

ARTICLE IX

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Sections 21-103 through 21-119 reserved for future use.

ARTICLE IX

APPLICATION PROCEDURES

SECTION 21-90 - GENERAL PROCEDURES

21-90.01 - General Requirements

- a. All properties subject to a single application must be contiguous and immediately adjacent to one another or be the subject of separate petitions and filing fees.
- b. No application shall be accepted unless it is presented on the official forms provided by the City of Edgewater and the appropriate fee is paid.
- c. The Development Services Department shall prepare and periodically revise, the required forms and instruction packages for each development permit application described in this Article.
- d. Before an application is scheduled for further consideration, the Development Services Department shall have five (5) days to determine that the application package is complete.
- e. All applicants for any action described herein are encouraged to schedule a pre-application conference with the Technical Review Committee (TRC).
- f. No application shall be determined to be complete unless the property owner of record as listed by the Volusia County Property Appraiser's Office signs the application or authorizes (in writing) an agent to act in the applicant's behalf and all required support documents are provided.
- g. Property surveys, site plans and landscape plans shall be provided at a common scale of 1" = 30 feet.
- h. The deadline for filing any complete application described herein shall be a minimum of forty-five (45) days prior to the regularly scheduled meeting of the first review body. The City shall not be at fault for the applicant's failure to meet any deadline described herein. Any waiver of this deadline by more than two working days shall require City Council approval. Due to unforeseen conditions, extremely large agendas, review process, etc., this deadline does not guarantee an applicant's placement on the next regularly scheduled meeting. However, the application will be placed on the next available meeting.

21-90.02 - Application Notice Requirements

It is the intent of this Section to provide legal and timely public notice of the application review process. It is also the intent to provide adequate procedural due process to the applicant and the public. Application notice requirements are based on the minimum requirements found in Chapters 163, 166, 171 and 177, Florida Statutes.

- a. Public notice of all applications for development approval shall be consistent with current State Statutes.
- b. When mailing of notices is required, the notice shall be sent to the applicant and the property owners of record as listed by the Volusia County Property Appraiser's Office.
- c. When newspaper advertisements are required, they shall appear in the newspaper of general circulation. The advertisement shall identify the Tax Parcel Identification Number, street address or location and a general description of the proposed project. A site location map may be required as appropriate.
- d. When on-site posting is required, the notice shall be posted in at least one (1) conspicuous place on the site.
- e. Proof of publication and mailing notices shall be available for public inspection.

21-90.03 - Application Fee Schedule

The City Council shall adopt by Resolution, development review, advertising and associated fees for administrative charges. If an applicant withdraws an application or requests tabling after the advertisement has been submitted and then reinstates consideration of the application, the applicant shall be billed for any additional advertising costs.

SECTION 21-91 - ZONING MAP AMENDMENTS (REZONING)

21-91.01 - General Provisions

An amendment to the Official Zoning Map requires adoption of an Ordinance by the City Council following the review and recommendation of the Planning and Zoning Board (P&ZB).

21-91.02 - Comprehensive Plan Consistency

No application for a change in zoning can be approved unless the proposed zoning is consistent with the Land Use Designation/ Zoning Classification Matrix in Table III-3.

21-91.03 - Procedures

- a. The public notice for a parcel rezoning shall be as provided in current Florida Statutes.
- b. Upon receipt of a complete application and relevant supporting material, the Development Services Department will schedule a review by the TRC.
- c. Following review by the TRC, a staff report including findings of fact and a staff recommendation shall be provided to the P&ZB.
- d. Following review by the P&ZB, a staff report presenting the P&ZB's recommendations, a proposed ordinance and a staff recommendation shall be provided to the City Council for consideration.
- e. The decision of the City Council with respect to the rezoning shall be based on findings of fact and the competent public testimony received at the hearing. Unless otherwise provided, the rezoning ordinance approved by the City Council shall be effective immediately upon adoption of the ordinance.

21-91.04 - Decision Criteria

In order to approve a rezoning application, the City Council must make a finding of fact that the rezoning:

- a. Is consistent with all the relevant Goals, Objectives and Policies of the Comprehensive Plan;
- b. Meets the Concurrency Management System requirements described in Article XI; and
- c. Is compatible with existing and proposed uses in the adjacent area.

21-91.05 - Rehearings

A rezoning application denied by the City Council shall not be eligible for re-submission for a period of one (1) year after the date of denial.

21-91.06 - Appeals

An appeal of the decision of the City Council concerning a rezoning decision is to the Circuit Court.

SECTION 21-92 - CONDITIONAL USE PERMIT (CUP)

21-92.01 - Intent

It is the intent of this Section to recognize that certain types of uses are unique and require special consideration. Unless specifically stated otherwise in the conditions of approval, the CUP applies to subsequent property owners operating the same business or engaging in the same use.

21-92.02 - Comprehensive Plan Consistency

No application for a CUP can be approved unless the property is located within a zoning district that is consistent with the Land Use Designation/Zoning Classification Matrix in Table III-3.

21-92.03 - Procedures

- a. The public notice for a CUP shall be as provided in current Florida Statutes.
- b. Upon receipt of a complete application and relevant supporting material, the Development Services Department will schedule a review by the TRC.
- c. Following review by the TRC, a staff report including findings of fact and a staff recommendation shall be provided to the P&ZB.
- d. The P&ZB shall provide findings of fact regarding their decision to approve, deny or modify the applicant's request.
- e. The P&ZB decision shall be final unless appealed to the City Council within fifteen (15) days.

21-92.04 - Decision Criteria

In order to approve a CUP, the P&ZB must make a finding of fact that the CUP:

- a. Is consistent with applicable land development regulations for the zoning district in which the property is located;
- b. Is compatible with existing and proposed uses in the adjacent area; and
- c. Meets the Concurrency Management System requirements described in Article XI.

21-92.05 - Authority

- a. A CUP may set reasonable time limits, renewal conditions and/or operational restrictions.
- b. A CUP may require completion of the site plan review process described in Section 21-93 of this Article.
- c. If the applicant agrees to install additional landscaping, reduce/or relocate signage or make other performance standards enhancing the appearance and/or public safety on the subject parcel specific land development requirements may be waived.

21-92.06 - Approval Expiration

Unless specifically stated otherwise, a CUP shall expire one hundred twenty (120) days after issued, if a building permit or certificate of occupancy has not been issued by that date.

21-92.07 - Reconsideration

A denied CUP shall not be eligible for resubmission for a period of one (1) year after the date of final denial by the P&ZB or by the City Council, if appealed.

21-92.08 - Appeals

An appeal of a decision of the City Council concerning a Conditional Use Permit is to the Circuit Court.

SECTION 21-93 - SITE PLAN REVIEW

21-93.01 - Intent

It is the intent of this Section to establish the process and criteria for review of site plans. A site plan for a building of less than 25,000 square feet of enclosed useable area is an administrative decision and shall be granted/denied by the TRC.

21-93.02 - Comprehensive Plan Consistency

No site plan application can be approved unless the property is located within a zoning district that is consistent with the Land Use Designation/Zoning Classification Matrix in Table III-3.

21-93.03 - Procedures

- a. The applicant shall prepare a conceptual site plan which, at a minimum, identifies the points of access, the amount of impervious surface, the footprint(s) of proposed structures, a general description of the proposed landscaping, provides for the proposed use of the parcel, the number of employees and other such matters as are identified in the application material.
- b. The Development Services Department shall coordinate preparation of a staff review regarding the proposed conceptual plan addressing the factors described in subsection (a) above and the application material.
- c. Upon receipt of a complete application and relevant supporting material, the Development Services Department will schedule a review by the TRC. Prior to the TRC review, the applicant shall be provided written findings of fact concerning the site plan application. The TRC shall evaluate the technical aspects of the proposed site plan and shall make written finding of fact and may establish conditions for approval. The proposed site plan shall be reviewed for compliance with the Land Development Code requirements. The TRC shall formally vote on passage of a site plan.
- d. Following review by the TRC, the applicant for a site plan with a building less than 25,000 square feet of enclosed useable area shall be provided with written findings of fact and shall receive official notification of the site plan action.
- e. Site plans involving buildings of 25,000 square feet or greater of enclosed usable area are also subject to review by the P&ZB and review and consideration by the City Council.
- f. As-built drawings shall be required on all projects requiring site plan approval.

21-93.04 - Approval Expiration

Unless specifically stated otherwise, a site plan permit shall expire in one (1) year if a complete building permit application has not been filed by that date. A one (1) year site plan approval extension may be granted by the City Manager or his designee if there is sufficient evidence of a hardship and the failure to complete the building permit application within the established time frame.

21-93.05 - Reconsideration

A denied site plan shall not be eligible for resubmission for a period of six (6) months after the date of final denial by the City Council.

21-93.06 - Appeals

For buildings of less than 25,000 square feet of enclosed usable area, an applicant may appeal a site plan decision of the TRC to the City Council within fifteen (15) days. The City Council shall consider the appeal at their next available meeting and shall make findings of fact in its decision.

SECTION 21-94 - LAND DEVELOPMENT CODE AMENDMENTS

21-94.01 - General Provisions

Any amendment to the text of Chapter 21 of the City Code (Land Development Code) requires adoption of an ordinance by the City Council after review and recommendation of the P&ZB. Changes to the text may be proposed by City staff, any advisory board and/or the City Council at any time.

21-94.02 - Comprehensive Plan Consistency

All modifications or text amendments to Chapter 21 shall be consistent with the provisions of the Comprehensive Plan.

21-94.03 - Procedures

- a. The public notice for a Land Development Code text amendment shall be as provided in current Florida Statutes.
- b. Such proposed changes are a legislative action.
- c. Upon receipt of a request to change the text of this Chapter, the Development Services Department will schedule a review of the proposed change by the TRC.
- d. Following review of the proposed text change by the TRC, a staff report including findings of fact and a staff recommendation shall be provided to the P&ZB.
- e. Following review of the proposed change by the P&ZB, the proposed change will be scheduled for a public hearing before the City Council. A staff report presenting the P&ZB's recommendations, a proposed ordinance, a staff recommendation and the P&ZB minutes shall be provided to the City Council for consideration at the public hearing.
- f. The City Council decision shall be based on findings of fact and competent public testimony received at the hearing. The City Council decision shall be effective immediately upon adoption of the ordinance.

21-94.04 - Approval Expiration

Any text amendments to this Chapter 21 shall be permanent unless subsequently amended as provided for in this Section.

21-94.05 - Reconsideration

Text amendments denied by the City Council may be reconsidered at any future date.

21-94.06 - Appeals

Any appeal of the decision of the City Council concerning any text amendment is to the Circuit Court.

SECTION 21-95 - SMALL SCALE PLAN AMENDMENTS

21-95.01 - General Provisions

Chapters 163.3184, 163.3187 and 163.3189, Florida Statutes provide for a process to amend the City Comprehensive Plan. The Plan shall be amended by ordinance in the manner provided in Chapter 166.041 and Chapter 163, Part II, F.S. The Legislature created Chapter 163.3187 (c), F.S. to provide for an abbreviated review of small scale plan amendments. A small-scale plan amendment decision is a legislative decision and will be administered accordingly.

21-95.02 - Criteria for Determination

All small-scale plan amendments may only be adopted under those conditions set forth in § 163.3187(c), Florida Statutes:

- a. The proposed amendment involves a use of less than ten (10) acres;
- b. The cumulative acreage of small scale amendments has not exceeded eighty (80) acres in the current calendar year;
- c. The amendment does not involve the same property granted a land use amendment within one (1) year;
- d. The amendment does not involve the same owner's property within two hundred feet (200') of property granted a plan amendment within the prior one (1) year; and
- e. The proposed amendment does not involve a text change to the goals, objectives and policies of the Comprehensive Plan, but only proposes a land use change to the Future Land Use Map for a site-specific small-scale development activity.

- f. The property that is the subject of the proposed amendment is not located within an area of critical state concern, unless the project subject to the proposed amendment involves the construction of affordable housing units meeting the criteria of s. 420.0004(3), and is located within an area of critical state concern designated by s. 380.0552 or by the Administration Commission pursuant to s. 380.05(1). Such amendment is not subject to the density limitations of sub-subparagraph f. and shall be reviewed by the state land planning agency for consistency with the principles for guiding development applicable to the area of critical state concern where the amendment is located and shall not become effective until a final order is issued under s. 380.05(6).
- g. If the proposed amendment involves a residential land use, the residential land use has a density of 10 units or less per acre or the proposed future land use category allows a maximum residential density of the same or less than the maximum residential density allowable under the existing future land use category, except that this limitation does not apply to small scale amendments involving the construction of affordable housing units meeting the criteria of s. 420.0004(3) on property which will be the subject of a land use restriction agreement or extended use agreement recorded in conjunction with the issuance of tax exempt bond financing or an allocation of federal tax credits issued through the Florida Housing Finance Corporation or a local housing finance authority authorized by the Division of Bond Finance of the State Board of Administration, or small scale amendments described in sub-sub-subparagraph a.(I) that are designated in the local comprehensive plan for urban infill, urban redevelopment, or downtown revitalization as defined in s. 163.3164, urban infill and redevelopment areas designated under s. 163.2517, transportation concurrency exception areas approved pursuant to s. 163.3180(5), or regional activity centers and urban central business districts approved pursuant to s. 380.06(2)(e).

21-95.03 - Procedures

- a. A small-scale plan amendment may be initiated by a property owner, the City staff, any advisory board and/or at the direction of the City Council.
- b. The public notice for a small-scale plan amendment shall be as provided in current Florida Statutes.
- c. Upon receipt of a complete application and payment of the appropriate fee, the Development Services Department will schedule a review by the TRC.
- d. Following review by the TRC, a staff report including findings of fact to amend the Comprehensive Plan, a small scale plan amendment report and a staff recommendation shall be provided to the P&ZB.
- e. The small-scale plan amendment report shall at a minimum include adequate data and

analysis to justify the proposed amendment.

- f. Following review by the P&ZB, a staff report presenting the P&ZB recommendation, a proposed ordinance and staff recommendation shall be provided to the City Council for consideration.
- g. The decision of the City Council with respect to the small-scale amendment shall be effective thirty-one (31) days after its adoption unless appealed by an affected person as defined in current Florida Statutes.

21-95.04 - Approval Criteria

In order to approve a small-scale plan amendment, the City Council must make the following findings of fact:

- a. The proposed amendment is consistent with the Goals, Objectives and Policies of the Comprehensive Plan.
- b. The proposed amendment is consistent with the Concurrency Management System requirements in Article XI.
- c. The proposed amendment is compatible with existing and proposed uses in the adjacent area.

21-95.05 - Approval Expiration

Small-scale plan amendments shall be permanent unless subsequently amended as provided for in this Section.

21-95.06 - Reconsideration

A small-scale plan amendment denied by the City Council shall not be reconsidered for one (1) year after the date of final denial by the City Council.

21-95.07 - Appeals

An appeal of the decision of the City Council concerning any final small-scale plan amendment is to the Division of Administrative Hearings within thirty (30) days of the final decision concerning the small-scale amendment.

SECTION 21-96 - OTHER PLAN AMENDMENTS

21-96.01 - General Provisions

Chapters 163.3184, 163.3187 and 163.3189, Florida Statutes provide for a process to amend the City Comprehensive Plan. Applications for plan amendments, other than small-scale amendments, shall be accepted two (2) times per year. The City Comprehensive Plan shall be amended by ordinance in the manner provided in Chapter 166.041 and Chapter 163, Part II, F.S. Plan amendments, other than small scale amendments, are legislative decisions and shall be administered accordingly.

21-96.02 - Criteria for Determination

A comprehensive plan amendment is required when:

- a. Any change is proposed or required in the boundaries of any portion of the Future Land Use Map.
- b. Any change is proposed in the text of the Data and Analysis and/or Goals, Objectives and Policies of the Comprehensive Plan.
- c. Any parcel is annexed into the City.

21-96.03 - Procedures

- a. The public notice for other plan amendments shall be as provided in current Florida Statutes.
- b. Upon receipt of a complete application and payment of the appropriate fees, the Development Services Department will schedule a review by the TRC.
- c. Following review by the TRC, a staff report including findings of fact to amend the Comprehensive Plan, a plan amendment report and a staff recommendation shall be provided to the P&ZB.
- d. The plan amendment report shall at a minimum include adequate data and analysis to justify the proposed amendment.
- e. Following review by the P&ZB, a staff report presenting P&ZB recommendations, a proposed ordinance and a staff recommendation shall be provided to the City Council for consideration.
- f. The purpose of the first public hearing is to allow the City Council to grant/deny transmittal of the proposed Comprehensive Plan amendment to the DCA for review and comments

pursuant to the requirements of Chapter 163, F.S., Part II.

- g. Upon receipt of the DCA comments, the proposed amendment(s) shall be scheduled for the second public hearing by City Council to consider the Comprehensive Plan amendment.
- h. In their consideration of the proposed Comprehensive Plan amendment, the City Council shall address any objections provided by the DCA and shall consider any recommendations and comments provided by the DCA. The City Council's decision shall be based on findings of fact and the public testimony received at this hearing.
- i. If the City Council adopts the Comprehensive Plan amendment ordinance, the adopted ordinance and supporting documentation shall be transmitted to the DCA for their compliance determination pursuant to the requirements of Chapter 163.3184, F.S.
- j. The Comprehensive Plan amendment(s) shall be effective twenty-one (21) days after the DCA issues a Determination of Compliance unless appealed by an affected person as defined in current Florida Statutes.

21-96.04 - Approval Criteria

In order to approve a Comprehensive Plan amendment, the City Council must find that, based on the facts presented, the proposed amendment is consistent with the Goals, Objectives and Policies of the Comprehensive Plan.

21-96.05 - Approval Expiration

Comprehensive Plan amendments shall be permanent unless subsequently amended as provided for in this Section.

21-96.06 - Reconsideration

A Comprehensive Plan amendment denied by the City Council shall not be reconsidered for one (1) year after the date of final denial by the City Council.

21-96.07 - Appeals

An appeal of the decision of the City Council concerning a Comprehensive Plan amendment in this Section is to the Division of Administrative Hearings within twenty-one (21) days of the final adoption.

SECTION 21-97 - VOLUNTARY ANNEXATION

21-97.01 - Intent

The purpose of this Section is to establish the process and criteria to voluntarily annex parcels into the City limits. A voluntary annexation shall be in accordance with the requirements of Chapter 171.044, F.S. An annexation decision is a legislative action and shall be administered accordingly.

21-97.02- Criteria for Determination

The owner or owners of real property which is contiguous and reasonably compact to the existing City limits may petition the City for voluntary annexation subject to Chapter 171, F.S.

21-97.03- Procedures

- a. The public notice for a voluntary annexation shall be as provided in Florida Statutes.
- b. Following review by the TRC, the Development Services Department shall transmit the annexation report and relevant supporting materials to the P&ZB for consideration. Separate ordinances shall be required for each parcel or contiguous group of parcels.
- c. The P&ZB shall conduct a public hearing and shall evaluate whether the proposed annexation meets the criteria as established by Florida Statutes and make any other findings of fact deemed pertinent to a particular parcel.
- d. Following review by the P&ZB, the Development Services Department shall transmit the annexation report, the annexation ordinance and P&ZB minutes to the City Council for consideration.
- e. The annexation ordinance shall be effective upon adoption by the City Council.

21-97.04 - Plan Amendment and Zoning of Annexed Property

Pursuant to the requirements of Chapter 171, F.S. the Volusia County Comprehensive Plan and Land Development Code shall control development on the parcel until the City amends its Comprehensive Plan to include the annexed parcel.

- a. Upon completion of the annexation process, a plan amendment shall be processed pursuant to the requirements of Section 21-95 or 21-96 of this Article for each parcel or contiguous group of parcels included in the annexation ordinance.
- b. Upon completion of the plan amendment process, the subject parcels shall be rezoned

pursuant to the requirements of Section 21-91 of this Article.

- c. A plan amendment application resulting from an annexation may be processed simultaneously with the annexation application. However, the plan amendment shall not be effective until the annexation process is completed.
- d. A rezoning application resulting from an annexation plan amendment may be processed simultaneously with the annexation plan amendment. However, the rezoning shall not be effective until the plan amendment process is complete.
- e. Pursuant to the requirements of Chapter 171, Chapter 163 and Chapter 166, F.S., separate ordinances shall be required for the annexation action, the plan amendment action and the zoning action.

SECTION 21-98 - INVOLUNTARY ANNEXATION

21-98.01 - Intent

The purpose of this Section is to establish the process and criteria to involuntarily annex parcels into the City limits. An involuntary annexation shall be in accordance with the requirements of Chapter 171 F.S. An annexation decision is a legislative action and shall be administered accordingly.

SECTION 21-99 - ABANDONMENTS AND VACATIONS

21-99.01 - Intent

The purpose of this Section is intended to establish the process and criteria for abandoning and vacating public rights-of-way, easements and plats. Abandonments and vacations are legislative actions and shall be administered accordingly.

21-99.02 - Application Requirements

An application must be submitted by an adjacent owner of record or the owner of a platted parcel. The application shall include:

- a. A recent boundary survey showing the area to be abandoned and the adjacent parcels.
- b. A legal description of the area to be abandoned including the Tax Parcel Identification number.
- c. Letters of support or opposition from the adjacent property owners of record.

- d. Letters of support or opposition from the affected utility companies and adjacent governments as may be applicable.
- e. A statement of the reason for the request.

21-99.03 - Procedures

- a. The applicant shall complete the application provided in the instruction package and pay the application fee.
- b. The public notice for an abandonment and vacation shall be as provided in current Florida Statutes.
- c. The complete application package shall be submitted to TRC for review and comments.
- d. Following review of the TRC, the Development Services Department shall prepare written findings of fact which at a minimum address:
 - 1. The consistency with the Comprehensive Plan's Objectives and Policies.
 - 2. The effects, if any, on any planned or programmed expenditures of any public agency.
 - 3. An assessment of the effects on adjacent property.
 - 4. A description of the adjacent land uses, zoning and site development criteria.
 - 5. Any other appropriate information.
 - 6. The certification that the current taxes have been paid.
- e. The application, findings of fact and staff report will be transmitted to the P&ZB for a public hearing and a recommendation.
- f. The P&ZB recommendation including the staff report and staff recommendation will be transmitted to the City Council.
- g. The City Council action shall be by Resolution in the manner provided by Chapter 166, F.S.
- h. Volusia County shall be furnished with a certified copy of the Resolution describing the final order in conformance with the requirements of Chapter 177, F.S.

21-99.04- Approval Criteria

The City Council must make the following findings of fact to approve an abandonment and vacation:

- a. The proposed abandonment and vacation is substantially consistent with the Comprehensive Plan's Goals, Objectives and Policies.

- b. The proposed abandonment and vacation will not affect the ownership or conferment access of persons owning adjacent property.
- c. Other matters of concern applicable to the specific area involved.

21-99.05- Decision Effects

If the City Council approves the abandonment and vacation, ownership of the abandoned area reverts to the adjacent property owners of record in accordance with State Statutes or as defined by the Volusia County Property Appraiser.

21-99.06- Appeals

Appeals of abandonment and vacation decisions by the City Council shall be to the Circuit Court.

SECTION 21-100 - VARIANCES

The purpose of this Section is to establish the process and criteria to allow a modification of the strict application of Article IV - Resource Protection Standards and Article V - Project Design Standards requirements under limited conditions. This section also establishes criteria whereby an applicant can appeal code interpretations made by the staff.

21-100.01 - General Requirements

- a. The variance application shall be consistent with the current Comprehensive Plan and zoning district. Variance applications inconsistent with the Comprehensive Plan shall require a Comprehensive Plan amendment. Variance applications inconsistent with the zoning district shall require a rezoning application.
- b. Economic hardship shall not be sufficient justification to grant a variance.
- c. No development permit, Business Tax Receipt or Certificate of Occupancy shall be issued for any property that is subject to a variance, until the process is completed.
- d. A variance request for any use not permitted within a certain zoning district shall not be considered.

21-100.02 - Procedures

- a. All applicants for a variance shall schedule a preapplication meeting with the Development Services Department to discuss the requirements and possible schedule. The staff will determine whether an administrative variance or a non-administrative variance is appropriate based on the specific conditions of the applicant's property;
- b. The staff will provide an applicant with a current copy of the necessary forms and instructions for either an administrative variance or a non-administrative variance as may be appropriate.
- c. At a minimum, the variance application shall include:
 1. The signature of the property owner, or his authorized agent;
 2. A copy of a recent survey of the subject property, signed and sealed by a surveyor licensed in the State of Florida;
 3. The tax parcel identification number from the Volusia County Property Appraiser;
 4. A site plan, as may be appropriate;
 5. Any other material deemed necessary by the staff; and
 6. Payment of the appropriate application fee as established by Resolution.

21-100.03 - Administrative Variance

- a. Upon receipt of a completed application for an administrative variance, the Development Services Director/Building Official may grant a variance only in the following situations:
 1. The variance involves real property materially affected by any governmental public utility, road improvement or condemnation actions;
 2. The variance requests a reduction in the number of required parking spaces of ten percent (10%) or less; or
 3. The variance involves site dimensions of less than one (1) foot.
- b. In determining whether to grant an administrative variance, the Development Services Director/Building Official shall make the following findings of fact:
 1. That there is no alternative available to allow reasonable use of the property; and/or
 2. That granting of the variance will not result in parking in the public right-of-way or an easement; and/or
 3. That granting of the variance will not result in a use which is incompatible with adjacent properties.
- c. The administrative variance decision shall be transmitted in writing to the applicant within

thirty (30) days of receipt of the application.

- d. An applicant or an adjacent property owner may appeal an administrative variance decision to the P&ZB provided it is filed within fourteen (14) days of the action by the Development Services Director/Building Official on the administrative variance application. A separate application and fee shall be required for such an appeal.
- e. The administrative variance may prescribe a reasonable time limit within which the action for the variance is required shall begin, be completed or both.

21-100.04 - Non-Administrative Variance

- a. A non-administrative variance application shall be completed by the applicant and submitted to the Development Services Department.
- b. Public notice regarding the non-administrative variance application shall be provided in accordance with current Florida Statutes.
- c. Upon receipt of the completed application, the Development Services Department shall provide a staff report and recommendation to the P&ZB.
- d. In order to grant a non-administrative variance, the P&ZB shall make the following findings of fact:
 - 1. That granting of the proposed variance is not in conflict with the Comprehensive Plan;
 - 2. That granting of the proposed variance will not result in creating or continuing a use which is not compatible with adjacent uses in the area;
 - 3. That granting of the proposed variance is the minimum action available to permit reasonable use of the property;
 - 4. That the physical characteristics of the subject site are unique and not present on adjacent sites; and
 - 5. That the circumstances creating the need for the variance are not the result of actions by the applicant or actions proposed by the applicant.
- e. The P&ZB may prescribe appropriate conditions for any variance and may prescribe a time limit for application of the variance.

21-100.05 - Expiration

Unless specifically stated otherwise, a variance shall expire two (2) years after final action unless a building permit or certificate of occupancy has been issued.

21-100.06 - Appeals

Appeals of P&ZB variance decisions shall be made to the City Council within fifteen (15) days of the P&ZB decision in a manner and form required by the City Council.

SECTION 21-101 - DEVELOPMENT AGREEMENTS

21-101.01 - Intent

It is the intent of this Section to set forth the procedures and requirements necessary for the City to consider and enter into Development Agreements in accordance with planned residential, business or industrial developments that encourage efficient use of resources and reduce the economic cost of development.

21-101.02 - Procedures

- a. A Development Agreement application may only be submitted by the owner, the owner's designated agent or any other person having a contractual interest in the parcel of land proposed for development.
- b. Upon receipt of a completed application, the appropriate fee and required supporting material, the Development Services Department will schedule a meeting for review of the proposed Development Agreement.
- c. If the proposed development requires site plan approval, the applicant shall submit an application meeting the requirements of Section 21-93.
- d. If the proposed development requires subdivision plat approval, the applicant shall submit an application meeting the requirements of Article XIII.
- e. If the proposed development requires rezoning of the property, the applicant shall submit an application meeting the requirements of Section 21-91.
- f. Public notice for the P&ZB public hearing regarding the proposed Development Agreement shall be as provided in accordance with Florida Statutes.
- g. Upon legal review, staff recommendations and public notice requirements the Development Agreement application shall be scheduled for the next available P&ZB meeting.
- h. The P&ZB shall consider the Development Agreement at a public hearing and make a decision recommending approval or denial of the Development Agreement to the City Council.
- i. Following the P&ZB public hearing, a public hearing regarding the proposed Development

Agreement shall be scheduled for the next available City Council meeting in compliance with the notice requirements in accordance with Florida Statutes.

- j. The City Council shall either grant, grant with amendments or deny the application for a Development Agreement.
- k. Within ten (10) days after the City Council executes the Development Agreement, a copy shall be provided to the developer/owner and the Development Services Department.

21-101.03 - Development Agreement Requirements

- a. A Development Agreement shall, at a minimum, address the following:
 - 1. A plat or legal description including acreage of the land subject to the Agreement and the names of legal and equitable owners.
 - 2. The duration of the agreement.
 - 3. The development uses permitted on the land including:
 - a) The current or proposed zoning designation of the property.
 - b) Minimum lot size and density or intensity.
 - c) Minimum square footage of buildings.
 - d) Minimum yard sizes/setbacks.
 - e) On and off-site road and signalization improvements.
 - f) A description of any reservations or dedications of land for public purposes.
 - g) Stormwater retention.
 - h) The future land use designation of the property.
 - i) A description of public facilities that will service the development, including who shall provide such facilities, the date any new public facilities, if needed, will be constructed and a schedule to assure public facilities are available concurrent with the impact of the development. Any public facilities to be designated and/or constructed by the developer shall be in compliance with all applicable federal, state and local standards to ensure the quality of the public facilities. The standards shall include, but not be limited to guarantees of performance and quality and project controls (including scheduling, quality control and quality assurance).
 - j) Consistency of development with the Comprehensive Plan.
 - k) A description of all local, state, federal or other development permits.
 - l) Applicable impact fee schedule.
 - m) Development requirements such as:
 - 1) Any required Comprehensive Plan Amendment.
 - 2) Any required rezoning.

- 3) Any required permits by the City, Florida Department of Environmental Protection, U.S. Army Corps of Engineers, St. Johns River Water Management District, United States Environmental Protection Agency and any other governmental approvals.
- 4) Any required subdivision plat approval.
- 5) Any final development order authorizing construction in accordance with the provisions of the Concurrency Management System requirement of Article XI.
- 6) Site plan approval.
- 7) Homeowners Association (if applicable).
- 8) Health, safety and welfare requirement.
- 9) Appeals.
- 10) Performance guarantees.
- 11) Binding effect.
- 12) Recording.
- 13) Period review.
- 14) Applicable law.
- 15) Time of the essence.
- 16) Agreement/amendment.
- 17) Further documentation.
- 18) Specific performance.
- 19) Attorney's fees.
- 20) Counterparts.
- 21) Captions.
- 22) Severability.

- n. The Development Agreement shall specifically provide that all development permits shall be obtained at the sole cost of the applicant/property owner and that in the event that any such development permits are not received, no further development of the property shall be allowed until such time as the City Council has reviewed the matter and determined whether or not to terminate the Development Agreement or to modify it in a manner consistent with the public interest and the Comprehensive Plan.

21-101.04 - Development Agreement Execution

- a. A Development Agreement shall be executed by all persons having legal or equitable title in the subject property, including the fee simple owner and any mortgagees, unless the City Attorney approves the execution of the Development Agreement without the necessity of such joinder or subordination based on a determination that the substantial interests of the City will not be adversely affected thereby. A Development Agreement is determined to be a legislative act of the City in the furtherance of its powers to plan, zone and regulate

development within its boundaries.

- b. In the event that the State and Federal laws are enacted after the execution of a Development Agreement which are applicable to and preclude the parties compliance with the terms of the Development Agreement, such agreement shall be modified or revoked as it is necessary to comply with the relevant State or Federal laws.

21-101.05 - Amendment and Cancellation

- a. A Development Agreement may be amended or canceled by written mutual consent of the parties to the agreement or by their successors in interest. Prior to amending a Development Agreement, a public hearing shall be held by the City Council with due public notice.
- b. If the Development Agreement is amended, canceled, modified, extended or revoked, notice of such action shall be provided to the applicant/owner with a copy to the Development Services Department.

21-101.06 - Expiration

- a. The term of a Development Agreement may be for any period mutually acceptable to all parties.
- b. A Development Agreement may be extended by mutual consent of the parties subject to a public hearing before the City Council.

21-101.07 - Monitoring

- a. The City shall periodically review the development subject to the Development Agreement to determine if there has been good faith compliance with the terms of the agreement.
- b. If the City makes a finding that there has been a failure to comply with the terms of the Development Agreement, a public hearing shall be conducted. If the City Council determines evidence that the developer has not complied in good faith with the terms and conditions of the Development Agreement, the agreement may be modified or revoked.

SECTION 21-102 - EXCAVATION PERMITS

21-102.01 - General Provisions

Excavation operations shall not be conducted within the City without approval by the City Council. The term “excavation operation” includes any operation that involves the excavation or removal of earth in excess of one hundred (100) cubic yards.

- a. Notwithstanding the forgoing, the following activities shall not require an excavation permit:
 1. Installing utilities.
 2. Installing foundations for any building or other structure, or undertaking any approved development authorized by site plan approval, conditional use, Right-of-Way Utilization Permits, preliminary plat and construction plan approval, building permit, development order or stormwater permit.
 3. Construction of drainage or mosquito control ditches and canals by authorized units and agencies of government.

21-102.02 - Application Requirements

An application for an excavation permit shall be submitted to the Development Services Department after a preapplication conference. At a minimum, the application shall contain an operational statement, an excavation plan and a reclamation plan as described below.

- a. An operational statement shall be provided to include a description of the proposed operational practices that, at a minimum, address the following:
 1. The purpose of the excavation operation and size of the area to be excavated.
 2. A timetable or schedule for excavation activities, from commencement of operations through completion of reclamation.
 3. The proposed days and hours of operation, including maintenance and service of equipment.
 4. The method of extraction and processing, including disposition of overburden or top soils as well as the type of excavation equipment being used.
 5. The location and estimated annual output of machinery or equipment to be used in any screening, crushing or processing operation for materials mixed or excavated on the site.
 6. Mitigation of noise, dust, air contaminants and vibration.
 7. Prevention of undue damage to public streets and roads or creation of a traffic hazard, including the posting of a bond for street repair.
 8. Protection of the existing drainage system capacity from project surface water discharges.
 9. Prevention of pollution of the groundwater resources.

10. Any other information identified at the preapplication conference as necessary for the reasonable review of the proposed excavation operation.
- b. The excavation plan shall be submitted in accordance with Section 21-93 (Site Plan). In addition, the plan shall include:
 1. The extent of the area to be excavated, with dimensions showing property line setbacks, corner locations, required berm and swales and phase boundaries.
 2. A typical cross-section showing the slope and grade of excavation side slopes, berm and swales.
 3. Processing, storage and ponding or water detention areas.
 4. Ground water depth.
 5. Ground water flow.
 6. Traffic pattern / flow layout.
 - c. A reclamation plan plus a performance bond in an amount determined by the City shall be submitted as part of the application. At a minimum, the plan shall include:
 1. A statement of planned reclamation, including the methods to accomplish reclamation as well as the phasing and timing of reclamation.
 2. The method of disposing of any equipment or structure used in the excavation operation.
 3. A plan setting forth the final grade of the excavation, any water features included in the reclamation, proposed methods to prevent stagnation and pollution, landscaping or vegetative planting and areas of cut or fill.

21-102.03 - Procedures

Upon receiving a completed application and relevant supporting material, the Development Services Department will schedule a review by the TRC. The TRC shall evaluate the technical aspects of the proposed plan. The Development Services Department shall issue a report and recommendation to the P&ZB for a public hearing.

21-102.04 - Decision Criteria.

- a. The P&ZB shall consider the following criteria:
 1. Consistency with this Article and the Comprehensive Plan.
 2. Whether the proposed excavation operation will have an undue adverse effect upon adjacent property, the character of the neighborhood, parking, utility facilities, or other matters affecting the public health, safety and general welfare.
 3. Whether reasonable steps have been taken to minimize noise, dust, air contaminants and vibration.

4. Whether the proposed excavation operation will discharge to the existing drainage system.
 5. Whether reasonable steps have been taken to prevent undue pollution of surface and underground water and to prevent undue alteration of the water table.
 6. Whether the proposed excavation operation will cause undue damage to public streets and roads, and/or will create a traffic hazard.
 7. Whether the reclamation plan is adequate to ensure that the property will be properly reclaimed upon completion of the excavation operation.
- b. The P&ZB, after reviewing the application at the public hearing, shall make a recommendation to the City Council.
 - c. The City Council shall conduct a public hearing to consider the proposed excavation permit and either approve, approve with conditions or deny the application.
 - d. The applicant shall provide a performance bond or other security, approved by the City Attorney, to assure compliance with the requirements of the excavation and reclamation plans.
 - e. The amount of the performance bond or other security shall be set by the City Council upon recommendation by the City Manager for an amount not less than one hundred ten percent (110%) of the cost of reclamation.
 - f. The bond or other security shall be released by the City Council only upon a recommendation by the City Manager that all conditions and reclamations have been fulfilled. The permit shall set forth any condition, limitation or requirement by the City Council, and shall take effect when the permit is issued.
 - g. The applicant shall provide a maintenance bond to restore any damage to local streets or roads.
 - h. No excavation may commence until a Development Order is issued.
 - i. The permit approval shall terminate if an applicant fails to post the required performance bond or other security and obtain an excavation permit within one (1) year of the date of approval by the City Council.

21-102.05 - Suspension of Excavation Permit

- a. The City Manager or his designee shall have the authority to suspend any excavation permit issued under this Section upon a determination that the permittee has failed to meet any requirements of this Section or has deviated substantially from or disregarded the terms and conditions of the permit.

- b. No excavation operation shall be conducted following suspension of an excavation permit until the City Manager determines that the permittee is in full compliance with the requirements and the terms and conditions of the excavation permit and reinstates the permit.
- c. The permittee under any suspended excavation permit shall be afforded the opportunity to have a hearing at a regularly scheduled meeting of the City Council.
- d. The City Clerk shall notify the permittee of the date, time and location of such hearing when he/she imposes the suspension.
- e. At the hearing, the City Council shall consider the evidence presented and shall:
 - 1. Confirm the suspension, in which event excavation operations shall not be reactivated until the City Manager determines that the permittee is in full compliance with the requirements and the terms and conditions of the permit and reinstates the permit; or
 - 2. Rescind the suspension and direct the reinstatement of the permit: or
 - 3. Confirm the suspension and initiate proceedings to revoke the permit.

Sections 21-103 through 21-119 reserved for future use.