to make a final inspection of the building or premises and to issue a certificate of occupancy if the land, building or part thereof and the proposed use thereof are found to conform with the land development regulations or, if such certificate is refused, to state such refusal in writing together with the cause. Failure to obtain a certificate of occupancy shall be deemed a violation of the land development regulations.

(Ord. No. 97-10, § 1(1-2.3(H)), 7-3-1997; Ord. No. 98-14, § 3, 5-5-1998)

Sec. 90-364. Same—Restrictions and limitations.

Building permits or certificates of occupancy issued on the basis of plans and applications approved by the chief building official shall authorize only the use, arrangements, and construction set forth in approved plans and application. No other use, arrangement or construction shall be allowed unless a new certificate of occupancy is issued and such use complies with all applicable requirements of the land development regulations as well as all adopted building and fire codes, including advisory standards of the National Fire Protection Association Code. Unauthorized use, arrangement, or construction activity shall be deemed a violation of the land development regulations.

(Ord. No. 97-10, § 1(1-2.3(I)), 7-3-1997)

Sec. 90-365. Violations and penalties.

Proceeding with any type of construction or use without an approved authorization for a building permit or land use shall be a violation of the land development regulations and punishable as provided in section 1-15 and in article VI of chapter 2.

(Ord. No. 97-10, § 1(1-2.3(J)), 7-3-1997)

Secs. 90-366—90-390. Reserved.

DIVISION 3. VARIANCES

Sec. 90-391. Variances.

Sec. 90-392. Application.

Sec. 90-393. Notice and hearing procedure.

Sec. 90-394. Action.

Sec. 90-395. Standards, findings.

Sec. 90-396. Effect and limitation.

Sec. 90-397. Reapplication.

Secs. 90-398—90-425. Reserved.

Sec. 90-391. Variances.

An owner or his authorized agent may request a variance from the land development regulations as provided for in this division. The planning board shall have the quasi-judicial power necessary to grant such variances that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the land development regulations would result in unnecessary hardship. A variance from the terms of the land development regulations shall not be granted by the planning board unless and until the requirements of this division are met.

(Ord. No. 97-10, § 1(1-2.6), 7-3-1997; Ord. No. 08-04, § 5, 5-20-2008)

Sec. 90-392. Application.

(a) All applications for variances from the land development regulations shall be in the form required and provided by the city planner. Such application shall be submitted to the city planning office together with the fee established by resolution of the city commission. A completed application shall include the application form, the fee and all required supplemental information necessary to render determinations related to the variance request.

(b) Upon receipt of an application for a variance, the planning board shall hold a public hearing upon the application in accordance with the procedures cited in section 90-393 and shall render an order granting or denying such application. In granting such application the planning board must make specific affirmative findings respecting each of the matters specified in section 90-394 and may prescribe appropriate conditions and safeguards, including requirements in excess of those otherwise required by these land development regulations, which shall become a part of the terms under which a development order may be issued.

(Ord. No. 97-10, § 1(1-2.6(A)), 7-3-1997; Ord. No. 08-04, § 6, 5-20-2008)

Sec. 90-393. Notice and hearing procedure.

In considering and acting upon applications for a variance from the land development regulations, the following procedures shall be observed:

(1) *Date of hearing.* The hearing shall be held by the planning board at a date and time fixed by the chairperson of the planning board.

(2) *Notice.* Notice shall be provided as required by division 2 of article VIII of this chapter.

(3) *Appearance and presentation.* At any hearing upon any matter subject to this division, the applicant or his authorized representative seeking action by the planning board and any other party desiring to be heard upon the application may appear in person, by agent or by attorney. The applicant shall be entitled to make an initial presentation respecting the application and, at the conclusion of presentations or statements by all other parties, shall be entitled to offer a statement in rebuttal to such presentations if the applicant so desires. The chairperson of the planning board may, at the commencement of the hearing upon each application or at any time during such hearing, require that parties desiring to make a presentation identify themselves and may specify the time to be allowed each such party within which to make such presentation.

(Ord. No. 97-10, § 1(1-2.6(B)), 7-3-1997; Ord. No. 00-04, § 3, 2-1-2000; Ord. No. 08-04, § 7, 5-20-2008)

Sec. 90-394. Action.

Action by the planning board upon any matter subject to the provisions of this division shall be announced by the chairperson of the board immediately following the vote determining such action and shall thereafter be embodied in a written order prepared by the planning director and executed by the chairperson of the planning board and filed with the city clerk. Such written order shall be incorporated into the minutes of the meeting at which such action occurred. The board shall enter its order denying such application, specifying the reasons therefore, or granting such application, in whole or in part, under such terms and conditions as the board shall determine appropriate.

The planning board shall not grant a variance to permit a use not permitted by right or as a conditional use in the zoning district involved or any use expressly or by implication prohibited by the terms of the ordinance in the zoning district. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance. No variance shall be granted that increases or has the effect of increasing density or intensity of a use beyond that permitted by the comprehensive plan or these LDRs.

(Ord. No. 97-10, § 1(1-2.6(C)), 7-3-1997; Ord. No. 02-01, § 1, 1-2-2002; Ord. No. 08-04, § 8, 5-20-2008)

Sec. 90-395. Standards, findings.

(a) Standards for considering variances. Before any variance may be granted, the planning board must find all of the following:

(1) Existence of special conditions or circumstances. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other land, structures or buildings in the same zoning district.

(2) Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.

(3) Special privileges not conferred. That granting the variance requested will not confer upon the applicant any special privileges denied by the land development regulations to other lands, buildings or structures in the same zoning district.

(4) Hardship conditions exist. That literal interpretation of the provisions of the land development regulations would deprive the applicant of rights commonly enjoyed by other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.

(5) Only minimum variance granted. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

(6) Not injurious to the public welfare. That the grant of the variance will be in harmony with the general intent and purpose of the land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare.

(7) Existing nonconforming uses of other property not the basis for approval. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

(b) The planning board shall make factual findings regarding the following:

(1) That the standards established in subsection (a) have been met by the applicant for a variance.

(2) That the applicant has demonstrated a "good neighbor policy" by contacting or attempting to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by these neighbors.

An order permitting a variance may prescribe appropriate conditions and safeguards, including visual screening, and may also prescribe a reasonable time limit within which construction or occupancy of the premises for the proposed use shall have begun or have been completed or both. Upon entry of an order granting a variance, the administrative official shall not issue any development order for the subject property unless and until all of the conditions and requirements of the order granting the variance are met. Violation of those conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the land development regulations and shall render the variances revoked.

(Ord. No. 97-10, § 1(1-2.6(D)), 7-3-1997; Ord. No. 02-01, § 1, 1-2-2002; Ord. No. 03-09, § 1, 3-4-2003; Ord. No. 08-04, § 9, 5-20-2008)

Sec. 90-396. Effect and limitation.

An order granting a variance from the land development regulations shall be deemed applicable to the parcel for which it is granted and not to the individual applicant, provided that no order granting a variance shall be deemed valid with respect to any use of the premises other than the use specified in the application for a variance.

(Ord. No. 97-10, § 1(1-2.6(E)), 7-3-1997)

Sec. 90-397. Reapplication.

Reapplication for the same or similar piece of property requesting the same or similar variance from the land development regulations cannot be made within two years from the date the application was originally denied by the board of adjustment or planning board. An applicant may, however, submit a

substantially different application or reapply based on changed conditions and/or the advent of new information which have a substantial impact on material issues.

(Ord. No. 97-10, § 1(1-2.6(G)), 7-3-1997; Ord. No. 03-09, § 2, 3-4-2003; Ord. No. 08-04, § 10, 5-20-2008)

Secs. 90-398—90-425. Reserved.

DIVISION 4. APPEALS

Sec. 90-426. Scope.

Sec. 90-427. Final decisions of planning board.

Sec. 90-428. Final decisions of historic architectural review commission.

Sec. 90-429. Final decisions of tree commission.

Sec. 90-430. Final orders and administrative decisions of city planner and chief building official.

Sec. 90-431. Procedures for rendering decisions.

Sec. 90-432. Decision and order.

Sec. 90-433. Finality of decision.

Sec. 90-434. Judicial review of decisions.

Secs. 90-435—90-460. Reserved.

Sec. 90-426. Scope.

With the exception of variances granted pursuant to this division, the final decisions of the planning board may be appealed to the city commission. Variances granted pursuant to this division may be appealed in the manner provided by law to the county Circuit Court. Final decisions of the historic architectural review commission may be appealed to a special master, as provided by the Charter. Final orders and administrative and enforcement decisions by the city planner and chief building official may be appealed to the city commission. Appeals of permit decisions of the tree commission may only be addressed by the city commission.

(Ord. No. 97-10, § 1(1-2.8), 7-3-1997; Ord. No. 08-04, § 11, 5-20-2008)

Sec. 90-427. Final decisions of planning board.

Decisions of the planning board shall be considered final in actions regarding minor development plan review as defined in section 108-91, in review of conditional uses proposed as part of a minor development plan approval, and in review of variance requests. Decisions of the planning board regarding major development plan review, including proposed conditional uses that are a part of the major development plan, as well as subdivision of land, change in the land development regulations, change in the comprehensive plan, and/or other decisions of the planning board, shall be advisory to the city commission.

(Ord. No. 97-10, § 1(1-2.8(A)), 7-3-1997; Ord. No. 08-04, § 12, 5-20-2008)

Editor's note—

Sections 108-162 and 108-163, referenced in § 90-427, were repealed by Ord. No. 05-04, adopted Jan. 19, 2005. The user should now see § 108-91

DIVISION 4. APPEALS

Sec. 90-428. Final decisions of historic architectural review commission.

(a) The historic architectural review commission decisions shall be considered final in actions regarding certificates of appropriateness, certificates of no contributing value, and denials of nominations to the local register of historic places as described in chapter 102. These final decisions of the historic architectural review commission may be appealed to a special master. The historic architectural review commission decisions approving nominations to the local register of historic places shall be advisory to the city commission. The historic architectural review commission decisions regarding nominations to the National Register of Historic Places may be appealed to the state historic preservation officer.

(b) An appeal of a decision of historic architectural review commission regarding a certificate of appropriateness may be taken:

(1) By the applicant; or

(2) When the certification of appropriateness is granted:

a. By any person with a legal interest in real property located within 200 feet of the boundary of the lot or parcel on which the work is to be done; or

b. By the city manager.

(Ord. No. 97-10, § 1(1-2.8(B)), 7-3-1997; Ord. No. 02-22, § 1, 9-4-2002)

Sec. 90-429. Final decisions of tree commission.

(a) Decisions of the tree commission regarding a tree permit shall be considered final. An appeal from a permit decision of the tree commission may be taken to the board of adjustment:

(1) By the applicant; or

(2) When written approval is granted:

a. By any aggrieved person who owns real property adjacent to or located within 200 feet of a boundary line of the lot or parcel on which the tree is located; or

b. By the city manager.

(b) Where the tree commission has heard a case of damage or destruction of a tree under sections 110-288 through 110-295 and has made findings and a recommendation to the special master, the alleged violator's rights of appeal shall be subject to the regulations governing the special master.

(Ord. No. 97-10, § 1(1-2.8(C)), 7-3-1997; Ord. No. 04-20, § 3, 11-3-2004)

Sec. 90-430. Final orders and administrative decisions of city planner and chief building official.

The intent of the land development regulations is that all questions of interpretation and enforcement shall first be presented to the city planner. Such questions shall be presented to the board of adjustment only on appeal from the decision of the city planner. Similarly, appeals to final orders of the chief building official shall be to the board of adjustment.

(Ord. No. 97-10, § 1(1-2.8(D)), 7-3-1997; Ord. No. 00-04, § 6, 2-1-2000)

DIVISION 4. APPEALS

Sec. 90-431. Procedures for rendering decisions.

In considering and acting upon appeals of final decisions of the planning board, the historic architectural review commission, or the tree commission, as well as final orders and questions of interpretation and enforcement of the land development regulations and the building codes by the city planner and the chief building official, the following procedures shall be observed:

(1) *Procedure and time limitation for appeal.*

a. An appeal to the city commission or the special magistrate, as the case may be, shall be taken on or before the tenth day, counted consecutively, after the date of the order by the planning board or the historic architectural review commission to which the appeal is directed.

b. An appeal to the board of adjustment shall be taken on or before the tenth day, counted consecutively, after the date of the order or the administrative action of the tree commission, chief building official or the city planner.

c. When the order or other administrative action has been mailed to the party, the party may add three (3) days to the prescribed time period for appeal. The original and one copy of the notice of appeal, together with all the documents, plans, papers or other materials constituting the record upon which the action appealed from was taken, shall be filed with the city clerk who shall provide copies thereof to the presiding officer of the city commission, the board of adjustment or the special magistrate, as appropriate, and to the city manager and city attorney. Appeals not so filed shall be deemed waived.

(2) *Date of hearing for appeals.* Hearings of appeals by the city commission as well as the board of adjustment or special magistrate shall be held at the next regularly scheduled meeting of the city commission, board of adjustment or special magistrate, as the case may be, after the filing of the notice of appeal, unless the parties mutually agree to another date.

(3) *Notice.* Upon notification of the date fixed for hearing on any matter subject to this division, the city clerk shall cause notice to be made pursuant to division 2 of article VIII of chapter 90. The city clerk shall also forward by certified mail, return receipt requested, similar notices setting forth the time, place and purpose of the hearing to the following:

a. The appellant.

b. The owner of the property described in the application, if other than the appellant.

(4) *Scope of review by city commission, board of adjustment, and special magistrate.* In reviewing final orders, requirements, decisions or determinations of boards, commissions, and the chief building official, upon appeal thereof in conformity with this division, the city commission as well as the board of adjustment shall be limited to review of the documents, plans, papers or other materials constituting the record upon which the action was taken. The city commission and board of adjustment, may, upon appeal, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination made by the planning board, the tree commission, the chief building official, or other administrative official and may make any necessary further order, requirements, decisions or determinations respecting the subject of the appeal and, to that end, shall have all the powers of the planning board, the tree commission, the chief building official, and/or other administrative official respecting such matter. The concurring vote of no less than four members of the city commission or the board of adjustment shall be necessary to reverse or modify any order, requirement, decision or determination of the planning board, the tree commission, the chief building official, and/or other administrative official. The special magistrate shall have *de novo* review of the record in appeals from the historic architectural

review commission; provided, however, that the term *de novo* shall not be interpreted to allow the introduction of new evidence that was not introduced in the initial proceedings of the historic architectural review commission, unless in the discretion of the special magistrate an additional presentation of evidence is equitable, necessary and limited in order to supplement the record.

(5) *Appearance and argument.* At any hearing upon any matter subject to the land development regulations, the appellant seeking review by the city commission, the board of adjustment or the special magistrate, and any other party desiring to be heard may appear in person, by agent or by attorney. The appellant shall be entitled to make an initial presentation respecting the appeal and, at the conclusion of presentations or statements by all other parties, shall be entitled to offer a statement in rebuttal to such presentations if the appellant so desires. The presiding officer may, at the commencement of the hearing or at any time during such hearing, require that parties desiring to make a presentation identify themselves and may specify the time to be allowed for each party to make such presentation.

(6) *Effect of appeal and stay of proceedings.* An appeal to the city commission, the board of adjustment or the special magistrate shall, upon filing, stay all work on the premises and all proceedings in furtherance of the order, requirement, decision or determination appealed from, unless the building official shall certify to the city commission or the board of adjustment, as appropriate, that, because of facts stated in the certificate, a stay would cause immediate peril to life or property, in which case proceedings or work shall not be stayed except by a restraining order granted by the city commission for due cause shown after notice to the party filing the appeal and to the administrative official. Nothing in this subsection shall be deemed to impair the authority of any court of competent jurisdiction to enjoin or stay actions of the administrative official, the city commission, the board of adjustment or the special magistrate.

(Ord. No. 97-10, § 1(1-2.8(E)), 7-3-1997; Ord. No. 00-04, § 6, 2-1-2000; Ord. No. 02-22, § 2, 9-4-2002; Ord. No. 06-14, § 3, 8-1-2006; Ord. No. 06-24, § 1, 12-5-2006)

Sec. 90-432. Decision and order.

Action by the city commission, the board of adjustment or the special magistrate upon any matter subject to this division shall be announced by the presiding officer immediately following the vote determining such action and shall thereafter be embodied in a written order executed by the presiding officer and the city clerk. Such written order shall be incorporated into the minutes of the meeting at which such action occurred.

(Ord. No. 97-10, § 1(1-2.8(F)), 7-3-1997; Ord. No. 06-24, § 1, 12-5-2006)

Sec. 90-433. Finality of decision.

When the city commission, the board of adjustment or the special master has taken action respecting an appeal of a board, commission, or the chief building official decision, as the case may be, no application for the same relief shall be accepted by the city clerk for consideration by the board, commission, or the chief building official or the city commission for a period of two years from the date of such action. However, after one year an applicant may request that the city commission, the board of adjustment or the special master, as appropriate, waive this section for proper cause based on changed conditions and/or the advent of new information which substantially impacts material issues. If a request for such waiver is submitted by the applicant and is filed, the city commission, the board of adjustment or the special master, as appropriate, shall determine if the changed conditions and/or the new information is sufficient to convene a new hearing on the applicant's appeal. If the city commission determines that a hearing should be held on the applicant's appeal, the city manager shall direct the city clerk to provide

due public notice of the scheduled public hearing in the same manner as required for the original appeal as described in section 90-431(3).

(Ord. No. 97-10, § 1(1-2.8(G)), 7-3-1997)

Sec. 90-434. Judicial review of decisions.

Any person, jointly or severally, or any officer, department, board, commission or bureau of the governing body aggrieved by any decision of the city commission, the special master, or the board of adjustment respecting an appeal of a decision by a board, commission, or the chief building official may apply, in the manner provided by law, to the county circuit court for judicial relief.

(Ord. No. 97-10, § 1(1-2.8(H)), 7-3-1997; Ord. No. 02-22, § 3, 9-4-2002)

Secs. 90-435—90-460. Reserved.

ARTICLE VI. AMENDMENTS

DIVISION 1. - GENERALLY

DIVISION 2. - LAND DEVELOPMENT REGULATIONS AMENDMENTS

DIVISION 3. - COMPREHENSIVE PLAN AMENDMENTS

DIVISION 1. GENERALLY

Secs. 90-461—90-485. Reserved.

Secs. 90-461—90-485. Reserved.

DIVISION 2. LAND DEVELOPMENT REGULATIONS AMENDMENTS

Subdivision I. - In General

Subdivision II. - Procedure

Subdivision I. In General

Sec. 90-486. Legislative intent.

Sec. 90-487. Powers and duties of city commission.

Secs. 90-488—90-515. Reserved.

Sec. 90-486. Legislative intent.

The legislative intent of the land development regulations is to provide the city commission regulatory powers necessary to implement the comprehensive plan consistent with enabling legislation of F.S. § 163.3202.

(Ord. No. 97-10, § 1(1-2.9(A)), 7-3-1997)

Sec. 90-487. Powers and duties of city commission.

(a) *Adoption or amendment of land development regulations.* The city commission shall adopt land development regulations consistent with F.S. § 163.3202. The city commission may amend or supplement the regulations and districts fixed by the adopted city land development regulations. The city commission shall hold a public hearing on such matters, with due public notice, if any change is to be considered and shall act on the proposed change after such hearing.

(b) *Establishment of fees and appropriate funds.* The city commission shall by resolution establish fees, charges, and expenses imposed by these land development regulations.

(c) *Consideration and action on development issues as required.* The city commission shall consider and act on development and growth management issues pursuant to the land development regulations, F.S. ch. 163, part II, County and Municipal Planning and Land Development Regulation, and other applicable laws and regulations.

(d) *Allocation of funding and staff resources to enforce land development regulations.* The city commission shall allocate funding and staff resources necessary to enforce the land development regulations, including carrying out appropriate administrative and legal actions.

(e) *Appointment and confirmation of members of requisite boards and commissions.* The mayor, with the advice and consent of the city commission, shall appoint members of the planning board and any other board, commission or committee as may be deemed necessary by the city commission.

(f) *Designation and appointment of hearing officers.* The city commission may designate and appoint hearing officers to make decisions as the city commission may deem appropriate.

(g) *Taking other actions necessary to implement the land development regulations.* The city commission may take such other action not delegated to the planning board, historic architectural review commission, board of adjustment, special master, hearing officer, or other entities as the city commission may deem desirable and necessary to implement the provisions of the comprehensive plan and the land development regulations.

(Ord. No. 97-10, § 1(1-2.9(B)), 7-3-1997)

Subdivision I. In General

Secs. 90-488—90-515. Reserved.

Subdivision II. Procedure [7]

Sec. 90-516. Purpose and limitations.

Sec. 90-517. Authority.

Sec. 90-518. Initiation.

Sec. 90-519. Submission of application.

Sec. 90-520. Contents of application.

Sec. 90-521. Criteria for approving amendments to official zoning map.

Sec. 90-522. Planning board review of proposed changes in land development regulations.

Sec. 90-523. Review by city commission.

Sec. 90-524. Public hearings.

Secs. 90-525—90-550. Reserved.

Sec. 90-516. Purpose and limitations.

The purpose of this subdivision is to provide a means for changing the text of the land development regulations or the boundaries of the official zoning map. It is not intended to relieve particular hardships nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the city commission shall consider, in addition to the factors set forth in this subdivision, the consistency of the proposed amendment with the intent of the comprehensive plan.

(Ord. No. 97-10, § 1(1-2.10(A)), 7-3-1997)

Sec. 90-517. Authority.

The city commission may amend the text of the land development regulations or the boundaries of the official zoning map upon compliance with this subdivision.

(Ord. No. 97-10, § 1(1-2.10(B)), 7-3-1997)

Sec. 90-518. Initiation.

Amendments to the text of the land development regulations or the boundaries of the official zoning map may be proposed by the city commission, the planning board, the city manager or any property owner or his authorized agent.

(Ord. No. 97-10, § 1(1-2.10(C)), 7-3-1997)

Sec. 90-519. Submission of application.

An application for an amendment to the land development regulations or the official zoning map shall be submitted to the planning director along with a nonrefundable application fee, which shall be established by the city commission from time to time to defray the actual cost of processing the application.

(Ord. No. 97-10, § 1(1-2.10(D)), 7-3-1997)

Sec. 90-520. Contents of application.

The application for an amendment to the text of the land development regulations or the boundaries of the official zoning map shall be submitted in a form established by the planning director and made available to the public. As many lots or parcels of property as the applicant may desire may be included in any single petition if they are contiguous. The application shall contain the following information:

(1) *Property description.* The application shall describe by legal description and by street address, where possible, the property to be affected by the proposed change.

(2) *Current and proposed comprehensive plan land use map designation.* The current and proposed comprehensive plan land use map designation for the subject property shall be identified.

(3) *Current and proposed zoning.* The current and proposed zoning for the subject property shall be identified.

(4) *Existing and proposed use.* The existing and proposed use of the subject property shall be stated.

(5) *Disclosure of ownership.* The application shall include a verified statement showing each and every individual person having a legal and/or equitable ownership interest in the property upon which the application for rezoning is sought, except publicly held corporations, in which case the names and addresses of the corporate officers shall be sufficient.

(6) *Justification.* The need and justification for the proposed change shall be stated. The evaluation shall address but shall not be limited to the following issues:

a. *Comprehensive plan consistency.* Identifying impacts of the proposed change in zoning on the comprehensive plan. The zoning must be consistent with the comprehensive plan.

b. *Impact on surrounding properties and infrastructure.* The effect of the change, if any, on the particular property and all surrounding properties. Potential land use incompatibility and impacts on infrastructure shall be identified.

c. *Avoidance of spot zoning.* The proposed change shall not constitute a spot zone change. Spot zoning occurs when:

1. A small parcel of land is singled out for special and privileged treatment;

2. The singling out is not in the public interest but only for the benefit of the landowner; and

3. The action is not consistent with the adopted comprehensive plan.

d. *Undeveloped land with similar zoning.* The amount of undeveloped land in the general area and in the city having the same zoning classification as that requested.

(Ord. No. 97-10, § 1(1-2.10(E)), 7-3-1997)

Sec. 90-521. Criteria for approving amendments to official zoning map.

In evaluating proposed changes to the official zoning map, the city shall consider the following criteria:

(1) *Consistency with plan.* Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

(2) *Conformance with requirements.* Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.

(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.

(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

(5) *Adequate public facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94

(6) *Natural environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

(7) *Economic effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.

(8) *Orderly development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

(9) *Public interest; enabling act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.

(10) *Other matters.* Other matters which the planning board and the city commission may deem appropriate.

(Ord. No. 97-10, § 1(1-2.10(F)), 7-3-1997)

Sec. 90-522. Planning board review of proposed changes in land development regulations.

(a) The planning board, regardless of the source of the proposed change in the land development regulations, shall hold a public hearing thereon with due public notice. The planning board shall consider recommendations of the city planner, city attorney, building official and other information

submitted at the scheduled public hearing. The planning board shall transmit a written report and recommendation concerning the proposed change of zoning to the city commission for official action. In its deliberations the planning board shall consider the criteria stated in section 90-521

(b) Whenever the secretary to the planning board has received a written request for a continuance, delay, or postponement of a public hearing from an applicant after the public hearing has been duly advertised, the planning board may grant the applicant's request for continuance, delay, or postponement. However, as a condition to granting the applicant's request, the planning board shall require a fee as may be established by the city commission for purposes of covering all expenses resulting from the continuance, delay, or postponement. The planning board shall reschedule the hearing as soon as practicable, but in any event within the following 180 days. Further request for continuance, delay, or postponement shall result in denial of the application, and the application shall be subject to section 90-523(c)(4).

(Ord. No. 97-10, § 1(1-2.10(G)), 7-3-1997; Ord. No. 00-04, § 7, 2-1-2000)

Sec. 90-523. Review by city commission.

(a) *Generally.* The city commission shall review and act upon all proposed amendments to the land development regulations and the official zoning map.

(b) *Planning board approval.* The actions of the city commission upon approval by the planning board are as follows:

(1) If the planning board approves the petition, the city commission shall schedule a public hearing on the petition. The city clerk shall transmit copies of the petition, all comments and the minutes of the planning board meeting to each member of the city commission at least seven days before the city commission shall consider the petition.

(2) The city commission shall hold a public hearing on the requested change, petition, or amendment, with due public notice, and shall then act on the proposed change. In its deliberations the city commission shall consider the criteria identified in section 90-521 together with the findings and recommendations of the planning board. Any modifications or revisions to the planning board recommendation which involve a greater area of land to be rezoned or a more intensive zoning classification shall be the subject of an additional public hearing before the city commission with due notice prior to action by the city commission.

(c) *Planning board denial.* The actions of the city commission upon denial by the planning board are as follows:

(1) If the planning board denies the requested change or amendment to the land development regulations, this action shall be deemed final unless such action is appealed to the city commission within ten calendar days following the oral decision announced by the planning board at its final hearing on the issue. The applicant shall file such notice of appeal with the city clerk.

(2) If an appeal to a decision of the planning board is filed, the city clerk shall transmit copies of the petition, the comments and the minutes of the planning board meeting to each member of the city commission at least seven days before the city commission shall consider the appeal. The city clerk shall notify the applicant of the time and place of the meeting at which the city commission will hear the appeal.

(3) The city commission's consideration of the appeal shall be conducted after a public hearing with due public notice. However, where the planning board's recommendation is adverse to the proposed amendment, the change shall not become effective except by an affirmative vote of a majority of the city commission.

(4) When the city commission has taken final action regarding an amendment to the official zoning map or a change in a zoning classification of property, the planning board and city commission shall not reconsider any petition for the rezoning of any part or all of the same property for a period of two years from the date of the final consideration by the city commission. However, after one year, an applicant may request that the city commission waive this subsection for proper cause based on changed conditions and/or the advent of new information which substantially impacts material issues. If a request for such waiver is filed by the applicant, the city commission shall determine if the changed conditions and/or the new information is sufficient to convene a new hearing on the applicant's appeal. The time limit may be waived by the affirmative vote of five members of the city commission when such action is deemed necessary to prevent injustice or to facilitate the proper development of the city. If the city commission determines that a hearing should be held on the applicant's rezoning, the city manager shall direct the planning board to provide due public notice of the scheduled public hearing in the same manner as required for the original requested amendment to the official zoning map.

(Ord. No. 97-10, § 1(1-2.10(H)), 7-3-1997)

Sec. 90-524. Public hearings.

Ordinances which rezone specific parcels of land or which substantially change permitted use categories in zoning districts shall be enacted, scheduled and noticed according to division 2 of article VIII of this chapter unless otherwise specified in state statutes.

(Ord. No. 97-10, § 1(1-2.10(I)), 7-3-1997; Ord. No. 00-04, § 7, 2-1-2000)

State law reference— Procedure for adoption, F.S. § 166.041.

Secs. 90-525—90-550. Reserved.

FOOTNOTE(S):

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State Law reference— Uniform minimum mandatory procedure for adoption of ordinances, F.S. § 166.041. (Back)

DIVISION 3. COMPREHENSIVE PLAN AMENDMENTS

Sec. 90-551. Purpose.

Sec. 90-552. Authority.

Sec. 90-553. Initiation.

Sec. 90-554. Application and fee.

Sec. 90-555. Criteria for approving amendments to comprehensive plan future land use map.

Sec. 90-556. Planning board review of proposed changes in comprehensive plan future land use map.

Sec. 90-557. Review by city commission.

Sec. 90-558. Public hearings on amendments to comprehensive plan future land use map.

Secs. 90-559—90-585. Reserved.

Sec. 90-551. Purpose.

The purpose of this division is provide a means for changing the boundaries of the future land use map of the comprehensive plan future land use map (i.e., specific comprehensive plan amendment) consistent with F.S. ch. 163. It is not intended to relieve particular hardships nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the city commission shall consider, in addition to the factors set forth in this division, the consistency of the proposed amendment with the intent of the comprehensive plan.

(Ord. No. 97-10, § 1(1-2.12(A)), 7-3-1997)

Sec. 90-552. Authority.

The city commission may amend the boundaries of the future land use map upon compliance with F.S. ch. 163 and this division.

(Ord. No. 97-10, § 1(1-2.12(B)), 7-3-1997; Ord. No. 98-14, § 4, 5-5-1998)

Sec. 90-553. Initiation.

Pursuant to this division, site-specific comprehensive plan amendments may be proposed by the city commission, the planning board, the city manager or the owner of real property within the city affected by the proposed amendment or the agent of such owner. In addition to site-specific amendments, the city commission, the planning board, or the city manager may initiate general amendments to the comprehensive plan.

(Ord. No. 97-10, § 1(1-2.12(C)), 7-3-1997; Ord. No. 12-13, § 1, 6-5-2012)

DIVISION 3. COMPREHENSIVE PLAN AMENDMENTS

Sec. 90-554. Application and fee.

The application for a comprehensive plan amendment shall be submitted in a form established by the planning director together with a nonrefundable application fee which from time to time shall be established by resolution of the city commission for purposes of defraying the actual cost of processing the application. The application shall contain the following information:

(1) *Property description.* The application shall describe by legal description and by street address, where possible, the property to be affected by the proposed comprehensive plan amendment.

(2) *Current and proposed comprehensive plan land use map designation.* The current and proposed comprehensive plan land use map designation for the subject property shall be identified.

(3) *Current and proposed zoning.* The current and proposed zoning for the subject property shall be identified.

(4) *Existing and proposed use.* The existing and proposed use of the subject property shall be stated.

(5) *Disclosure of ownership.* The application shall include a verified statement showing each and every individual person having a legal and/or equitable ownership interest in the property upon which the application for amendment is sought, except publicly held corporations, in which case the names and addresses of the corporate officers shall be sufficient.

(6) *Justification.* The need and justification for the proposed change. The evaluation shall address but shall not be limited to the following issues:

a. *Comprehensive plan consistency.* Identifying impacts of the proposed change in the comprehensive plan future land use map on the overall purpose of the comprehensive plan and consistency with applicable policies within the comprehensive plan.

b. *Impact on surrounding properties and infrastructure.* The effect of the change, if any, on the particular property and all surrounding properties. Identify potential land use incompatibility and impacts on infrastructure.

c. *Avoidance of special treatment.* The proposed change shall not:

1. Single out a small piece of land and confer special and privileged treatment not provided to abutting properties with similar characteristics and land use relationships; and

2. Provide for land use activities which are not in the overall public interest but only for the benefit of the landowner.

d. *Undeveloped land with similar comprehensive plan future land use map designation.* The amount of undeveloped land in the general area and in the city having the same zoning classification as that requested shall be stated.

(Ord. No. 97-10, § 1(1-2.12(D)), 7-3-1997)

Sec. 90-555. Criteria for approving amendments to comprehensive plan future land use map.

In evaluating proposed changes to the comprehensive plan future land use map, the city shall consider the following criteria:

(1) *Consistency with plan.* Whether the proposal is consistent with the overall purpose of the comprehensive plan and relevant policies within the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

(2) *Conformance with ordinances.* Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.

(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the comprehensive plan's effective date and whether such conditions support or work against the proposed change.

(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

(5) *Adequate public facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Approval of a plan amendment does not constitute a concurrency determination, and the applicant will be required to a concurrency determination pursuant to chapter 94

(6) *Natural environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

(7) *Economic effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.

(8) *Orderly development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

(9) *Public interest; enabling act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of this subpart B and its enabling legislation.

(10) *Other matters.* Other matters which the planning board and the city commission may deem appropriate.

(Ord. No. 97-10, § 1(1-2.12(F)), 7-3-1997)

Sec. 90-556. Planning board review of proposed changes in comprehensive plan future land use map.

(a) The planning board, regardless of the source of the proposed change in the comprehensive plan, shall hold a public hearing thereon with due public notice as described in this division. The planning board shall consider recommendations of the city planner, city attorney, building official and other information submitted at the scheduled public hearing. The planning board shall transmit a written report and recommendation concerning the proposed change in the comprehensive plan to the city commission for official action. In its deliberations the planning board shall consider the criteria in section 90-555

(b) Whenever the secretary to the planning board has received a written request for a continuance, delay, or postponement of a public hearing from an applicant after the public hearing has been duly advertised, the planning board may grant the applicant's request for continuance, delay, or postponement. As a condition of the continuance, delay, or postponement, the planning board shall require a fee, as may be established by the city commission, for purposes of covering all expenses

resulting from the continuance, delay, or postponement. The planning board shall reschedule the hearing as soon as practicable, but within the following 180 days. Another request for continuance, delay, or postponement shall result in denial of the application, and the application shall be subject to section 90-557(c)(4).

(Ord. No. 97-10, § 1(1-2.12(G)), 7-3-1997)

Sec. 90-557. Review by city commission.

(a) *Action by city commission.* The city commission shall review and act upon all proposed amendments to the comprehensive plan.

(b) *Planning board approval.* Upon approval by the planning board, action by the city commission shall be as follows:

(1) If the city planning board approves a request to amend the comprehensive plan, the city commission shall schedule a public hearing on the proposed amendment. The city clerk shall transmit copies of the proposed amendment, all comments and the minutes of the planning board meeting to each member of the city commission at least seven days before the city commission shall consider the amendment.

(2) The city commission shall hold a public hearing on the requested change, petition, or amendment, with due public notice, and shall then act on the proposed change. In its deliberations the city commission shall consider the criteria identified in section 90-555 together with the findings and recommendations of the planning board. Any modifications or revisions to the planning board recommendation which impact a greater land area than impacted by the planning board recommendation or which include a more intensive future land use map designation shall be the subject of an additional public hearing before the city commission with due notice prior to action by the city commission.

(c) *Planning board denial.* City commission actions upon planning board denial shall be as follows:

(1) If the planning board denies the requested change or amendment to the comprehensive plan, this action shall be deemed final unless such action is appealed to the city commission within ten calendar days following the oral decision announced by the planning board at its final hearing on the issue. The applicant shall file such notice of appeal with the city clerk.

(2) If an appeal to a decision of the planning board is filed, the city clerk shall transmit copies of the petition, the comments and the minutes of the planning board meeting to each member of the city commission at least seven days before the commission shall consider the appeal. The city clerk shall notify the applicant of the time and place of the meeting at which the commission will hear the appeal.

(3) The city commission's consideration of the appeal shall be conducted after a public hearing with due public notice. However, where the planning board's recommendation is adverse to the proposed amendment, the change shall not become effective except by an affirmative vote of a majority of the city commission.

(4) When the city commission has taken final action regarding an amendment to the comprehensive plan future land use map, the planning board and city commission shall not reconsider any petition for the same amendment or any part or all of the same property affected for a period of two years from the date of the final consideration by the city commission. However, after one year, an applicant may request that the city commission waive this subsection for proper cause based on changed conditions and/or the advent of new information which substantially impacts material issues. If a request for such waiver is filed by the applicant,

the city commission shall determine if the changed conditions and/or the new information is sufficient to convene a new hearing on the applicant's appeal. The time limit may be waived by the affirmative vote of five members of the city commission when such action is deemed necessary to prevent injustice or to facilitate the proper development of the city. If the city commission determines that a hearing should be held on the applicant's proposed change in the comprehensive plan future land use map, the city manager shall direct the planning board to provide due public notice of the scheduled public hearing in the same manner as required for the original requested amendment to the comprehensive plan future land use map.

(Ord. No. 97-10, § 1(1-2.12(H)), 7-3-1997)

Sec. 90-558. Public hearings on amendments to comprehensive plan future land use map.

(a) *Generally.* Ordinances which amend land use classification on specific parcels of land on the comprehensive plan future land use map shall be enacted, scheduled and noticed according to division 2 of article VIII of chapter 90 unless otherwise specified in state statutes.

(b) *Use plan amendments.* The planning board shall hold one public hearing and recommend action to the city commission. Upon receipt of the planning board recommendations the city commission shall hold two public hearings.

(Ord. No. 97-10, § 1(1-2.12(I)), 7-3-1997; Ord. No. 00-04, § 8, 2-1-2000)

Secs. 90-559—90-585. Reserved.

ARTICLE VII. VACATION OF EASEMENTS AND RIGHTS-OF-WAY

Sec. 90-586. Proposals to vacate.

Sec. 90-587. Application and review by development review committee.

Sec. 90-588. Findings of no public purpose.

Sec. 90-589. Public hearing, notice and final determination by city commission.

Secs. 90-590—90-615. Reserved.

Sec. 90-586. Proposals to vacate.

A proposal to vacate a public easement or right-of-way may be initiated by a vote of the city commission or upon the filing of an application, as specified in this article, by one or more owners of property within the city.

(Ord. No. 97-10, § 1(1-2.13(A)), 7-3-1997)

Sec. 90-587. Application and review by development review committee.

(a) *Generally.* The development review committee (DRC), established pursuant to section 108-61, shall review all applications for vacation of public easements and rights-of-way. Any proposal for vacation of public easements or rights-of-way shall be submitted as an application to the city planning director. The city planning director, as chair of the development review committee, shall prescribe the form and content of the application for vacation of public easements and rights-of-way.

(b) *Information required on application.* The application, at a minimum, shall identify the following information:

(1) The specific location and legal description of the easement or right-of-way;

(2) The current use of the easement or right-of-way;

(3) The projected future use or reuse of the easement or right-of-way;

(4) The projected impacts of the proposed vacation on public services now and in the future; and

(5) The impact on adjacent properties as well as major areas or land uses currently benefitting from a public service or system that uses the subject easement or right-of-way.

(Ord. No. 97-10, § 1(1-2.13(B)), 7-3-1997)

Sec. 90-588. Findings of no public purpose.

In considering applications for vacating public easements or rights-of-way, the development review committee shall review whether any public purpose is served by the subject easement or right-of-way. This evaluation shall consider all relevant public purpose options associated with drainage systems; water service; sanitary sewer services; roadways, pedestrian and/or bicycle ways, and alleys; public safety, including emergency service access and egress; communication systems; power and/or fuel networks; or other public or semipublic services essential to the public welfare and safety. Consideration shall include present and future needs for the easement or right-of-way for purposes of accommodating or improving delivery of public services and/or ensuring convenient access for service and/or maintenance or other

public benefit now or in the future. In order to affirmatively recommend vacation of easements and/or rights-of-way, the development review committee shall render a finding that no current or future public purpose can be identified for the subject easement or right-of-way.

(Ord. No. 97-10, § 1(1-2.13(C)), 7-3-1997)

Sec. 90-589. Public hearing, notice and final determination by city commission.

(a) *Generally.* The city commission shall render the final determination regarding a vacation of a public easement or right-of-way after convening a public hearing with due notice and considering the development review committee's findings.

(b) *Notice.* Upon notification by the city manager of the date fixed for a public hearing on any matter subject to this division, the city clerk shall cause notice pursuant to division 2 of article VIII of chapter 90. The city clerk shall also forward by certified mail, return receipt requested, similar notice setting forth the time, place and purpose of the hearing to the following:

(1) The applicant and/or property owner.

(2) All providers of public or semipublic services such as those identified in section 90-588

(c) *Findings and final action.* The city commission shall cite specific findings in support of a final decision to vacate a public easement or right-of-way, including an absence of public purpose for the subject easement or right-of-way. Similarly the city commission shall identify specific findings in support of any decision to retain the public easement or right-of-way. Any decision to vacate a public easement or right-of-way shall be by resolution of the city commission.

(Ord. No. 97-10, § 1(1-2.13(D)), 7-3-1997; Ord. No. 00-04, § 9, 2-1-2000)

Secs. 90-590—90-615. Reserved.

ARTICLE VIII. PUBLIC HEARINGS

DIVISION 1. - GENERALLY

DIVISION 2. - NOTICE

DIVISION 1. GENERALLY

Secs. 90-616—90-640. Reserved.

Secs. 90-616—90-640. Reserved.

DIVISION 2. NOTICE

Sec. 90-641. Scope.

Sec. 90-642. Newspaper notice.

Sec. 90-643. Mail notice.

Sec. 90-644. Posted notice.

Sec. 90-645. Content of notice.

Sec. 90-646. Timing of notice.

Secs. 90-647—90-675. Reserved.

Sec. 90-641. Scope.

Except as required by F.S. §§ 163.3181(3)(a), 163.3225(2), and 166.041(3)(a), (c), the city shall provide notice for public hearings on variances, board of adjustment actions, planning board actions, appeals, vacation of public easements or rights-of-way, conditional uses, development plans, subdivision plans, planned redevelopment and development plans, as provided in this division.

(Ord. No. 00-04, § 10(1-2.14), 2-1-2000; Ord. No. 08-04, § 14, 5-20-2008)

Sec. 90-642. Newspaper notice.

In accordance with the requirements of sections 90-645 and 90-646, the city shall be required to publish an advertisement of the public hearing in a newspaper of general paid circulation in the city and of general interest and readership in the city, not one of limited subject matter.

(Ord. No. 00-04, § 10(1-2.14(A)), 2-1-2000)

Sec. 90-643. Mail notice.

In accordance with the requirements of sections 90-645 and 90-646, the city shall mail a notice of the public hearing to each property owner located within 300 feet of the outer boundaries of the land which is the subject of the request, based upon the list of property owners maintained by the planning department and periodically updated with ad valorem tax records.

(Ord. No. 00-04, § 10(1-2.14(B)), 2-1-2000)

Sec. 90-644. Posted notice.

In accordance with the requirements of sections 90-645 and 90-646, the city shall post a notice of the public hearing on the subject property that is legible from the adjacent public street. The notice shall contain block lettering on a high contrast background color with the words "public notice" in letters three inches or more in height.

(Ord. No. 00-04, § 10(1-2.14(C)), 2-1-2000)

DIVISION 2. NOTICE

Sec. 90-645. Content of notice.

The notice required by this division shall contain the date, time and place of the public hearing and a common description of the location of the subject site and the nature of the project.

(Ord. No. 00-04, § 10(1-2.14(D)), 2-1-2000)

Sec. 90-646. Timing of notice.

(a) The notice required by this division shall be given at least ten days prior to the date set for the public hearing at which the application is first considered. A copy of the notice shall be available for public inspection during regular business hours of the city clerk.

(b) The first two postponements of an item shall not require a new notice, provided that the postponement is to a date and location certain. In the event of a third postponement, then a new notice shall be given as provided herein. If at least two of the three postponements were at the applicant's request or due to the applicant's actions, then the applicant shall bear the cost of the re-notice; otherwise the cost shall be borne by the city.

(Ord. No. 00-04, § 10(1-2.14(E)), 2-1-2000; Ord. No. 04-01, § 1, 1-6-2004)

Secs. 90-647—90-675. Reserved.

ARTICLE IX. DEVELOPMENT AGREEMENTS [8]

Sec. 90-676. Authorization to enter into agreements.

Sec. 90-677. Applicability.

Sec. 90-678. Initiation of process by applicant.

Sec. 90-679. Preliminary actions by city commission.

Sec. 90-680. Required information for application.

Sec. 90-681. Review and negotiations.

Sec. 90-682. Content.

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Sec. 90-686. Execution.

Sec. 90-687. Effect of subsequently adopted laws and ordinances.

Sec. 90-688. Periodic review.

Sec. 90-689. Modification or revocation.

Sec. 90-690. Recording and transmittal.

Sec. 90-691. Effect on successors.

Sec. 90-692. Enforcement.

Sec. 90-676. Authorization to enter into agreements.

(a) The city commission, in its sole and exclusive discretion, may enter into development agreements with the legal and equitable owners of real property within or to be annexed to the city limits as is authorized in F.S. § 163.3220 and as is further set forth under the terms of this article.

(b) The state legislature has found that:

(1) The lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.

(2) Assurance to a developer that, upon receipt of a development permit, the applicant may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in ensuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development.

(3) The comprehensive planning process should be furthered by authorizing local governments to enter into development agreements with developers. The intent is to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate

public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

(Ord. No. 97-10, § 1(1-3.1), 7-3-1997)

Sec. 90-677. Applicability.

(a) The city may, by ordinance, establish procedures and requirements, as provided in F.S. §§ 163.3220—163.3243, to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.

(b) The entry into a development agreement by the city shall in no way whatsoever limit or modify any legislative power of the city to adopt ordinances, resolutions or regulations or to make executive or legislative decisions of any kind which it had the power to make prior to the entry into such development agreement, except to the degree that the development agreement, by its express terms and not by implication, gives vested rights to the property owner as to certain development permissions, required improvements and similar matters. No development agreement shall, by its express terms or by implication, limit the right of the city commission to adopt ordinances or regulations or to adopt policies that are of general application in the city, except as is expressly provided by F.S. §§ 163.3220—163.3243.

(Ord. No. 97-10, § 1(1-3.2), 7-3-1997)

Sec. 90-678. Initiation of process by applicant.

A property owner desiring to enter into a development agreement with the city shall make a written request for such development agreement to the city administrative official and pay the fee as is established by resolution of the city commission. Such written request shall identify the lands which are desired to be subject to the development agreement and shall identify all legal and equitable owners having any interest in such property. Such ownership interest shall be certified by a title company or an attorney at law licensed to practice law in the state. If any partnership, joint venture or other entity, other than an individual, owns a legal or equitable interest in the subject property, all principals and other persons with interest in such partnership or joint venture shall be revealed. If any corporation owns a legal or equitable interest in the subject property, the officers and directors and any shareholder owning more than ten percent of the interest in the corporation shall be revealed.

(Ord. No. 97-10, § 1(1-3.3), 7-3-1997)

Sec. 90-679. Preliminary actions by city commission.

Upon receipt of a request to enter into a development agreement with the city, the city administrative official shall place the matter on the agenda of the city commission. The city commission, after considering staff comments, shall, in its sole and absolute discretion, determine whether or not to enter into a development agreement and to pursue negotiations with the property owner.

(Ord. No. 97-10, § 1(1-3.4), 7-3-1997)

Sec. 90-680. Required information for application.

An applicant for a development agreement shall meet the requirements for development plan review set forth in article II of chapter 108.

(Ord. No. 97-10, § 1(1-3.5), 7-3-1997)

ARTICLE IX. DEVELOPMENT AGREEMENTS

Sec. 90-681. Review and negotiations.

An applicant for a development agreement shall meet the requirements for development plan review set forth in article II of chapter 108. If approved or approved with conditions under either the minor or the major development plan review process, the applicant may request a development agreement with the city.

(Ord. No. 97-10, § 1(1-3.6), 7-3-1997)

Sec. 90-682. Content.

(a) Any development agreement approved under this article shall contain not less than the following requirements as provided in F.S. § 163.3227:

(1) A legal description of the land subject to the development agreement and the identification of all persons having legal or equitable ownership therein.

(2) The duration of the development agreement, which duration shall not exceed five years, but which may be extended by mutual consent of the city and the developer. Any request for an extension shall be subject to the public hearing process necessary for the initial approval of the development agreement.

(3) The development uses permitted on the land, including population densities, building intensities and building heights.

(4) All documents required to comply with criteria cited in the land development regulations applicable to the subject project.

(5) A description of the public facilities that will service the development, including designation of the entity that will be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed shall be provided. A schedule to ensure that public facilities shall be available concurrent with the impacts of the development shall also be provided. Such schedule, relating the provision of public facilities or services to events or thresholds in the development, may be substituted for the certain dates required under this subsection.

(6) The applicant may be required to provide for a performance bond, letter of credit, or similar instrument, to be deposited with the city, to secure the construction of any new facilities that are required to be constructed as part of the proposed development agreement. Alternatively, such construction may be a condition precedent to the issuance of any building permits or other development permissions. If the new public facilities are in place and operating at the time development permits are requested, no such performance bond or letter of credit shall be necessary unless such facilities are not adequate for the project.

(7) A description of any reservation or dedication of land for public purposes. The development agreement shall provide specifically how all impact fees and other funding requirements for the project are to be met.

(8) If land is to be conveyed to the city in discharge of the obligation of any impact fee or other similar obligation, the development agreement shall provide that such conveyance will be by warranty deed and will be accompanied by an environmental audit and a title insurance policy which shall be in an amount not less than the assessed value of the land. The applicant shall bear the cost of these requirements.

(9) A description of all development permits approved or needed to be approved for the development of the land, which description shall specifically include but not be limited to the following:

a. Any required comprehensive plan amendments or rezonings.

b. Any required submissions to or approvals from the county; the South Florida Regional Planning Council; the state departments of community affairs (DCA), environmental protection (DEP), transportation (DOT), health and rehabilitative services (DHRS); the United State Army Corps of Engineers; the South Florida Water Management District; the United States Environmental Protection Agency; or any other departments with competent jurisdiction over any aspect of the proposed development.

c. If development requirements are not satisfied, action in reliance on the development agreement or expenditures in pursuance of its terms shall not vest any development rights to the applicant/property owner. Failure to perform as specified in the development agreement shall not constitute partial performance and shall not entitle the applicant or property owner to a continuation of the development agreement.

(10) A specific finding in the development agreement that the development permitted or proposed is consistent with the city's comprehensive plan and with the land development regulations. However, if amendments are required to the comprehensive plan or land development regulations, such amendments shall be specifically identified in the development agreement, and the agreement shall be contingent upon those amendments being made and approved by the appropriate governmental agencies.

(11) The city commission may provide for any conditions, terms, restrictions or other requirements determined to be reasonably necessary for the public health, safety or welfare of city residents and property owners.

(12) A statement indicating that failure of the development agreement to address a particular permit, condition, term or restriction shall not relieve the developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

(13) At the city commission's discretion, the development agreement may provide that the entire development, or any phase thereof, be commenced or completed within a specific period of time.

(b) At such time as the city administrative official has reduced the terms of the proposed development agreement to written contractual form, the administrative official shall transmit such development agreement to the planning board and the city commission with a written recommendation from the development review committee.

(c) Prior to the first public hearing, the proposed development agreement shall have been reviewed by the planning board, and its recommendation along with the development review committee's recommendation shall be provided to the city commission.

(Ord. No. 97-10, § 1(1-3.7), 7-3-1997)

Sec. 90-683. Public hearings and notice.

Pursuant to F.S. § 163.3225, before entering into, amending, or revoking a development agreement, the city shall conduct at least two public hearings. One of the public hearings shall be held by the planning board. The following procedures shall be applied in advertising for the public hearings:

(1) Each public hearing shall be advertised in a newspaper of general circulation in the city, and such advertisement shall be placed approximately seven days before each public hearing pursuant to requirements of F.S. ch. 163.

(2) Notice of intent to consider the development agreement shall also be mailed to all property owners abutting the subject land and/or owners of property lying within 500 feet of the subject

land. The applicant for the development agreement shall furnish the city administrative official with an updated listing of the complete names and addresses of the affected owners.

(3) The day, time and place at which the second public hearing will be held shall be announced at the first public hearing.

(4) All notices of public hearings shall specify the location of the land subject to the proposed development agreement; the development uses proposed on the property; the proposed population densities, building intensities and heights; and shall further specify where a copy of the proposed development agreement can be obtained.

(Ord. No. 97-10, § 1(1-3.8), 7-3-1997)

Sec. 90-684. Duration.

Pursuant to F.S. § 163.3229, the duration of a development agreement shall not exceed ten years. It may be extended by mutual consent of the city commission and the developer, subject to a public hearing in accordance with F.S. § 163.3225.

(Ord. No. 97-10, § 1(1-3.9), 7-3-1997)

Sec. 90-685. Consistency with comprehensive plan and land development regulations.

Pursuant to F.S. § 163.3231, a development agreement and authorized development shall be consistent with the city comprehensive plan and land development regulations. The city comprehensive plan, land development regulations, and other city laws and policies governing the development of the land at the time of the execution of the development agreement shall govern the development of the land for the duration of the development agreement.

(Ord. No. 97-10, § 1(1-3.10), 7-3-1997)

Sec. 90-686. Execution.

All development agreements shall be executed by all persons having legal or equitable interest in the subject land. However, the city administrative official may approve the execution of the development agreement without the necessity of such joinder or subordination upon a determination that the substantial interests of the city will not be adversely affected.

(Ord. No. 97-10, § 1(1-3.11), 7-3-1997)

Sec. 90-687. Effect of subsequently adopted laws and ordinances.

(a) *Local laws and ordinances.* The city may apply subsequently adopted laws and policies to a development that is subject to a development agreement only if the city commission has held a public hearing and determined that such new or amended laws and policies are, as provided in F.S. § 163.3233:

(1) Not in conflict with laws and policies governing the development agreement and do not prevent development of land uses, intensities or densities allowed under the terms of the development agreement.

(2) Essential to the public health, safety and welfare and expressly state that they shall apply to a development that is subject to a development agreement.

(3) Specifically anticipated and provided for in the development agreement.

The city must further demonstrate that substantial changes have occurred in pertinent conditions existing at the time of the approval of the development agreement, or that the development agreement is based on substantially inaccurate information supplied by the developer. Consistent with F.S. § 163.3233(2), the intent is that all development agreements shall specifically provide that subsequently adopted laws and policies having general application throughout the city shall be applicable to the lands subject to the development agreement so long as conditions identified in this subsection are not abridged. The applicant must abide by such laws of general application which are adopted after the development agreement is executed. Such laws and policies shall apply equally to the subject property as to other properties developed prior to the adoption of such new laws or policies. This section does not abrogate any rights that may vest pursuant to common law.

(b) *State or federal laws.* If state or federal laws are enacted after the execution of a development agreement, which laws are applicable to and preclude either party's compliance with the terms and conditions of the development agreement, the agreement shall be modified or terminated as is necessary to comply with the relevant state or federal laws (refer to F.S. § 163.3241). For each annual review conducted during years six through ten of a development agreement, the review shall be incorporated into a written report which shall be submitted to the parties to the agreement and the state land planning agency.

(Ord. No. 97-10, § 1(1-3.12), 7-3-1997)

Sec. 90-688. Periodic review.

(a) Pursuant to F.S. § 163.3235, the city shall review land subject to a development agreement at least once every 12 months. Such review shall determine if there has been demonstrated good faith compliance with the terms of the development agreement. The city administrative official shall present the city commission with a report on the status of all activities and achievements pursuant to the development agreement.

(b) Prior to the city's review of the status of a development agreement, the developer or property owner shall, within 14 days of the city commission's review of the development agreement, submit to the city a progress report indicating all activities and achievements since the execution of the development agreement and, if applicable, since the previous periodic report.

(c) If the city no longer has a record of the present property owner and/or developer, any requests or notices required by this subpart B shall be made to the property owner of record as shown on the records of the county property appraiser.

(Ord. No. 97-10, § 1(1-3.13), 7-3-1997)

Sec. 90-689. Modification or revocation.

Pursuant to F.S. § 163.3235, if the city commission finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of the development agreement, the agreement may be revoked or modified by the city commission. In addition, pursuant to F.S. § 163.3237, a development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest. Prior to modifying, revoking or terminating a development agreement, the city commission shall hold public hearings pursuant to 90-683 and give notice as required for the adoption of a development agreement as provided in F.S. § 163.3225.

(Ord. No. 97-10, § 1(1-3.14), 7-3-1997)

ARTICLE IX. DEVELOPMENT AGREEMENTS

Sec. 90-690. Recording and transmittal.

Not later than 14 days after the execution of a development agreement, the city clerk shall record the agreement with the clerk of the circuit court in the county. A copy of the recorded development agreement shall be submitted to the state land planning agency within 14 days after the agreement is recorded as provided in F.S. § 163.3239. A development agreement shall not be effective until it is properly recorded in the public records of the county and until 30 days after having been received by the state land planning agency pursuant to F.S. § 163.3239.

(Ord. No. 97-10, § 1(1-3.15), 7-3-1997)

Sec. 90-691. Effect on successors.

The burdens of the development agreement shall be binding upon and the benefits of the agreement shall inure to all successors in interest to the parties to the agreement as provided in F.S. § 163.3239.

(Ord. No. 97-10, § 1(1-3.16), 7-3-1997)

Sec. 90-692. Enforcement.

Such persons as are defined by state law shall have standing to enforce the development agreement as provided in F.S. § 163.3243.

(Ord. No. 97-10, § 1(1-3.17), 7-3-1997)

FOOTNOTE(S):

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Cross reference— Planning and development, ch. 108. (Back)

Chapters 91—93 RESERVED