

ORDINANCE NO. 3840

AN ORDINANCE
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE CITY CODE, SUB-PART B, LAND DEVELOPMENT CODE, CHAPTER 98 ADMINISTRATION; AND AMENDING CHAPTER 142 DEFINITIONS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, that:

SECTION 1. The City Code of the City of Fort Myers, Florida, Sub-Part B, Land Development Code, Chapter 98 Administration, is hereby amended in its entirety and attached hereto as Exhibit A to this ordinance.

SECTION 2. The City Code of the City of Fort Myers, Florida, Sub-Part B, Land Development Code, Chapter 142 Definitions, is hereby amended as follows:

Agricultural activities means exclusively bonafide agricultural land uses, by the owner or tenant. The use of land for agricultural purposes including farming, silviculture, viticulture, fish culture, animal and poultry husbandry, and the necessary accessory uses for packing, treating, or storing the produce, provided that the operation of the accessory use is clearly incidental to the agricultural activity.

Agricultural related industries and services means activities and facilities integral to agricultural production, this includes: packaging and processing plants, storage facilities for agricultural products, sales or rental of farm tools and implements, feed, grain, tack, animal care products, farm supplies, and farm machinery repair services that are accessory to the principal use.

Community residential home means a dwelling unit licensed to serve residents who are clients of the Department of Elderly Affairs, the Agency for Persons with

Disabilities, the Department of Juvenile Justice, or the Department of Children and Families or licensed by the Agency for Health Care Administration which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. Siting of Community Residential Homes shall be in compliance with F.S. 419. Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use for the purpose of local laws and ordinances. Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning without approval by the local government, provided that such homes are not located within a radius of 1,000 feet of another existing such home with six or fewer residents or within a radius of 1,200 feet of another existing community residential home per Sec. 419.001(2), F.S., as amended.

Hardship means a restriction on property so unreasonable that it results in an arbitrary and capricious interference with basic property rights. Hardship relates to the physical characteristics of the property, not the personal circumstances or the owner or uses. Such physical characteristics may include, but are not limited to: exceptional shape of the lot, exceptional topographic conditions, or other exceptional physical conditions of a parcel of land. A hardship shall not include personal or financial hardship, or any other hardship that is self-imposed.

Hospital means a facility licensed by the state, which provides full medical, emergency and inpatient care.

Indoor commercial recreation means recreational uses where the majority of activities are conducted indoors, not limited to arcades, theaters, skating rinks, swimming pools, billiards, bowling, shooting ranges and similar uses.

Major utilities means uses or structures providing utility services that have potential major impact by virtue of their appearance, noise, size, traffic generation, or other operational characteristics, which include, but which are not limited to: aeration facilities, artesian wells, electrical substations, electric or gas generation plant, filter bed, railroad right-of-way (new), transmission towers, waste treatment plans, water pumping facilities, water towers or tanks.

Outdoor recreation means recreational uses where the majority of activities are conducted outdoors, not limited to golf driving ranges, miniature golf and par three courses, amusement parks, sports fields and tracks, amusement parks, BMX and skate parks, batting cages, paintball, sports academies, horse riding stables, and similar uses.

Personal care services means an establishment which offers specialized services including, but not limited to: barber, salon, manicure and pedicure, massage therapy, tailor, shoe repair.

Religious Assembly means a use located in a permanent building and providing regular organized religious worship and related incidental activities, except primary or secondary schools and day care facilities.

Religious Institution means a church or place of worship or religious assembly with related facilities such as the following in any combination: rectory, convent, monastery, assembly hall, community center, meeting rooms, kitchen facilities for institutional use

or “Meals on Wheels” type program only, offices for administration of the institution, childcare during services or events, playground, cemetery, columbarium.

~~Residential care facilities means establishments primarily engaged in the provision of residential social and personal care for children, the aged and special categories of persons with some limits on ability for self-care, but where medical care is not a major element. Included are establishments providing 24 hour year round care for children. Establishments provide a living environment which constitutes a single housekeeping unit with staff, including such supervision and care as may be necessary to meet the physical, emotional, and social needs of the residents for a period exceeding 24 hours and licensed by the department of health.~~

Retail or Rental Store means a store selling, leasing or renting consumer goods, wares and merchandize for off premises use, including but not limited to, alcoholic beverages,-building supplies, convenience goods, electronic equipment, novelties, groceries, household products, medical supplies, pet supplies, pharmaceuticals, plants, sporting goods, tobacco, used or secondhand goods, and related products. Automobile and large equipment are excluded.

SECTION 3. Severability. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than that part declared to be invalid.

SECTION 4. Effective Date. This ordinance shall become effective immediately upon adoption.

EXHIBIT A

CHAPTER 98 ADMINISTRATION

ARTICLE 1. - IN GENERAL

98.1.1 - Title.

This subpart B shall be known and may be referred to as the "City of Fort Myers Land Development Code."

98.1.2 - Applicability.

The rules, regulations, and requirements contained in this land development code shall apply to all land and water areas within the corporate limits of the city, as well as any lands subsequently annexed to and incorporated within the city limits.

98.1.3 - Purpose.

- A. The purpose of this land development code is to guide the future growth, development, and redevelopment of the city in accordance with the city comprehensive plan adopted pursuant to the provisions of F.S. § 163.3194(1)(b).
- B. More specifically, it is the purpose of the land development code to implement the goals, objectives, and policies of the city comprehensive plan, and protection of the health, safety, and general welfare of existing and future residents by:
 - 1. Providing the means of implementing the goals and objectives of the city comprehensive plan.
 - 2. Dividing the city into such districts as may be necessary to provide specific protection to sensitive environmental land, to promote the redevelopment and rehabilitation of deteriorating neighborhoods, and to promote the revitalization of the city, especially the downtown area.
 - 3. Controlling and regulating the growth of the city, concentrating more intense development in areas with high development capabilities and limiting development in areas of lower development capacity.
 - 4. Protecting landowners from adverse impacts of adjoining developments.
 - 5. Balancing the interest of the general public in the city and those of individual property owners.

98.1.4 - Comprehensive Plan.

- A. The city council has adopted the city comprehensive plan, a copy of which is maintained in the offices of the city clerk and community development department. The plan may be amended from time to time pursuant to the Florida Local Government Comprehensive Planning and Land Development Regulation Act.
- B. No public or private development shall be permitted except in conformity with the comprehensive plan. In the event that any other ordinance or regulation of

the city conflicts with the comprehensive plan, the provisions of the comprehensive plan shall govern.

98.1.5 - Official Zoning Map.

The city is divided into zoning districts; the boundaries and designations of which are shown on the Official Zoning Map, copies of which are on file in the community development department and the city clerk's office.

The Official Zoning Map, together with all lawfully adopted explanatory material shown thereon, is declared a part of this article as if set forth in full herein.

98.1.6 - Legal Status.

In their interpretation and application, the provisions of this land development code shall be held to be the minimum requirements adopted for the promotion of, and in the exercise of the power to provide for, the public health, safety, morals and general welfare. Wherever the requirements of this land development code are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances or resolutions, the most restrictive, or that imposing the higher standards, shall govern.

98.1.7 - Violations.

1. **Penalties.** Penalties for the violation of any section of this land development code may be heard before the code enforcement board or may be determined and prosecuted as provided by section 1-14 of the city code.
2. **Parties.** The owner or tenant of any building, structure, or premises, or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.
3. **Other action.** Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation of this land development code.

98.1.8 - Responsibility for Enforcement and Interpretation.

The community development director, along with the public works director, building official, ~~development services manager~~, planning manager and fire chief shall collectively administer the provisions of the land development code. The responsibilities for the interpretation of the provisions of the land development code are as follows:

1. Chapter 98, General Provisions and Administration, community development director;
2. Chapter 102, Building and Construction Regulations, building official;
3. Chapter 106 Reserved.
4. Chapter 110, Flood Prevention and Protection, building official;
5. Chapter 114, Historic Preservation, planning manager;

6. Chapter 118, Land Use Regulations, ~~development services manager~~ community development director, entire chapter, except section 118.3.9, pertaining to garbage, trash disposal and recycling facilities, public works director;
7. Chapter 122, Public Facilities, public works director, entire chapter, except Article VI, pertaining to fire protection service, fire chief;
8. Chapter 126, Signs, ~~development services manager~~ community development director;
9. Chapter 130, Subdivisions, public works director, entire chapter, except section 130-62, pertaining to submission requirements, section 130-123, pertaining to submission, and Article IV, pertaining to vacations of plats, easements, and rights-of-way, ~~development services manager~~ community development director;
10. Chapter 134, Traffic Circulation and Parking, public works director, entire chapter, except section 134.2.19, pertaining to setbacks from frontage roads, section 134.3.2, pertaining to handicapped parking, section 134.3.5, pertaining to minimum number of off-street parking, and section 134.3.7, pertaining to special event temporary parking on private property, ~~development services manager~~ community development director;
11. Chapter 138, Vegetation, ~~development services manager~~ community development director.

ARTICLE 2. - REVIEW AND DECISION-MAKING BODIES

98.2.1 - City Council.

A. Powers and duties relating to land development code. The city council shall have the following powers and duties under the land development code:

1. Consider, adopt or reject proposed amendments to the city comprehensive plan.
2. Consider, adopt or reject proposed amendments to the land development code.
3. Consider, adopt or reject proposed planned unit development and rezoning applications in accordance with chapter 118.
4. Grant variances and appeals concerning flood hazard areas in accordance with chapter 110, article II.
5. Designate historic districts and historic landmarks, and approve tax exemptions for historic properties pursuant to chapter 114.
6. Hear and decide appeals from the historic preservation commission regarding demolition of unsafe historic structures and regarding appeals from the historic preservation commission pursuant to chapter 114.
7. Hear and decide appeals of decisions regarding warrants pursuant to section 118.8.3.
8. Establish a schedule of fees and charges as stated in section 98.3.14.
9. Approve public art after consideration of the recommendation of the public art committee pursuant to section 98.2.6.

98.2.2 - Planning Board.

A. Created; membership.

1. Pursuant to the City Charter, Section 83, the city shall have a planning board, consisting of 11 voting members. The planning board shall consist of members

who are professional and shall be selected from the disciplines of landscape architecture, architecture, traffic planning, urban planning, environmental planning, civil engineering, legal, contracting, business, and real estate or other related disciplines. In the event that there are not enough professionals in the city to fill all positions, membership may include laypersons who have demonstrated special interest, experience, or knowledge in comprehensive planning, land use, and other related disciplines. Members of the planning board shall be either residents of the city, own property in the city, own a business in the city, or work in the city. Each councilperson and the mayor shall nominate one member for a total of seven and the mayor and city council shall collectively nominate four members at-large for a total of 11 members. Each nominee shall be presented to city council for consideration of appointment. After consideration of each nominee, the city council shall make such appointments to the board as it deems appropriate. Nominees that are not appointed by city council shall be replaced with a new nominee from the elected official who made the original nomination or collectively at-large. The city council shall make the final decision of all appointments. After nomination and appointment, the members of the planning board shall be sworn by the city clerk to perform the duties of the office. All members of the board shall serve without compensation. The initial appointments shall consist of 11 members as herein provided; four members shall serve for a term of three years, four members shall serve for a term of two years, and three members shall serve for a term of one year, thereafter members shall serve for three year terms. Any vacancy of the appointive membership shall be filled for the unexpired term by the city council, which also shall have authority to remove any appointive members.

2. The planning board shall include a representative of the school district appointed by the school board as an ex officio nonvoting member to attend those meetings at which the planning board considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application.
3. The planning board shall elect its chair and vice-chair, whose terms shall be for one year. The term of the chair and vice-chair shall be for a period of one year, at which time a new chair and vice-chair must be elected. A member may not serve two consecutive terms as chair or vice-chair, but may be reelected after a one term absence from such position.
4. The board shall adopt rules for the transaction of business and shall keep records of its resolutions, transactions, findings, and determinations, which shall be filed with the city clerk and be public records.
5. A member must be present for 75 percent of the meetings in a 12-month period or the chair may declare the member's office vacant. A vacancy on the board shall be filled by appointment as provided in this section.
6. A quorum of the board shall consist of a majority of appointed voting members, ~~but no less than four voting members.~~ eConstituting an affirmative vote of a majority of the quorum present shall be necessary to pass any motion.

7. All meetings shall be public meetings and shall be held at the call of the chair and at such other times as may be determined by the majority of the board. The ~~development services division~~ city clerk shall keep minutes of the meetings of the planning board, showing the vote of each of the members upon decisions and resolutions which shall be filed with the city clerk. When a voting conflict form has been filed, it shall be attached to the minutes.

B. Objectives. The broad objective of the planning board is to:

1. Preserve and enhance the quality of life for the community;
2. Encourage the ~~most~~ appropriate use of land, water, and resources, consistent with the public interest;
3. Overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within the city.

C. Powers and duties. The powers and duties of the planning board shall be as follows:

1. Assume the responsibility for the preparation of the comprehensive plan and amendments thereto, after public hearings to be held after due public notice, and make recommendations to the city council regarding the adoption of such plan or element, or portion thereof.
2. Conduct the comprehensive planning program, including the responsibility to monitor and oversee the effectiveness and status of the comprehensive plan.
3. Recommend to the city council such changes in the comprehensive plan as may from time-to-time be required and to the land development regulations and other mechanisms that implement the comprehensive plan.
4. Adopt rules of procedure and policies for the administration of the comprehensive planning program.
5. Promote public interest in comprehensive planning.
6. Request the assistance of and receive information from the community development department in relation to planning board work.
7. Review and recommend to the city council as to the relationship to the comprehensive plan of proposed land development regulations or amendments thereto.
8. Review and recommend to the city council as to the relationship to the comprehensive plan of proposed development to be undertaken by the city. It is the intent of this subsection that no development shall be undertaken by, nor actions taken in regard to development orders by the city council ~~or the board of adjustments~~ until such proposals have been reviewed by the planning board and found to be consistent with the comprehensive plan.
9. Act in the capacity of local planning agency, pursuant to F.S. § 163.3174.

10. Coordinate the comprehensive planning program with the county, region, and state planning programs and with local civic organizations.
- ~~11. Review and make recommendations to the board of adjustments regarding proposed conditional uses.~~
- ~~12.~~10. Review and make recommendations to the city council regarding rezonings, including rezoning to a planned unit development, and regarding text amendments to this land development code.
- ~~13.~~ 11. Review and make recommendation to the city council regarding development agreements.

98.2.3 - Board of Adjustments.

A. Created; composition; appointment; terms; vacancies; removal; residency or ownership requirement. The city shall have a board of adjustments consisting of seven voting members and two alternates, who shall be appointed by the city council, ~~beginning December 16, 2007.~~ Each councilperson and the mayor shall nominate one member and the mayor shall nominate two alternate members. Each nominee shall be presented to city council for consideration of appointment. After consideration of each nominee, the city council shall make such appointments to the board as it deems appropriate. Nominees that are not appointed by city council shall be replaced with a new nominee from the elected official who made the original nomination. The city council shall make the final decision of all appointments. After nomination and appointment, the members of the board of adjustments shall be sworn by the city clerk to well and faithfully perform the duties of the office. All members of the board shall serve without compensation. The initial appointments shall consist of seven members with two alternate members as herein provided; three members shall serve for a term of three years, two members shall serve for a term of two years, and two members shall serve for a term of one year, thereafter members shall serve for three year terms. The initial appointments for the alternate members shall be as herein provided; one member shall serve for a term of two years, one member shall serve for a term of three years, and thereafter the alternate members shall serve for three-year terms. In the event a member declares a conflict of interest making voting improper is ill or absent for any reason, an alternate member shall be called to serve temporarily during the absence or inability of a board member to serve. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members may be removed for cause by the city council upon written charges and after a public hearing. Each member shall be either a resident of the city or own property in the city.

B. Exclusivity of purpose; compensation; service.

1. Members of the board of adjustments shall not hold another public office in the city.
2. Members of the board of adjustments shall serve without pay, but may be reimbursed for expenses incurred in the performance of official duties.

3. All members shall serve until the expiration of their terms, their resignation or removal, or until their successors are appointed.

C. Officers; rules. The board of adjustments shall elect a chair and a vice-chair, each of whom shall serve for one year or until the chair is reelected or a successor is elected. The board shall adopt rules for the conduct of its business. The board shall appoint a secretary, who may be an officer or employee of the city.

D. Meetings.

1. Meetings of the board of adjustments shall be held at the call of the chair and at such other times as the board may determine. The attorney to the board may administer oaths and at the direction of the chair compel the attendance of witnesses by subpoena. No member of the board shall participate in a hearing in which he has any pecuniary or special interest. All meetings of the board shall be open to the public.
2. The ~~development services division~~ city clerk shall keep minutes of the proceedings of the board of adjustments, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the city clerk's office and shall be a public record.

E. Powers and duties. The board of adjustments shall have the following powers and duties:

1. **Administrative reviews and appeals.** To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the community development director or any other officer, department, board or bureau of the city affected by any decision of the community development director in the enforcement and interpretation of this land development code.
2. **Conditional uses.** To hear and decide only such conditional uses as the board of adjustments is specifically authorized to pass on by the terms of this land development code; to decide such questions as are involved in determining whether conditional uses should be granted; and to grant conditional uses with such conditions and safeguards as are appropriate under this land development code, or to deny conditional uses when not in harmony with the purpose and intent of this land development code. A conditional use shall not be granted by the board of adjustments unless and until an application is filed and the requirements of the land development code have been met.
3. **Variances.** To authorize in specific cases and pursuant to section 98.3.5, a variance from the terms of this land development code.

98.2.4 - Historic Preservation Commission.

The composition, duties and authorities of the historic preservation commission are as set forth in chapter 114 of the land development code.

98.2.5 - Tree Removal Review Board.

The composition, duties and authorities of the tree removal review board are as set forth in section 138-106 of the land development code.

98.2.6 - Public Art Committee.

A. Created; composition; appointment; terms.

1. Pursuant to the City Charter, Section 83, the city shall have a public art committee, consisting of seven voting members and two alternates, who shall be appointed by the city council, beginning November 15, 2007. Each councilperson and the mayor shall nominate one member and the mayor shall nominate two alternate members. Each nominee shall be presented to city council for consideration of appointment. After consideration of each nominee, the city council shall make such appointments to the board as it deems appropriate. Nominees that are not appointed by city council shall be replaced with a new nominee from the elected official who made the original nomination. The city council shall make the final decision of all appointments. After nomination and appointment, the members of the public art committee shall be sworn by the city clerk to well and faithfully perform the duties of the office. All members of the board shall serve without compensation.
2. The initial appointments shall consist of seven members with two alternate members as herein provided; three members shall serve for a term of three years, two members shall serve for a term of two years, and two members shall serve for a term of one year, thereafter members shall serve for three year terms. The initial appointments for the alternate members shall be as herein provided; one member shall serve for a term of two years, one member shall serve for a term of three years, and thereafter the alternate members shall serve for three year terms. Any member of the public art committee may be reappointed from term-to-term upon nomination by the city council or the mayor and appointment by city council in the manner provided above.
3. Each member of the public art committee shall be a resident of the city who has an interest or background in the arts. If not a resident, the member of the public art committee must work in the city or be a member of an arts board or committee in the city. Whenever a vacancy shall occur, a successor shall be appointed in like manner to serve for the remainder of such term. Any member of the public art committee who fails to attend two of three successive meetings without cause shall be automatically removed from the committee; and the vacancy shall be filled provided above. The members of the board shall be required to file a disclosure of financial interests pursuant to Florida Statute 112.3145(1)(a)g.

B. Oath; officers; quorum; chair; records; meetings; minutes; compensation; legal counsel.

1. After nomination or renomination and appointment or reappointment, the members of the public art committee shall be sworn by the city clerk to well and faithfully perform the duties of the office.
2. A quorum of the public art committee shall consist of a majority of the appointed members, ~~but not less than five members~~, and an affirmative vote of a majority of the quorum present shall be necessary to pass any motion, to take action and transact business.
3. The members of the public art committee shall elect the chair and a vice-chair. The chair and vice-chair shall serve for a term of one year at which time the chair and vice-chair shall be elected or re-elected by the members of the board. The chair and the vice-chair may serve for a maximum of two consecutive years.
4. The city shall provide an employee who shall serve as recording secretary to prepare written minutes of the meetings, showing the vote of each of the members, and keep records of resolutions, transactions, findings and determinations made by the public art committee. The minutes of each meeting, as prepared by the recording secretary, shall include the names of all members appointed, all members present and all members absent. A copy of the minutes shall be filed with the city clerk and be public records.
5. All meetings shall be held at the call of the chair and at such other times as may be determined by a majority of the public art committee. Proper notice of all meetings, both regular and special, shall be provided to the clerk's office in a timely manner for inclusion on the notice of public meetings to comply with the Sunshine Law. All meetings of the public art committee shall be open to the public.
6. All members of the public art committee shall serve without compensation.
7. The city attorney shall provide legal counsel as may be reasonably required by the public art committee for the performance of its functions.
8. Pursuant to Florida Statutes, Section 112.3145(a)2.g., members of the Public Art Committee are required to file annual statements of financial interest.

C. Duties. The public art committee, as constituted in this section, shall act in an advisory capacity as follows:

1. Develop an art plan for the city, which shall be presented to city council annually.
2. Prepare implementation guidelines, selection criteria, and organizational policies to facilitate this article to include a fiscal impact and economic analysis, subject to the approval of the city council.
3. Maintain responsibility for program planning; prioritizing sites for public art; determining project scope and budget; overseeing the artist selection process; commissioning artworks; reviewing design, execution and placement of artworks; overseeing maintenance and repair of the artworks in cooperation with parks division or facilities maintenance division and the process for removal of artworks from the city public art collection.

4. Invite professionals in the visual arts and design fields to serve in the artist selection process in order to ensure works of highest quality, or to assist in the determination of artistic merit of works of art offered to the city as donation or for purchase.
5. Ensure appropriate community participation in the public art and public education activities as part of the public art collection.
6. Coordinate, investigate, review and recommend to city council other means by which artworks may be obtained, including donations to the public art fund, gifts of artwork, and grant applications for the public art collection.
7. Act as liaison with private developers to encourage and facilitate private contributions and private art installations within corporate construction and reconstruction projects.
8. Encourage public art throughout the city and educate and stimulate the participation of all citizens in a joint public and private effort to promote art in public places.
9. Prior to the selection and commissioning of artists, the review of design and the recommendation of the acceptance of works of art, the public art committee shall submit the action proposed to be taken to the city council for approval.
10. Develop procedures detailing the rights and responsibilities of the artists selected.
11. Establish an inventory and archive of existing and future public art.
12. Have other such duties and responsibilities granted by the city council consistent with the public art needs of the city.

ARTICLE 3. - PROCEDURES

98.3.1 - Common Review Procedures.

- A. Generally.** This article shall apply to all applications for development approval except those applications addressed in other chapters of this land development code, specifically those permits for:
1. Building and construction - chapter 102,
 2. Flood prevention and protection - chapter 110,
 3. Historic preservation - chapter 114,
 4. Public facilities - chapter 122,
 5. Signs - chapter 126,
 6. Subdivision plats - chapter 130,
 7. Traffic, Circulation and Parking - chapter 134,
 8. Vegetation - chapter 138.

B. Informal pre-application meeting. Applicants submitting applications that do not require a public hearing for approval, including but not limited to administrative deviations, insubstantial amendments to planned unit developments, and site work permits, may schedule a non-mandatory pre-application meeting. ~~Prior to submitting an application, the prospective applicant may informally consult with the city staff to obtain information and guidance concerning the proposed application, the general application requirements and the site plan review process. No statement made or information exchanged during the informal consultation shall be binding on the city or the applicant.~~

C. Mandatory pre-application conference.

1. All applicants for development approval, when the applications require a public hearing for approval, shall schedule a pre-application conference with appropriate city staff to discuss the nature of the application, applicable standards, application information requirements, application format requirements, and the timing of review and approval, unless waived by the community development director. Such required pre-application conference shall be conducted before the submittal of an initial application. Any other applicant for development approval may request a pre-application conference with the appropriate city staff (see B above).
2. At the pre-application conference, city staff may advise the applicant regarding required application forms and information that will be required of the applicant in order to review the application for compliance with this land development code. City staff may also advise the applicant of other matters that may be pertinent to the application, such as permits that may need to be obtained from federal, state or other agencies, and whether a comprehensive plan amendment may be necessary. No statement made or information exchanged during the pre-application conference shall be binding on the city or the applicant.

D. ~~No approval where ongoing violation~~ Procedures for applications subject to violations. No application may be accepted, and no approval may be issued if the business, enterprise, occupation, trade, profession, property or activity is the subject of an ongoing enforcement procedure, a state law or county violation or a violation of other city ordinance, where the business enterprise is located or is to be located, unless the application is required to rectify the violation. In cases where the violation cannot be rectified and an application is intended instead to redevelop the property, the community development director may allow the application to proceed.

E. Application.

1. **Form of application.** All applications for development approval shall be submitted on a form approved by city staff.
2. **Payment of application fee.** The application fee required by this land development code shall accompany all applications.

3. **Plans and specifications.** Such plans and specifications as are required by city staff for the review of the application shall be prepared by persons qualified under the laws of the State of Florida, or as required elsewhere in this land development code, to prepare such plans and specifications.
4. The application shall provide names and addresses of the record owners of the property, the applicant, and evidence of authority from the record owners for submission of the application, and identification of the applicant's relationship to the owner if the applicant is not the record owner.
5. **Simultaneous applications.** If more than one approval is requested for particular development proposal, with the exception of an application for a building permit, an applicant is required to submit all applications for development review at the same time.

F. Determination of completeness and sufficiency review.

1. **Completeness review process.** Upon receipt of the application, the designated development review official, and other appropriate staff, shall review the application to determine whether all required information is provided in an acceptable format; the required fee is paid; and whether the information is technically competent to proceed forward with additional city review. A determination of completeness will be rendered by staff within approximately five (5) business days from the date of submittal.
2. **Incomplete applications.** If any required information is not provided, the applicable fee not paid or if the application or any part of the application is determined not technically competent, then the development review official shall notify the applicant of the specific deficiency in the application, and the applicant shall either:
 - a. Submit the specifically identified information in a technically competent form; or
 - b. Withdraw the application.
 Failure to comply with either a. or b. above within 120 days of the date of the first notification of the deficiencies shall constitute a withdrawal of the application.
3. **Complete applications.** After an application for development approval is determined to be complete and technically competent, appropriate city staff shall review the application for sufficiency in accordance with the applicable procedures.
4. **Sufficiency review process.** The sufficiency review process provides applicants with the ability to provide supplemental and/or revised application materials to city staff in order to address substantive review comments. Staff shall provide the applicant with written substantive comments on the application. The applicant may submit additional information and/or revised materials to address city staff comments within the timeframes specifies in section 98.3.1.I. Upon determination that the applicant has addressed the substantive comments raised by city staff, the application will be deemed sufficient and scheduled for public hearings, where applicable.

G. Public hearing applications.

1. If the application requires review by the planning board, board of adjustments or city council, the appropriate staff shall prepare a written staff report and recommendation which shall be provided to the applicant prior to the public hearing on the application.
2. The applicant may amend its application after it has been found complete and before it is scheduled for public hearing. Upon submission of an amendment to the application, the staff must determine if the application as amended is complete, pursuant to subsection F. above. After the initial amendment and re-review of the application by the staff, any additional amendment shall require an additional fee to pay the cost of additional review time, as determined by the community development director. A change in ownership shall require notification to the community development department, but shall not require an additional fee.
3. For any development project which requires more than one approval reviewed at a public hearing, the public hearing process that is most restrictive will apply to all such approvals.

H. Notice of public hearing. When an application for development approval requires a public hearing, the appropriate city staff shall ensure that the necessary public hearing is scheduled for the decision-making or advisory body reviewing the petition, and that notice as required by law is provided. The applicant shall be responsible for payment to the city of the costs of noticing the public hearing. ~~Notice of each public hearing shall be posted on the property and on the city hall bulletin board at least 15 days before the hearing.~~

1. Applications requiring a public hearing before the planning board or the board of adjustments shall be publicly noticed at least ten (10) days prior to the meeting by the community development director as follows:

- a. A notice shall be mailed to the owners of all properties within a 300-foot radius of the perimeter boundaries of the property, or properties, described in the application by the community development department. For this purpose, the notice will be sent by regular mail to the last known name and address as shown on the tax roll of the county, as obtained from the Property Appraiser within six (6) months of the first date of public hearing. The notice is a courtesy only. The failure to timely mail the notice, or failure of an affected property owner to receive mailed notice shall not constitute a defect in notice or bar the public hearing as scheduled.

- b. Notice of the time, place and date of the public hearing, and any other information required by Florida Statutes, shall be given in a local newspaper with general circulation in the city by the city clerk.

- c. Notice of the public hearing, provided by the community development department, shall be posted on the property frontage, no more than fifteen feet from the property line, by the applicant a minimum of ten (10) days in advance of each public hearing. Signs shall be removed by the applicant within five (5) days after the public hearing. The

applicant shall submit an affidavit to the community development department confirming the notice of public hearing was completed in accordance with these provisions.

2. Notice of public hearing for city council shall be provided as follows:

a. The city clerk shall provide notice of the time, place and date of the public hearing in a local newspaper with general circulation in accordance with the appropriate Florida statute(s).

b. Notice of the public hearing, provided by the community development department, shall be posted on the property frontage, no more than fifteen feet from the property line, by the applicant a minimum of ten (10) days in advance of each public hearing. Signs shall be removed by the applicant within five (5) days after the public hearing. The applicant shall submit an affidavit to the community development department confirming the notice of public hearing was completed in accordance with these provisions.

I. Withdrawal, denial or abandonment of application.

1. ~~An applicant may withdraw its application any time before a noticed public hearing. Once a public hearing on the application has been noticed as required by this land development code, and the applicant withdraws the application, the application may not be resubmitted for a period of six months.~~
2. ~~Any application for rezoning, conditional use, PUD, platting, or variance or administrative deviation that has been denied by the board of adjustments or the city council may not be resubmitted for a period of one year six months.~~
3. ~~If a completed application is on file for more than six months with no action taken by the applicant as required, it shall be deemed abandoned and notice by certified mail shall be provided to the applicant. Further, if an applicant does not provide information respond to city staff sufficiency review comments requested by the city for a period of six months60 days, the application will be considered abandoned, unless an extension is requested by the Applicant in writing prior to abandonment of the application demonstrating justification for the extension, and the request is granted by the community development director.~~
4. ~~Once an application is deemed abandoned and if development approval is still desired, then a new application, with repayment of all applicable fees, shall be submitted to the development services division community development department. The applicant may be granted a three-month extension, at the discretion of the community development director development services manager, if a written request is received within 30 days prior to the six-month deadline.~~

5. Refunds, including partial refunds, of application fees will not be issued for applications deemed withdrawn, denied or abandoned pursuant to this subsection.

J. Notification of decision. The city shall provide notification of a decision on an application for those development approvals described by this chapter, by mail ~~and within ten working days~~ after the decision is rendered. A copy of the decision shall also be made available to the public in the office of the community development department during normal business hours within a reasonable period of time after the decision. A PUD approval shall be effective only after the city clerk has signed the ordinance approving the PUD.

98.3.2 - Ownership Disclosures.

A. Purpose and intent. The purpose of this section is to provide the minimum requirements for disclosing ownership of property as it relates to applications under this land development code. The intent is to disclose the identity of true parties in interest to the public, thereby enabling the public to ascertain which parties will potentially benefit from the land use transactions.

B. Applicability.

1. Disclosure provisions are required for zoning map amendments, conditional use approvals, development agreements, variances, planned unit developments and developments of regional impact.
2. Any person or entity holding real property in the form of a partnership, limited partnership, corporation, assignment of interest, trust, option, assignment of beneficial interest, or any form of representative capacity whatsoever for others, except as otherwise provided in this section, shall, during application submittal for zoning map amendments, conditional use approvals, development agreements, variances, planned unit developments and developments of regional impact, shall make a public disclosure, in writing, under oath, and subject to the penalties prescribed for perjury. In the case of a trust, the four largest beneficiaries must also sign the affidavit.
3. This written disclosure shall be made to the city manager at the time of application. The disclosure information shall include the name and address of every person having a beneficial interest in the real property, however small or minimal. All evidence submitted shall be subject to the city's satisfaction, and said satisfaction shall be liberally interpreted in favor of the city's interest.
4. The city shall send written notice to the person required to make disclosures under this section prior to the time when such disclosures are required to be made, which written request shall also inform the person required to make such disclosure that such disclosure must be made pursuant to this article.
5. Exemptions to the requirements of this section include the beneficial interest which is represented by stock in corporations registered with the federal securities exchange commission or in corporations registered pursuant to Chapter 517, Florida Statutes, whose stock is for sale to the general public.

98.3.3 – Administrative Deviations Adjustments.

~~A. Where, due to physical constraints of a site, specific requirements of chapter 118 and chapter 134 cannot be met as listed in section D below, an An applicant may seek an administrative adjustment deviation from the following provisions of the land development code outlined herein, upon demonstration that the proposal does not negatively impact public health, safety and welfare, and uphold the intent of this code to ensure well-planned, attractive and functional development patterns.~~

~~The objective of granting administrative adjustments deviations is to give relief from a regulation by allowing a minor an adjustment, in inches or a few feet or a few parking spaces, so that those type of minor adjustments do not have to be that does not require formally reviewed by the board of adjustments as a variance due to the nature of the request. The request for an administrative adjustment deviation shall be approved or denied after review by the community development director, or the public works director, or their assignees, as applicable. The determination shall be provided in writing, shall be expressly for the specific use or structure in the request, and shall be effective for the duration specified in the approval, as long as the use or structure is legally in existence. Deviations requested as part of a planned unit development zoning district shall follow the procedures and criteria set forth in 98.3.10 of this chapter.~~

- B.** A requested administrative adjustment deviation shall demonstrate the request is the be minimum possible relief necessary to make reasonable use of the land or structure and shall not create adverse impacts to the surrounding area.
- C.** The administrative adjustment deviation approved shall be no less consistent with the health, safety and welfare of the abutting landowners and the general public than the standard from which the administrative adjustment deviation is requested, and demonstrate that the proposed design will not negatively impact compatibility with surrounding lands or result in negative external impacts.
- D. Authorized.** An administrative adjustment deviation to ~~an approved site plan~~ the requirements of the land development code may be authorized by the community development director or the public works director, or their designees, as applicable, for the following:
1. Minimum lot dimensions and setbacks. See Chapter 118, Article 2. Any decrease in the minimum required lot width or setbacks may not exceed five (5) feet, or 10%. In no case shall administrative deviations allow reductions to waterbody setbacks, or reduce any setback to less than five feet from the property line, excluding zero lot line building types, or allow for encroachment into a lake maintenance or buffer yard easement, or allow reduction to waterbody setbacks.
 2. Building height: Up to ten percent (10%) of the total height or five (5) feet, whichever is less.
 3. Winkler Avenue administrative deviation. See section 118.4.2.A.5.
 4. Cleveland Avenue Corridor design requirements. See section 118.4.3.A.3.j.

5. Refuse disposal and recycling facilities. See section 118.3.9.C.
 6. Fence and walls. See section 118.3.8.
 7. Signs. See section 126-8.
 8. Traffic circulation and parking. See chapter 134. Any decrease in required parking spaces may not exceed ten (10) percent.
 9. Vegetation. See chapter 138-3(3)c and 138-4. Additionally, the director may administratively decrease open space by a maximum of ten percent (10%).
1. ~~Minimum residential lot size: Up to five feet of width, but in no event for more than 500 square feet in total area.~~
 2. ~~Setbacks in residential zoning districts: Adjustments of no more than ten percent of the required setback can be approved of front, side, rear, or corner side yards, provided building coverage does not exceed the maximum allowed by the zoning designation. No administrative adjustments to the waterfront setback shall be permitted. In no case shall administrative adjustments reduce any setback to less than five feet on any side, excluding zero lot line building types.~~
 3. ~~Building height: Up to five percent of the total height or four feet, whichever is less.~~
 4. ~~A modification of the size and configuration of a perimeter stormwater lake or any internal lake, provided that it is approved by the city public works director.~~
 5. ~~A decrease in total residential units or nonresidential square footage.~~
 6. ~~A decrease in the amount of open space of less than five percent.~~
 7. ~~A modification to off street parking layout provided all other city requirements for facilities are met, but not if the modification is within 100 feet of any residentially zoned property.~~
 8. ~~A modification to external access points, provided the applicant demonstrates that the spacing is appropriate, safe, does not adversely affect the operation of the adjacent public roadway, and is approved by the city public works director.~~
- E.** Conditions may be attached to the approval of the administrative deviation to address unique aspects of the parcel to protect a bona fide public interest. The decision regarding the administrative deviation shall be a written approval, denial, or approval with conditions. The written decision must clearly identify the action requested by the applicant and the basis of the final administrative action of the city. The written decision shall be on file in the department of community development.
- F. Appeals.** Appeals to decisions regarding administrative deviations will be processed by the board of adjustments in accordance with section 98.2.3 of the land development code.

G. Board of adjustments review. The community development director, at the director's discretion, may require a deviation to be reviewed for approval by the board of adjustments, in accordance with the variance process set forth in section 98.3.5.

~~98.3.4—Administrative Deviations.~~

~~A. **Authorized.** An administrative deviation may be granted by the community development director upon filing of a sufficient application for the following regulations:~~

- ~~1. Planned unit development administrative deviation. See section 98.3.10.~~
- ~~2. Master development plan administrative deviation. See section 118.5.3.~~
- ~~3. Winkler Avenue administrative deviation. See section 118.4.2.~~
- ~~4. Cleveland Avenue Corridor design requirements. See section 118.4.3.~~
- ~~5. Refuse disposal and recycling facilities. See section 118.3.9.~~
- ~~6. Fence permits. See section 118.3.8.~~
- ~~7. Outdoor storage and display in industrial zoning districts. See section 118.3.7.~~
- ~~8. Signs. See section 126-8.~~
- ~~9. Traffic circulation and parking. See chapter 134.~~
- ~~10. Vegetation. See chapter 138.~~

~~B. **Public hearing review.** The community development director, at the director's discretion, may require a deviation to be reviewed for approval by the board of adjustments, which in its review shall apply the standards in subsection C.1 below.~~

~~C. **Approval of administrative deviation to chapters 134 and 138.**~~

~~1. Where due to physical constraints of the site, the requirements of chapters 134 and 138 cannot be met, the applicant may seek an administrative deviation from the provisions. The request for an administrative deviation shall be determined after review by the community development director, public works director, parks manager, and the building official. Such determination shall be stated in writing and shall be expressly for the specific use requesting the administrative deviation effective as long as the use is legally in existence. The written notice shall be signed by the building official. These administrative deviations shall be granted based on the following standards:~~

- ~~a. New work must be designed to be compatible with neighboring structures in material, size, scale and texture.~~
- ~~b. The site and landscape plan shall be sensitive to the individual buildings and shall be visually compatible with the buildings and environment with which it is visually related, including but not limited to site orientation, setbacks, vegetative or other screening.~~
- ~~c. The requested administrative deviation is the minimum possible to make reasonable use of the land and structure and will not have adverse impacts to the surrounding area.~~

2. ~~The community development director, at the director's discretion, may require the deviation to be reviewed for approval by the board of adjustments, which in its review shall apply the standards in subsection 1 above.~~

~~D. Approval of administrative deviation to planned unit development and master plan development.~~

1. ~~A request for an administrative deviation from an approved planned unit development, or a master plan development that is reviewed pursuant to section 118.5.3.D.2 shall be submitted to community development department for review and evaluation. The objective of administrative deviation is to provide design flexibility in community development. An application for administrative deviation shall include documentation that demonstrates how the administrative deviation will provide to the benefit of, or at least not to the detriment of, the public interest, and how the deviation provides for good planning and design flexibility. All requests for administrative deviations from master plan (MDP) development shall be submitted to the applicable MDP design review committee for its review, evaluation and recommendation prior to submission to the development services division. The applicant must submit to the development services manager a copy of the MDP design review committee recommendation, which shall include the committee's justification for its recommendation.~~
2. ~~Deviations may be administratively approved by the development services manager with the consent of the public works director, parks manager, fire marshal, and downtown redevelopment director when applicable. Administrative deviation(s) shall be granted only when the development services manager finds the following:~~
 - a. ~~Administrative deviations that encourage innovation in community development, improve the design, quality and character of new development; foster a more functional relationship pattern between different land uses, encourage patterns of land use that decrease trip lengths of automobile travel and encourage trip consolidation; and foster safe, efficient and economic use of land and public facilities or services shall be given greatest consideration.~~
 - b. ~~The alternative is no less consistent with the health, safety and welfare of the abutting landowners and the general public than the standard from which the deviation is being requested.~~
 - c. ~~The administrative deviation does not increase density or intensity (i.e., number of dwelling units or quantity of commercial or office floor area), or decrease the minimum required buffers and open space.~~
3. ~~Special conditions may be attached to the approval of the administrative deviation to address unique aspects of the parcel to protect a bona fide public interest. The decision regarding the administrative deviation shall be a written approval, denial, or approval with conditions. The written decision must clearly identify the action requested by the applicant and the basis of the final administrative action of the city. If the decision is to deny the administrative deviation, this does not preclude the applicant from~~

~~submitting an amendment to the planned unit development or master plan application in accordance with this land development code. The written decision shall be on file in the city clerk's office and placed with the original planned unit development or master plan approval.~~

98.3.5 - Variances.

- A. **Application and criteria.** A variance from the terms of this land development code may only be granted for minimum lot width, minimum lot area, minimum living area per unit, and minimum yard setbacks, and shall not be granted unless a written application for a variance is submitted on forms provided by the city, demonstrating:
1. That ~~special conditions~~ hardship(s), as defined in this land development code, and circumstances exist which are peculiar to the land, structure, or community development involved and which are not applicable to other lands, structures, or buildings in the same district.
 2. That literal interpretation of the provisions of the section of the land development code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this land development code.
 3. That the ~~special conditions~~ hardship(s), and circumstances do not result from the actions of the applicant.
 4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this land development code to other lands, structures, or buildings in the same district.
 5. That granting the variance is in the best interest of the public and promotes the general health, safety and welfare of the neighborhood to be affected by the variance.
 6. The variance is the minimum necessary to afford the applicant relief.
- B. **Prohibitions.** Nonconforming uses of neighboring lands, structures or buildings in the same district, and permitted or nonconforming uses of lands, structures or buildings in other districts shall not be considered grounds for the issuance of a variance. A variance shall not be authorized except in conformance with the criteria herein and, for example but without limitation, shall not be authorized to increase the allowable density of multifamily structures.
- C. **Use variances prohibited.** Under no circumstances shall the board of adjustments grant a variance to allow a use not permissible under the terms of this land development code in the district involved, or any use expressly or by implication prohibited by the terms of this land development code in such district.
- D. **Notice of hearing.** Notice of a public hearing on an application for a variance shall be given as provided in section 98.3.1H.
- E. **Holding of hearing; attendance of parties.** The public hearing on an application for a variance shall be held according to the quasi-judicial procedures in section 98.3.13. The applicant shall, and any party may, appear in person or by agent or attorney.

F. **Findings.**

1. The board of adjustments shall make findings that the requirements of this section have been met by the applicant for a variance.
2. The board of adjustments shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
3. The board of adjustments shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this land development code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- G. **Conditions and safeguards precedent for issuance.** In granting any variance, the board of adjustments may prescribe appropriate conditions and safeguards in conformity with this land development code. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this land development code.

98.3.6 - Other Administrative Approvals.

- A. **Warrants.** Section 118.8.3 establishes the warrant approval process for the downtown smart code. Appeals of a warrant decision shall be made to the city council pursuant to the procedures of the downtown smart code.
- B. **Renewal registration of garage apartments.** See section 98.4.6.B.2.
- C. **Administrative interpretation.** The community development director shall prepare administrative interpretations regarding this land development code as the director shall deem appropriate, and maintain a record of those interpretations for public use. ~~Annually, the director shall report those interpretations to the planning board for its recommendations to the city council as to whether this land development code should be amended in light of any interpretation.~~ Interpretations of the City of Fort Myers Growth Management Code, predating the adoption of this land development code, shall be considered non-binding on the city.
- D. **Master Development Plan administrative deviations.** See Section 118.5.3

98.3.7 - Appeal from Administrative Action to the Board of Adjustments.

A. **Authorized; notice; hearing.**

1. Appeals to the board of adjustments concerning the interpretation or administration of this land development code by the community development director may be taken by any person aggrieved or by any officer, department, board, or bureau of the city affected by any decision of the community development director. Such appeals shall be taken not more than 30 days from the date of the decision of the community development

director, by filing with the community development director a notice of appeal, on forms provided by the city. Every appeal shall refer to the specific land development code provision involved and shall set forth the interpretation or the administrative decision that is claimed to be incorrect.

2. The community development director shall ~~forthwith~~ transmit to the board of adjustments all papers and documents constituting the record upon which the action appealed from is taken.
3. ~~The board of adjustments shall fix a time within 20 days~~ A public hearing with the board of adjustments shall be scheduled for hearing the appeal, and shall give public notice thereof, as well as due notice to the parties at interest, and decide the appeal within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

B. Stay of proceedings. An appeal stays all work on the premises and all proceedings in furtherance of action appealed from, unless the community development director certifies to the board of adjustments after the notice of appeal has been filed that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustments or by a court of record on application. The restraining order shall be issued only upon due notice to the community development director from whom the appeal is taken and on due cause shown.

C. Authority of board of adjustments.

1. So long as such action is in conformity with the terms of this land development code, the board of adjustments may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made; and to that end, shall have the powers of the community development director from whom the appeal is taken.
2. The concurring vote of ~~three members~~ the majority of the board shall be necessary to reverse any order, requirement, decision, or determination of the community development director or to decide in favor of the applicant on any matter upon which it is required to pass under this section, or to ~~effect~~ affect any variation in the application of this land development code.

D. Appeal from the board of adjustments. Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustments, any taxpayer, or any officer, department, board or bureau of the city, may, in accordance with the rules of the court, seek review by certiorari of such decision by a court. Any person interested in appealing the decision of the board must ensure that a verbatim record of the proceeding is made.

98.3.8 - Conditional Uses.

A. **Application.** A written application for a conditional use shall be submitted on forms provided by the city, indicating the section of this land development code

under which the conditional use is sought and stating the grounds on which it is requested.

B. Notice of public hearing.

1. ~~Notice shall be given at least 15 days in advance of a public hearing on the conditional use. A notice shall be mailed to the owners of all properties within a radius of 300 feet of the perimeter boundaries of the property described in the application using, for this purpose, the last known name and address as shown on the tax roll of the county. Notice of such hearings shall be posted on the property and on the city hall bulletin board at least 15 days before the hearing. Notice of a public hearing on an application for a conditional use shall be given as provided in section 98.3.1.H.~~
2. ~~Notice of the time, place and date of the hearing shall be given in a local newspaper with general circulation in the community at least 15 days before the hearing.~~

C. Holding of hearing; attendance. The public hearing on an application for a conditional use shall be held according to the quasi-judicial procedures in section 98.3.13. The applicant must, and any party may, appear in person or by agent or attorney.

D. Consideration of adverse impact elements. In considering an application for a conditional use, the board of adjustments shall review the following and may require mitigation of adverse impact as a condition of approval:

1. Impacts on the local economy, ~~including governmental fiscal impact,~~ employment, and property values.
2. Impacts on the natural environment, including air, water, and noise pollution, vegetation and wildlife, open space, noxious and desirable vegetation, and flood hazards.
3. Impacts on historic, scenic, and cultural resources, including views and vistas, and loss or degradation of cultural and historic resources.
4. Impacts on public services, including water, sewer, surface water management, police, fire, parks and recreation, streets, public transportation, marinas and waterways, and bicycle and pedestrian facilities.
5. Impacts on housing and social conditions, including the variety of housing unit types and prices, and neighborhood quality.

E. Bases Basis for action by board of adjustments.

1. Certain uses may be approved after review and public hearing by the board of adjustments. ~~The board shall consider the recommendation of the planning board.~~ Each case shall be considered independently, and approval of any conditional use shall not be construed to establish precedent for other cases.
2. In granting any conditional use, the board of adjustments shall prescribe appropriate conditions and safeguards in conformity with this land development code. Violation of such conditions and safeguards, when made

a part of the terms under which the conditional use is granted, shall be deemed a violation of this land development code, and punishable under this land development code. The board of adjustments shall prescribe a time limit within which the action for which the conditional use is required shall be begun or completed. Failure to begin or complete such action within the time limit set shall void the conditional use.

E. Finding at hearing. The board of adjustments shall make a finding that the granting of the conditional use will meet the criteria of this section and will not adversely affect the public interest.

98.3.9 - Land Development Code and Official Zoning Map Amendments.

- A. The city council, the planning board, or the city manager may initiate amendments to the text of this land development code. The planning board shall make a recommendation to the city council as to whether the text amendment is consistent with the comprehensive plan and otherwise in the interests of the public health, safety and welfare.
- B. The Official Zoning Map may from time to time be amended, supplemented, or changed. A zoning map amendment (rezoning) may be proposed by the city council, the planning board, city manager, or by the persons or persons who own property and only for that property which he or she owns.
- C. All applications for zoning map amendments shall be submitted in writing to the community development department on forms provided by the department.
- D. All proposals for zoning map amendments shall be considered first by the planning board, which shall make a recommendation to the city council as to whether the rezoning is consistent with the comprehensive plan and future land use map and otherwise in the interest of the public health, safety and welfare.
- E. Notice and hearing of the application to amend the Official Zoning Map and the land development code text shall be provided as required by law.

98.3.10 - Planned Unit Development.

- ~~A. **Purpose and intent.** The planned unit development district (PUD) is created to provide an alternative method of land development not available within the framework of the other zoning districts. The standards and procedures of this district are intended to promote flexibility of design and allow for planned diversification and integration of uses and structures while at the same time retaining in the city council the authority to establish such limitations and regulations as it deems necessary to protect the public health, safety and general welfare. In doing so, the PUD district is designed to achieve the following objectives:~~

- ~~1. To accommodate a mixture of uses on a single parcel of land, which mixture is compatible both internally and externally through the limitations, sign control, building orientation, buffering or other techniques which may be appropriate to a particular development proposal.~~
- ~~2. Provide flexibility to meet changing needs, technologies, and economic and consumer preferences.~~
- ~~4. Permit the combining and coordinating of architectural styles, building forms and building relationships within a planned unit development.~~

~~B. Relation to general zoning, subdivision, and other applicable regulations.~~

~~Planned unit developments shall meet the requirements of all other sections of the land development code, including, but not limited to, traffic circulation, parking, landscaping, open space, subdivision and other city codes as applicable except where they are expressly modified in the planned unit development approval. The planned unit development approval consists of the adopting ordinance and the development plan approved by the ordinance. Where there are conflicts between planned unit development provisions of the PUD approval and the general zoning, subdivision or other applicable regulations, those standards expressly adopted in the PUD approval, including the notes or drawings of the development plan, shall apply. Deviations may be requested by the applicant, but must be specified on the development plan and in the adopting ordinance, and approved by the city council. The proposed PUD shall be consistent with the intent of the comprehensive plan and future land use designation of the site which is currently in effect. In addition, the minimum requirements of section 118.5.1 of this land development code shall apply.~~

A. Application. A written application for a planned unit development (PUD) shall be submitted on forms provided by the city.

B. Development concept plan. Applications for PUDs must include a development concept plan

describing the proposed development. Approval of a development concept plan does not constitute approval of construction drawings of public and private improvements. The proposed design and location of utilities and streets will be subject to review by the public works department and may be subject to revisions in the construction drawings review phase in conjunction with the subdivision process or in the building permit process. Development plan requirements are detailed in section 118.5.1 of this land development code.

a. Required general information.

- 1) Name of the planned unit development.
- 2) Vicinity map of not less than one-inch equals one mile.
- 5) North point, legend and scale (scale not to be less than one-inch equals 50 feet).
- 6) Total acreage of the site.
- 7) Residential density and non-residential intensity in the form of square footage and Floor Area Ratio, if applicable.

8) Estimated development schedule, including initiation and completion dates for all phases of development, recreation facilities, common areas, street and utility systems.

b. **Existing conditions.**

1) Existing zoning, future land use map designation, and development on the site and on property adjacent to the site.

2) Names and locations of all adjacent future land use map designations, zoning districts, and existing land uses.

3) Name, location and width of all platted rights-of-way, alleys and existing streets within and/or adjacent to the site.

4) Location of wetland and upland preserve areas.

5) Distance from Page Field and the Southwest Florida Regional Airport, if applicable.

c. **Proposed development.**

1) Location of proposed access points to the development from external roadways.

2) Locations of all proposed residential and non-residential development areas, including parking areas, services areas, and other areas intended for development.

3) Location and width of proposed internal streets, including typical right-of-way cross section with travel lanes, sidewalks, and other required facilities.

4) Location, type and width of perimeter and internal buffer yards, if applicable.

5) Location, purpose, dimensions and general description of common open space, parks and recreational facilities, including a summary table containing acreage of open space.

6) Site data table containing the proposed lot dimensions, setbacks, building height, lot coverage, and other development standards.

7) Where proposed internal lot lines are not shown on the plan, a typical lot detail delineating the proposed minimum dimensions of the lot and building footprint must be provided.

8) Location of stormwater management features, including detention and retention areas.

9) Location of requested deviations and/or warrants from the land development code requirements.

C. Additional submittal requirements, supportive data and analysis. In addition to the above requirements, the applicant will provide all materials outlined on the application form provided by the community development department, which may include, but is not limited to:

1) Traffic impact statement based upon a methodology acceptable to the community development department, or their assigns.

2) Environmental data including FLUCCS maps, Soils maps, Floodplain maps, and protected species survey.

3) Schedule of uses.

- 4) Site development regulations specific to the PUD zoning district, including but not limited to: proposed lot dimensions, front, rear, side yard setbacks, building coverage, and building height.
- 5) Schedule of deviations from the land development code and narrative justification for the request. Deviations from building envelope standards and dimensional requirement for base zoning districts set forth in Chapter 118, Article II are not required for Planned Unit Developments.
- 6) Project narrative demonstrating compliance with the applicable Comprehensive Plan goals, objectives and policies, and the criteria set forth in the land development code.
- 7) Boundary survey and legal description prepared by a licensed surveyor.

D. Waiver of submittal requirements. The community development director or public works director is authorized to waive or modify the submittal requirement upon review of a written request by the applicant. The request must clearly demonstrate that the submission material has no applicability to the project based upon existing or proposed conditions, and that the request will have no bearing on the review and processing of the application. The request and the director's written response must accompany the application submitted to the city, and will become a part of the permanent file. The decision of the director on waiver requests is discretionary and may not be appealed.

E. Public hearings. Notice of public hearings before the planning board and city council on an application for a planned unit development shall be given as provided in section 98.3.1.G and H of this chapter. The public hearing on an application for a PUD shall be held according to the quasi-judicial procedures in section 98.3.13. The applicant must, and any party may, appear in person or by agent or attorney.

F. Conditions of approval. Conditions may be formulated by the community development department, public works director, planning board, and/or city council, and applied to the PUD approval to address unique aspects of the development in the protection of a bona fide public interest. The source of such restrictions may include good planning practice as well as those specifications set forth in the application documents, policy and standards set forth in the Comprehensive Plan. All special conditions must be reasonably related to the proposed development and to any reasonably expected impacts on public services and facilities and the public safety, health and general welfare. Such conditions should be pertinent to the mitigation of these impacts. All conditions must be adopted as part of the zoning ordinance that governs the PUD.

~~C.~~ **G. Time limit on approval.** A planned unit development (PUD) shall be in effect for ~~three~~ five years, or as provided in the specific planned unit development ordinance. ~~If no building activity is~~ Vertical construction of principal structure(s) must be commenced prior to the expiration date of the planned unit development approval, as may be amended, to vest approval of the PUD, or the approval becomes null and void. The development of the property then will require approval of a new planned unit development or a rezoning to another zoning district. Upon expiration or voiding of the PUD, the property, or properties, will revert to the zoning district(s) applicable prior to PUD approval. For PUDs approved prior to the

adoption of the City of Fort Myers Zoning Map per Ordinance 3422, the zoning will revert to the zoning district identified in Table 118.1.2. of this code based upon the previous district name. I.e. a property identified as Single-Family Estate (AAA) prior to PUD approval will revert to Residential Single-Family – Estate (RS-E).

D. H. Unified control and development obligations. The applicant shall present firm evidence of the unified control of the entire area within the proposed planned unit development district and shall agree to develop in accord with:

1. The development approval, including the development plan, adopted for the applicable development.
2. Unified control of the property in a form acceptable to the city attorney.
3. Other such conditions or modifications as may be attached to the approval of the planned unit development.
4. Provision of agreements, contracts, deed restrictions, or sureties acceptable to the city for completion of the undertaking in accordance with the adopted PUD as well as for the continuing operation and maintenance of such areas, functions and facilities as are not to be provided, operated or maintained at general public expense.
5. Binding the development successors in title to any commitments made in the above-stated conditions.

E. I. Mapping required. When a planned unit development district is approved, its location and a reference to the adopting ordinance shall be designated on the official zoning map.

I. Amendments. Once a planned unit development has been approved, and there is any cause for amendment to any aspects of the approval, including but not limited to the development concept plan, schedule of uses, site development regulations, deviations, or conditions of approval, of the development plan, or any portion thereof, such amendment shall be processed as a substantial or insubstantial amendment. ~~in the same manner as the original planned unit development application. An amendment to the development plan is necessary when any one or more of the following changes occurs:~~ A substantial amendment must undergo the application and public hearing process in the same manner as the original planned unit development, and apply applies to the following types of changes:

1. Increase the proposed number of dwelling units or approved density.
2. Increase in non-residential square footage by more than 10%.
- ~~2-3.~~ Reduction of the area set aside for open space, buffer yards or preserve areas by more than ten percent (10%) and usable open space, or a relocation of such area that negatively impacts the external property boundaries of the PUD.
- ~~3-4.~~ Increase by more than ~~five~~ ten percent (10%) the total building coverage of all buildings and structures within the planned unit development.
- ~~4-5~~ Any increase in the height of buildings or reduction in setback lines ~~from within 100 feet of the external property boundaries of the PUD property lines.~~

- ~~5-6~~ Any change that increases in the number of trip ends generated in the a.m. or p.m. peak hours by more than 1%.
- ~~6, 7.~~ Any changes to approved conditions, or deviations, or allowable uses that adversely impact surrounding land uses or infrastructure. Requires city council approval only if subsections 1—5 above are not triggered.
- ~~7.~~ Any changes to landscape buffers, excluding changes to plant species. Requires city council approval only if subsections 1—5 above are not triggered.
8. Any change to the Schedule of Uses relating to non-residential uses that results in an increase to the development's intensity. For the purposes of this provision, an increase in intensity shall mean the addition of any non-residential uses or uses that generate additional external impacts, in terms of light/glare, noise, or dust., or peak hour trips by more than 1% per subsection 6 above.
9. Any change to the Schedule of Uses relating to residential uses that results in the adverse impacts to surrounding land uses in terms of compatibility, or the addition of a use or uses that the community development director finds substantially impacts the character of the development.

If none of the above thresholds are triggered, the amendment may be processed as an ~~administrative deviation~~ an insubstantial amendment pursuant to the procedures for administrative deviations set forth in section 98.3.3 of this chapter. At the discretion of the community development director, an amendment application not triggering the above thresholds may be required to follow the full public hearing process. All PUD amendments must demonstrate compliance with the Comprehensive Plan.

J. Dedication of public facilities. The city council may, as a condition of approval, require that suitable areas for streets, public rights-of-way, schools, parks and other public facilities be set aside, improved or dedicated for public use.

98.3.11 - Development Agreements.

A. Purpose and intent.

1. This section is intended to enable the city to invoke the provisions of the "Florida Local Government Development Agreement Act" while also retaining all home rule authority granted pursuant to Article VIII of the Constitution of the State of Florida and Chapters 163 and 166, Florida Statutes, to enter into other, similar agreements outside the provisions of the "Florida Local Government Development Agreement Act."
2. Vendees under a specifically enforceable contract for the sale of real property shall be recognized as having a sufficient equitable interest so as to have legal capacity to become a party to a development agreement made pursuant to this section, but persons having only a mere option to purchase real property shall not be so recognized. Development agreements made pursuant to this section are intended to protect and further the public health, safety and welfare by providing certain guarantees to land developers in exchange for their agreement to provide specified public facilities or services which are related to and consistent with the city's capital improvement planning and financing.

- B. Applications for development agreements and required hearings.** Development agreements shall be submitted to the community development department for review. The community development director or public works director, as applicable, shall recommend to the planning board and city council whether or not the city should become, or decline to become, a party to the agreement, or a modified form of the agreement, with such information as the community development director deems necessary to support a recommendation. The planning board, after a public hearing, shall provide a recommendation to city council as to whether or not the city should become a party to the development agreement and if and what modifications should be made. The city council, upon the recommendation of the community development director and the planning board and after a public hearing, shall make a final determination on whether or not the city should become a party to the development agreement.
- C. Minimum statutory requirements for development agreements.** Development agreements shall include such conditions, terms, restrictions or other requirements to which the parties to the agreement may desire to include and which are not otherwise prohibited by law or exceed the authority vested in the parties. Should a development agreement provide that public facilities are to be designed or constructed by the developer, the agreement shall require that the design and the construction be in compliance with all applicable federal, state, and city standards and requirements including, but not limited to, guarantees of performance and quality and project controls, including scheduling, quality control and quality assurance. When public facilities are to be designed or constructed by the developer, or when the developer agrees to dedicate land to the city, the development agreement shall specifically state the extent to which such design, or construction or dedication shall be eligible for impact fee credits pursuant to Chapter 122, Public Facilities, of the city code.
- D. Notice.** Public notice of the intended consideration of the development agreement at a public hearing shall be advertised seven days before each public hearing in a local newspaper of general circulation and shall be mailed to all affected property owners within 300 feet in every direction of the subject property. The notice shall specify the location of the land subject to the development agreement, the development uses proposed on the property, the proposed population densities, the proposed building intensities and height, and any other information that would apply and shall specify the place where a copy of the proposed agreement may be obtained.
- E. Amendment and cancellation of development agreements by mutual consent.** A development agreement adopted pursuant to this section may be amended or cancelled by mutual consent of the parties or by their successors in interest by utilizing the same public hearing and notice requirements as are prescribed for the adoption of development agreements in this section.
- F. Reservation of home rule authority.** Nothing contained in this section shall be construed so as to prevent the city from entering into an agreement pursuant to this code and the home rule authority granted to the city pursuant to Article

VIII of the Constitution of the State of Florida and Chapters 163 and 166, Florida Statutes, and specifically recognized by the Florida Legislature in Section 163.3220(5), Florida Statutes, notwithstanding the separate authority provided to the city by the "Florida Local Government Development Agreement Act".

- G. **Appeals.** No person may challenge the validity of a development agreement on the grounds that the agreement conflicts with the city's comprehensive plan except pursuant to the procedures set forth in section 163.3215, Florida Statutes. A party or a successor in interest to a party to a development agreement may bring suit to challenge the city's administration of a development agreement only after the party or successor has exhausted the administrative remedies prescribed in this chapter for appeals from administrative actions.

98.3.12 - Developments of Regional Impact.

Any application for development approval which qualifies under chapter 380.06, Florida Statutes, as a development of regional impact, shall be reviewed pursuant to the Florida Statutes. The development application shall be reviewed by the city council according to the same legislative procedures applicable to Comprehensive Plan Amendments in accordance with 380.06(30) and 163.3184(4), F.S. quasi-judicial procedures applicable to an Official Zoning Map amendment. Amendments to development orders governing an existing development of regional impact will be reviewed subject to the requirements of 380.06(19).

98.3.13 - Quasi-Judicial Procedures.

- A. **Intent.** The intent of this section is to establish procedures to ensure procedural due process and maintain citizen access to the local government decision-making process for the review of development orders and appeals of those orders that require quasi-judicial hearings. These procedures shall be applied and interpreted in a manner recognizing both the legislative and judicial aspects of the local government decision-making process in quasi-judicial hearings.
- B. **Applicability.** These procedures shall apply to all applications in which the city council or the board of adjustments acts in a quasi-judicial capacity for final decisions or appeals of final decisions as to conditional uses, variances and rezonings, or where the planning board hears applications to make such recommendations to the decision-making board. These procedures do not apply to administrative decisions made by city staff, except upon the appeal of the administrative decision to the board of adjustments or the city council.
- C. **Definitions.** The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
1. Applicant shall mean the owner of record, the owner's agent, or any person with a legal or equitable interest in the property for which an application for a development order or appeal thereof has been made and which is subject

to quasi-judicial proceedings, and shall mean the staff when the application is initiated by the city.

2. Competent substantial evidence shall mean testimony or other evidence based on personal observation, or fact or opinion evidence offered by an expert on a matter that requires specialized knowledge and that is relevant to the issue to be decided. Competent substantial evidence is evidence a reasonable mind could accept as adequate to support a conclusion.
3. Decision-making body shall mean the city council or the board of adjustments, as the case may be, that makes a decision on an application or decides the appeal.
4. Expert shall mean a person who is qualified in a subject matter by knowledge, skill, experience, training, or education.
5. Intervener shall mean a person whose interests in the proceeding are adversely affected in a manner greater than those of the general public. The decision making body, or the planning board as applicable, shall determine who shall be permitted to participate as an intervenor in the hearing, but such permission shall not determine the person's legal rights for purposes of judicial proceedings.
6. Material fact shall mean a fact that bears a logical relationship to one or more issues raised by the application or the laws and regulations pertaining to the matter requested by the application.
7. Participants shall mean members of the general public, other than the applicant, including experts and representatives of local governments and governmental agencies, who offer testimony at a quasi-judicial hearing for the purpose of being heard on an application.
8. Party shall mean the applicant, the city staff, or any person recognized by the decision-making body as a qualified intervenor.
9. Relevant evidence shall mean evidence which tends to prove or disprove a fact that is material to the determination of the application.

D. General procedures.

1. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any relevant matter (subject to the rules contained herein), and to rebut evidence.
2. Staff shall have the responsibility of presenting the case on behalf of the city. The staff report on the application shall be made available to the applicant and the decision-making body no later than five days prior to the quasi-judicial hearing on the application.
3. Official file. All written communication received by decision-making body or staff concerning an application, the staff report on the application, any petitions or other submissions from the public, and all other documents pertaining to the application upon receipt shall be filed in the official file for the application, which shall be maintained by staff. The comprehensive plan and the city code of ordinances shall be deemed to be part of the official file. The official file shall be available for inspection during normal business hours.
4. The printed agenda for the meeting at which the quasi-judicial hearing is scheduled to take place shall identify the hearing as quasi-judicial and indicate where copies of the procedures that apply may be obtained.

E. **Hearing procedures.** The hearing shall, to the extent possible, be conducted as follows:

1. The chair or city attorney shall read a statement at the beginning of the quasi-judicial hearing portion of the agenda, which shall outline the procedure to be followed. A copy of the procedures shall be made available at the hearing.
2. The applicant, staff, and all participants requesting to present evidence at the hearing shall be collectively sworn by oath or affirmation.
3. The applicant may waive its right to an evidentiary hearing if it agrees with the staff recommendation and no one from the audience wishes to speak for or against the application. The decision-making body may then vote on the item, based upon the staff report and any other materials entered by staff from the official file into the record of the hearing.
4. All members of the decision-making body or the planning board shall make ex-parte disclosures.
5. If there is an evidentiary hearing, the order of the presentation shall be as follows, unless the chair agrees to a different order, taking proper consideration of fairness and due process:
 - a. The applicant shall make its presentation, including offering any exhibits from the official file, and introduce any witnesses as it desires.
 - b. Staff shall present a brief synopsis of the application; introduce any appropriate additional exhibits from the official file which have not already been transmitted to the decision-making body with the agenda materials, as staff desires; summarize issues; and make a recommendation on the application. Staff shall also introduce any witnesses that it wishes to provide testimony at the hearing.
 - c. Participants in opposition to or support of the application shall make their presentations in the order as determined by the chair.
 - d. Staff may cross-examine any witnesses and respond to any testimony presented.
 - e. The applicant may cross-examine any witnesses and respond to any testimony presented.
 - f. The chair may choose to allow participants to respond to any testimony if the chair deems the response to be necessary to ensure fairness and due process.
 - g. Members of the decision-making body or the planning board as applicable, through the chair, may ask any questions of the staff, applicant and participants.
 - h. Final argument may be made by the staff, related solely to the evidence in the record.
 - i. Final argument may be made by the applicant, related solely to evidence in the record.
 - j. An intervener who is accepted as an intervenor by the decision-making body or the planning board, as applicable, may make a presentation, conduct cross-examination and make final arguments in the order as decided by the chair.

6. The chair shall keep order, and without requiring an objection, may direct a party conducting the cross-examination to stop a particular line of questioning that merely harasses, intimidates or embarrasses the individual being cross-examined; is unduly repetitious is not relevant; or is beyond the scope of the testimony by the individual being cross-examined. If the party conducting the cross-examination continuously violates directions from the chair to end a line of questioning deemed irrelevant and merely designed to harass, intimidate or embarrass the individual, the chair may terminate the cross-examination.
7. After the presentations, and at the conclusion of any continuances, the decision-making body or the planning board, as applicable, shall deliberate on the application or appeal, as the case may be. Once deliberations are begun, no further presentations or testimony shall be permitted except in the sole discretion of the decision-making body or the planning board, as applicable. The decision-making body's decisions must be based upon competent substantial evidence in the record.
8. The decision-making body or the planning board may, on its own motion or at the request of any person, continue the hearing to a fixed date, time, and place. The applicant shall have the right to one continuance; however, all subsequent continuances shall be granted at the sole discretion of the decision-making body.
9. The applicant may withdraw an application by requesting such withdrawal in writing. If an application is withdrawn, that application or any similar application for the same site shall not be accepted for review for a period of twelve months from the date of such withdrawal.

F. Rules of evidence.

1. The decision-making body or the planning board shall not be bound by the strict rules of evidence, or limited only to consideration of evidence which would be admissible in a court of law.
2. The chair may exclude evidence or testimony which is not relevant, material, or competent, or testimony which is unduly repetitious or defamatory.
3. The chair will determine the relevancy of evidence, with the assistance of the city attorney.
4. Matters relating to an application's consistency with the city comprehensive plan or land development code will be presumed to be relevant and material.
5. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in a court.
6. Documentary evidence may be presented in the form of a copy of the original, if available. A copy shall be made available to the decision-making body and to the staff no later than two days prior to the hearing on the application. Upon request, the applicant and staff shall be given an opportunity to compare the copy with the original. Oversized exhibits shall be copied and reduced for convenient record storage.

7. Only the applicant, intervener, staff and the decision-making body or planning board shall be entitled to conduct cross-examination when testimony is given or documents are made a part of the record.
8. The city attorney shall represent the decision-making body or planning board and advise it as to the procedures to be followed and the propriety, relevancy and admissibility of evidence presented at the hearing.
9. The decision-making body or planning board shall take judicial notice of all state and local laws, ordinances and regulations and may take judicial notice of such other matters as are generally recognized by the courts of the State of Florida.

G. Final decision by the decision-making body. The decision-making body shall reach a decision, or the planning board shall make its recommendation, without unreasonable or unnecessary delay. The decision shall be in writing and dated as of the date issued. The community development director shall provide the applicant notification of the decision by certified mail.

H. The record. All evidence admitted into the record at the hearing, and the adopted development order of the decision-making body shall be maintained by the city clerk in a hearing file for a period of at least 45 days from issuance of the decision.

98.3.14 - Fees and Charges.

A. Fees established by city council. The city council shall establish by resolution the fees for comprehensive plan amendments, development orders and permit applications under this land development code. The schedule of fees shall be posted in the office of the community development director and may be altered or amended only by the city council.

B. Technical consultants.

1. The city shall have the right to retain independent technical consultants and experts that it deems necessary to properly evaluate an application ~~for new developments of regional impact (DRI), or amendments to approved development orders for DRIs, certain zoning applications, annexation agreements or development agreements.~~
2. The applicant shall enter into a contract with the city which obligates the applicant to reimburse the city for the consultant fees charged to review the application. The city, upon notice to the applicant, may engage one or more technical consultants or experts relating to the matters addressed herein. The fees charged or collected by the city hereunder for each consultant shall not exceed \$75,000.00. For each application, when deemed necessary by the city, ~~for a new DRI development order, or an amendment to a DRI development order, certain zoning applications, or development agreements,~~ the city shall collect a fee deposit of \$35,000.00. If technical consultants are not retained by the city prior to issuance of the applicable development order the full amount is refundable.
3. The fee deposit will be placed in a separate, non-interest bearing account. When the city's ~~DRI application, certain zoning applications or development~~

agreements are filed with the community development department, all fees are due and shall be paid by either certified check or bank draft made payable to the city, or by United States currency. The applicant shall be liable to the city for 100 percent of the actual and verifiable costs of the independent technical consultants. The city shall notify the applicant when any consultant fees exceed the initial \$35,000.00 deposit. The notice shall indicate whether the city estimates the consultants' costs to exceed the existing deposit and, if so, will request an additional deposit sufficient to cover the estimated remaining costs, not to exceed a total deposit of \$75,000.00 for any one consultant. The applicant shall make an additional deposit with the city in an amount specified in the notice within 15 days of receipt of the notice.

4. If the applicant disputes any expenses incurred by the city, the applicant shall notify the city, in writing, of the specific expenses in dispute and the reasons why these expenses should not be considered reasonable and necessary for the review of the project. The applicant's response shall be received within 15 days of receipt of the final bill, and failure to do so shall be considered as a waiver of the applicant's right to dispute any expenses. Within 30 days of receipt of this response, the city shall submit to the city council the applicant's notice of disputed expenses, including any other documentation or information which the city deems appropriate to show that the disputed expenses were reasonable and necessary. Within 30 days, the city council shall render a determination as to whether the disputed expenses were reasonable and necessary. The determination shall constitute final action. Within 15 days of the determination by the city council regarding disputed expenses, the applicant shall pay any amount remaining outstanding or shall be refunded any amount deemed unreasonable or unnecessary.

98.3.15—~~Dr. Martin Luther King Jr. Boulevard Interim Development Approval Process.~~

- ~~A. With the adoption of the Dr. Martin Luther King Jr. and Veronica S. Shoemaker Boulevards Revitalization Plan there is an anticipated interest in both new and redevelopment of property along Dr. Martin Luther King Jr./Veronica S. Shoemaker corridors. Therefore, an interim development approval process is being extended for a 12 month period until May 21, 2009, or until the land development code is amended to incorporate the recommended code changes in the revitalization plan, whichever occurs first. Maps 1, 2, and 3 shown at the end of this section reflect the properties subject to the interim development approval process.~~
- ~~B. Conflict. The provisions of this section when in conflict shall take precedence over other codes, ordinances, regulations and standards, except that those listed in section 118.8.4 shall remain in effect. Other requirements of the land development code or other applicable ordinances continue to be applicable only to issues not covered by this section, except where those would contradict the intent of this section.~~
- ~~C. Exemptions. Items listed below shall be exempt from the requirements of this section and shall instead be reviewed for compliance with the requirements of the land development code.~~
- ~~(1) Interior remodeling only.~~
 - ~~(2) Like replacement of materials and structures.~~
 - ~~(3) Routine maintenance and repair.~~
 - ~~(4) Single family homes and single family residential development, including additions, except those fronting on Dr. Martin Luther King Jr. Boulevard and Veronica S. Shoemaker Boulevard.~~
 - ~~(5) Historic rehabilitation and/or restoration in compliance with the Secretary of the Interior Standards, or the occupancy of a historic landmark with a permitted use that proposes no additional square footage.~~
 - ~~(6) Change in occupancy from one permitted use to another where no additional square footage is proposed.~~
- ~~D. Activation. Provisions of this section shall be activated by "shall" when required, "should" when recommended, and "may" when optional.~~
- ~~E. Applicability.~~
- ~~(1) The existing small lots along Dr. Martin Luther King Jr. Boulevard between Evans Avenue and Ford Street reflected with hatching on map 2 are of insufficient size to comply with the current regulations in the land development code. Proposed improvements in this area may need relief from certain dimensional code requirements, including but not limit to: setback requirements, on-site parking requirements, driveway width, building height, lot width and depth, lot coverage and landscape requirements and may follow the variance process prescribed in section 98.3.5. Application fee for variance(s) in these areas shall be waived during this interim period.~~

ORDINANCE NO.

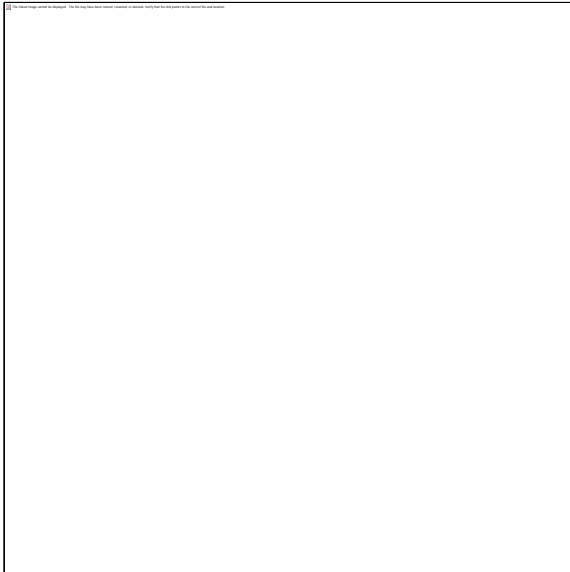
- ~~(2) New development, additions to existing development and renovations to existing development five acres or greater in size along the Dr. Martin Luther King Jr. and Veronica S. Shoemaker Boulevards as shown on maps 1 and 3 shall be approved only through the planned unit development process prescribed in section 98.3.10. The planned unit development application fee shall be waived during this 12 month interim review and approval process.~~
- ~~(3) New development, additions to existing development and renovations to existing development less than five acres in size along the Dr. Martin Luther King Jr. and Veronica S. Shoemaker Boulevards as shown on maps 1 and 3 or those located within the boundary of Dunbar Belle Vue Annexation area (see map D) are not required to follow the planned unit development process and instead shall follow to the maximum extent practical the planning concepts in the revitalization plan and the design guidelines prescribed in Appendix B as the plan was adopted by Resolution No. 2006-58 on November 20, 2006, by city council. Proposed improvements to properties less than five acres may also need relief from certain dimensional code requirements, including but not limit to: setback requirements, on-site parking requirements, driveway width, building height, lot width and depth, lot coverage and landscape requirements and may follow the variance process prescribed in section 98.3.5. Application fee for variance(s) in these areas shall be waived during this interim period.~~
- ~~(4) Uses requiring conditional use approval by the board of adjustments. Regardless of the size or location of property, the following uses have been identified as uses that may have potential adverse impacts to the surrounding neighborhood and therefore require conditional use/site plan review and approval by the board of adjustments. These provisions shall apply only to new uses or redevelopment of existing uses that add 50 percent or more to the gross floor area or exceed 50 percent of the assessed value of the building and site in the areas reflected on maps 1, 2, and 3 as shown at the end of this section. Where the conditional use process conflicts with other provisions herein, the conditional use process shall prevail as the prescribed process for review and approval of a particular use(s). The application fee for a conditional use and any associated variance request shall be waived during the interim review and approval process.~~
- ~~a. Pawnshops.~~
 - ~~b. Pool halls.~~
 - ~~c. Tire repair.~~
 - ~~d. Check cashing establishments.~~
 - ~~e. New and used auto, truck, boat, mobile home, cycle, or other similar sales agencies with accessory servicing and repairing.~~

F. ~~Determination of vested rights or denial of all economic use.~~

- ~~(1) Nothing in this section shall be construed or applied to abrogate the vested right of a property owner to complete development of a parcel where the property owner can demonstrate by substantial competent evidence each of the following:~~

ORDINANCE NO.

- ~~a. A development approval from the city as described in subsection (e), above, was obtained prior to May 21, 2007, the effective date of this section; and~~
- ~~b. Upon which the property owner has detrimentally relied, in good faith, by making substantial monetary expenditures; and~~
- ~~c. That it would be highly inequitable to deny the property owner the right to complete the development.~~
- ~~(2) Nothing in this section shall be construed or applied to prevent development of a particular parcel where the property owner can demonstrate by substantial competent evidence that, because of the interim development approval process, no economic use can be made of the parcel.~~
- ~~(3) Any property owner claiming vested rights or denial of all use under this subsection (e) must file an application with the city council for a determination within 90 days after May 21, 2007, the effective date of this section. The application shall be accompanied by an application fee of \$500.00 and contain a sworn statement as to the basis upon which the vested rights or denial of all use are asserted, together with documentation required by this section and other documentary evidence supporting the claim. The city council shall hold a noticed public hearing on the application. Based upon the competent substantial evidence submitted, the city council shall make a determination by ordinance as to whether the property owner has established vested rights or a lack of economic use for the parcel.~~
- ~~(4) Judicial review of final decisions by the city council under subsection (e) of this section shall be by the filing of a petition for writ of certiorari in the circuit court of the Twentieth Judicial Circuit in and for Lee County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial decisions of municipalities.~~
- ~~(5) Exhaustion of administrative remedies. No property owner claiming that this section as applied constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court unless he or she has first exhausted the applicable administrative remedies provided in this section.~~



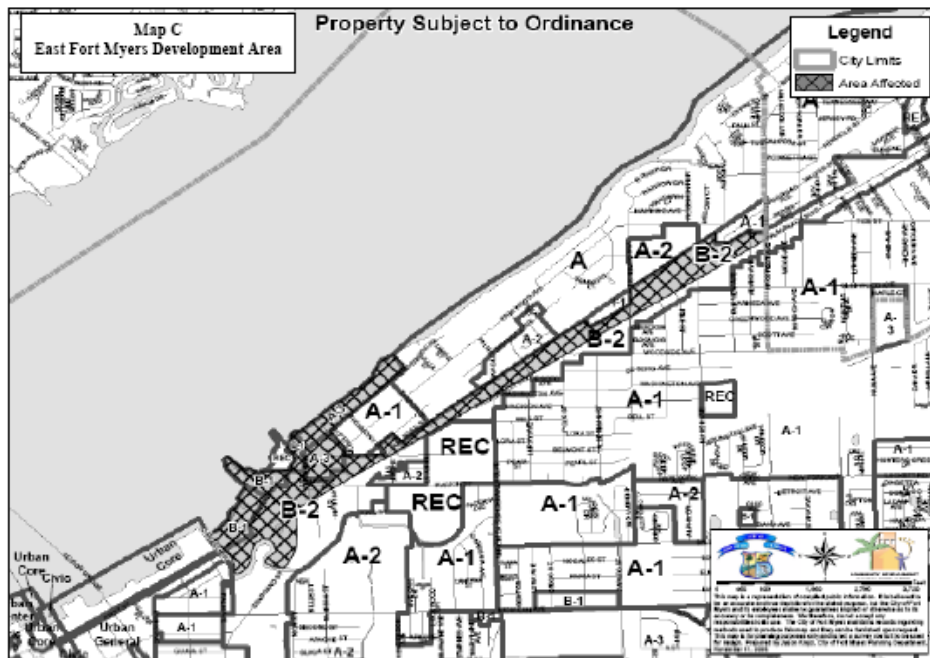
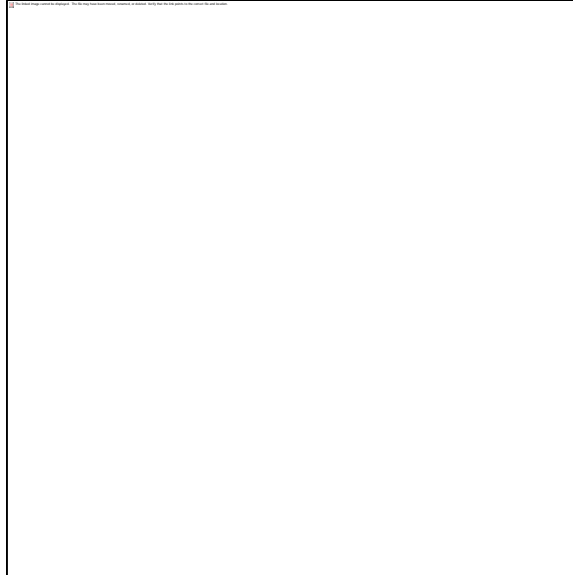
98.3.16 – East Fort Myers Interim Development Approval Process.

ORDINANCE NO.

~~A. Due to increased interest in redevelopment of mixed residential areas into high rise residential uses with increased density and height for that area located east of Billy's Creek along the north and south sides of Palm Beach Boulevard to Seaboard Street, and north of Palm Beach Boulevard east of Seaboard Street, as reflected on Map C, which redevelopment may possibly result in deleterious effects to the neighborhood, the city council has deemed that for an interim period not to exceed February 6, 2010, applications for permits for multifamily residential development shall be considered through the planned unit development process. Multifamily development over 35 feet in height or greater than eight units per acre for property zoned RM-16 or greater than 25 units per acre for property zoned CG and CI, shall be considered through the planned unit development process in accordance with the requirements and procedures of this chapter. Map C reflect the property subject to the interim development approval process.~~

~~B. There are concerns that existing water and sewer lines are of insufficient size to handle an increase in capacity and that roadways are not designed or adequate to handle any significant increase in traffic volumes. Additionally, fire flows in the area are insufficient to handle additional demand without upgrading the existing utility system. Allowing increased density and height within this area without proper planning and consideration of the above referenced deficiencies/needs would result in adverse impacts to the neighborhood and community as a whole. Any development that proposes to increase density or height within the area reflected on Map C, through the planned unit development process, shall be required to pay its proportionate share of costs associated with any and all studies the city deems necessary to address possible infrastructure deficiencies and needed improvements resulting from those studies.~~

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98.3.15. - Requests for zoning verification.

- A. Request. Zoning verification letters ("ZVL") may be requested from the department of community development by an individual who is seeking verification of the zoning status of a specific parcel of land. The request must provide sufficient information to identify the property and the information the requestor seeks to verify, such as a Property Appraiser STRAP number or legal description. The request must be submitted in writing and be accompanied by the required administrative fee. If the request covers multiple parcels, the community development director may treat each parcel as a separate request and may result in additional fees. The requestor is solely responsible for the accuracy of the information provided to the city within the request.
- B. Duration. There is no specific expiration date for a ZVL. However, zoning regulations are continually under review and may change at any time. ZVL determinations are subject to changes in City regulations adopted after the issuance of the Letter. Determinations provided in a ZVL may be superseded if not in conformance with

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the current regulations at the time of permit application. Before relying on a ZVL, an individual must ensure that all applicable rules, regulations, and circumstances have not changed subsequent to the issuance of the ZVL.

C. Content. A ZVL provided by the city may contain the following information:

1. The future land use designation of the property.
2. The zoning district of the property.
3. A list of permitted uses in the zoning district.
4. Identification of current zoning resolutions, conditional uses, variances, and deviations that apply to the property.
5. The development regulations applicable to the property.
6. Identification of any current Notice of Violations issued for code enforcement violations on the subject property.

D. Limitations. The ZVL is limited in the following manner:

1. The determinations set forth in section 98.3.15(c) are the only information that a ZVL may address.
2. In preparing a ZVL, the Director must review the request based upon current regulations and the current state of the property. The ZVL may not be based on conjecture, supposition, or speculation.
3. ZVLs must apply the plain meaning of the applicable regulations.
4. A ZVL may not address whether existing development on the property conforms to current Code requirements.
5. ZVLs may not provide legal opinions or advice.
6. The submission of sample letters with desired format or content is not permitted.

E. ZVL was based on inaccurate or misleading information or if the ZVL does not comply with this Code, then, at any time, the community development director may issue a modified ZVL that complies with the Code or revoke the ZVL. No refunds will be provided.

F. Effect of a Zoning Verification Letter. A ZVL does not authorize development activity.

ARTICLE 4. – NONCONFORMITIES

98.4.1 - Intent.

Within the districts established by this land development code, there exist lots, structures and uses of land and structures which were lawful before the adoption of this land development code, but which would be prohibited, regulated, or restricted under the terms of this land development code. It is the intent of this article to permit these nonconformities to continue until they are removed, but not to encourage their survival or to allow their enlargement except in compliance with this article. It is further the intent of this article that nonconformities created by any future amendment to this land development code likewise shall be allowed to continue only in accordance with the nonconformity regulations herein.

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98.4.2 - Generally.

- A. To avoid undue hardship, nothing in this article shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to (the effective date of the land development code ordinance), or any amendment to this land development code, as applicable, and upon which actual building construction has been diligently carried on. The term "actual construction" is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner, except that, where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved.
- B. In the event of a natural disaster, the city may permit the reconstruction of any nonconforming single-family dwelling to the same or decreased nonconformity as existed immediately prior to the natural disaster, upon proof satisfactory to the community development director of the configuration of the prior single-family dwelling, and only in compliance with the Florida Building Code. A permit for reconstruction of the single family dwelling must be obtained within 12 months of the event of its destruction.

98.4.3 - Nonconforming Lots.

- A. A permitted use in a principal building or, in the downtown area, any permitted use in a principal building and customary accessory buildings, may be erected on any single lot of record which was legally in existence on June 21, 1993. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership, except as provided in paragraph C below. This provision shall apply even though such lot fails to meet the requirements for area or width, that are generally applicable in the district, provided, that yard dimensions and other requirements not involving lot area or width shall conform to the regulations for the district in which such lot is located. Variances of area, width and yard requirements shall be obtained only through approval by the board of adjustments.
- B. If two or more lots, or combinations of lots and portions of lots, with continuous frontage in single ownership are of record as of (the effective date of the land development code ordinance), and if all or part of the lots do not meet the requirements for lot width and area as established by this land development code, the lands involved shall be considered to be an undivided parcel for the purposes of this chapter. No portion of an undivided parcel shall be used or sold which does not meet lot width, nor shall any division of the parcel be made which leaves any lot with a width or area below the requirements stated in this land development code. Any amendment to this land development code that changes the lot width and area requirements shall likewise regulate lots that become nonconforming as to lot width and area.
- C. Notwithstanding paragraphs A. and B. above, within an area designated by the city council as either a Community

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Redevelopment Area or Enterprise Zone, or for attainable housing incentives (where the lot is developed for qualified attainable housing), nonconforming lots of record need not be of separate ownership or of continuous frontage with lots in the same ownership in order to approve the construction of a principal building and customary accessory buildings on the lot. In such case, the lot shall be developed insofar as possible in conformance with yard dimensions and only pursuant to approval by the community development director.

98.4.4 - Nonconforming Uses of Land.

Where nonconformities in use of land, including the use of a structure and premises in combination, have been created based on adoption of this code or amendments thereto, the nonconforming use of land may be continued as long as it remains otherwise lawful, subject to the following provisions:

- A. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the time it became nonconforming. No such nonconforming use shall be moved, in whole or in part, to any other portion of the lot or parcel occupied by such use at the time it became nonconforming.
- B. If any such nonconforming use of land ceases for any reason for a period of more than 30 days, any subsequent use of such land shall conform to the regulations that are at that time applicable. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

98.4.5 - Nonconforming Structures and Site Improvements.

Where a lawful structure or site improvement becomes nonconforming, such structure or site improvements may be continued as long as they remain otherwise lawful, subject to the following provisions:

- A. A structure or site improvement may be enlarged or renovated in such a way which does not increase its nonconformity. A structure or site improvements which is altered in a way which decreases its nonconformity may be allowed.
- B. On a nonconforming site, enlargements, renovations or additional structures or site improvements that exceed either (i) 50 percent of the assessed value of the structures and site improvements or (ii) 50 percent of the gross floor area of an existing structure shall be required to bring the site improvements into compliance with the regulations applicable at that time.
 - i. For the purposes of this section, assessed value shall be the assessed market value obtained from the Lee County Property Appraiser or based upon an appraisal of the market value obtained by the Applicant and prepared by a qualified independent appraiser of the building or structure before the start of construction of the proposed work. In the case of repair, the market value of the building or structure will be

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the market value before the damage occurred and before any repairs are made. The appraisal must be dated within one (1) year of application to the City.

- ii. To encourage redevelopment, improvements relating to general maintenance and repair shall not be included in the calculation of the proposed site improvements, including replacement of roofs, HVAC systems, parking lot re-surfacing, and parking lot re-striping. Alternative design standards for redevelopment projects may be considered through the administrative deviation procedures set forth in this chapter.
- C. Should a nonconforming structure or site improvement be destroyed by any means to an extent of more than either 50 percent of the structure's or site improvement's assessed value or 50 percent of the gross floor area at the time of destruction, said structure or improvement shall not be reconstructed, except in conformity with all current city regulations. "Destroyed" or "destruction" for the purposes of this article includes both voluntary and involuntary destruction of the structure or site improvement, except where destruction is required by act of a government such as by an act of eminent domain or, in the case of a single-family dwelling in subsection 98.4.2B, occurs as a result of a natural disaster. "Destruction" does not include the addition of structures or site improvements where the additions do not require demolition of existing structures or site improvements. In the case of destruction by natural disaster, the structure may be replaced, subject to issuance of a building permit within six (6) months of the date of demolition.
- D. Should such structure be moved for any reason for any distance whatsoever, said structure and its site improvements shall thereafter conform to the regulations for the district in which it is located after it is moved. Should any portion of any structure or site improvement be removed for any reason, it shall not be replaced, except in conformity to the regulations for the district in which it is located.
- E. Historic landmarks or structures over 50 years of age, in a locally designated historic district, and their site improvements shall be considered conforming, and may be enlarged, rebuilt, or renovated, subject to the requirements set forth in chapter 114.

**98.4.6 - Nonconforming Uses of vested garage apartments.
~~Structures and Premises.~~**

- A. ~~**General.** If a lawful use of a structure, or structure and premises in combination, becomes a nonconforming use, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:~~
 - 1. ~~An existing structure devoted to a use not permitted by this chapter in the district in which it is located may be enlarged, reconstructed, moved, or structurally altered provided that the board of adjustments finds that, through the variance process, the proposed enlargement, reconstruction, movement or structural alteration does not create additional adverse impact~~

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~~or further detrimentally impact the surrounding area. In permitting such change, the board of adjustments may require appropriate conditions and safeguards in accordance with the provisions of this chapter.~~

- ~~2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time the use became nonconforming, but no such use shall be extended to occupy any land outside such building.~~
- ~~3. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided that the board of adjustments, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the board of adjustments may require appropriate conditions and safeguards in accord with the provisions of this land development code.~~
- ~~4. Any structure, or structure and land in combination, in or on which a nonconforming use is replaced by a conforming use shall thereafter continue to conform to the regulations for the district in which such structure is located, and the earlier nonconforming use may not thereafter be resumed.~~
- ~~5. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six consecutive months the structure or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located.~~
- ~~6. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.~~

C. Nonconforming use of garage apartments.

1. **Intent.** Pursuant to land development code, subsection 118.1.5.D, it is the present policy and requirement of the city that only one single-family principal building may be permitted on a single-family residential lot except as specifically permitted otherwise. Garage apartments as defined in the land development code represent a separate accessory structure. However, garage apartment rental use for garage apartments existing on December 31, 2002, except in Dean Park (“vested garage apartments”), will be permitted in conjunction with a separate single-family dwelling only pursuant to the registration process as completed on July 1, 2004. All rental of garage apartments shall cease by January 1, 2007 except where specifically permitted in the zoning district or as approved pursuant to this registration process.
2. **Renewal of registration for vested garage apartment.**
 - a. A \$50.00 annual renewal fee for an existing garage apartment license shall be required on or before October 1 every year. Registration forms will be provided by the ~~development services division~~ community development

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director to register existing garage apartments for designation in one of four categories:

- 1) Existing lawful nonconforming garage apartments. Garage apartments which have lawfully existing nonconforming rental uses (i.e., those which were first rented for occupancy in compliance with zoning regulations in effect on the date that the rental use began and which have been used continuously to the present).
 - 2) Garage apartments, constructed and utilized for residential occupancy with living and sleeping quarters with bathroom facilities, before June 24, 1953.
 - 3) Existing garage apartment rental use in Seminole Park (and Seminole Park No. 2), Edison Park, York Manor and Riverside platted subdivisions. Garage apartments located within Lee County Official Records Plat Book 5, Page 54 (Seminole Park); Plat Book 6, Page 11 (Seminole Park No. 2); Plat Book 7, Page 28 (Edison Park); Plat Book 5, Page 70 (York Manor); and Plat Book 3, Pages 63, 63a, 63b and 63c (Riverside), which are presently being used as rental apartments, including those for which occupancy and use is exchanged as compensation for services rendered, as in a garage apartment occupied by a property caretaker or domestic servant, and regardless of whether the rental use and occupancy can be demonstrated to be in compliance with an existing zoning regulation when started.
 - 4) All other existing garage apartments. All other existing garage apartments that do not qualify under subsections (a)1 through (a)3 above may be permitted to continue their rental use only pursuant to this section. Those provisions will also govern existing garage apartments being used only by family members and which are registered pursuant to this section.
- b. The following information shall be submitted where available, in addition to any other information requested in the application form:
- 1) Name of property owner.
 - 2) Address and STRAP (Tax identification) number of lot on which the garage apartment is located, and address of the garage apartment if different from lot on which located.
 - 3) Evidence of any existing rental/lease of the garage apartment.
 - 4) Earliest date that rental of the garage apartment first began and any evidence to support.
 - 5) Evidence of any city approval of construction of the garage apartment, such as building permits or certificates of occupancy.
 - 6) Evidence of the date of construction of the garage apartment including but not limited to: Lee County Property Appraiser's field cards, aerials or other photographs, the building department and zoning data, Sanborn maps, newspaper articles, architectural evidence or any other evidence

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demonstrating that the structure was used as a dwelling prior to June 24, 1953.

- 7) Evidence to show that the garage apartment complies with the development standards set forth herein in subsection 98.4.6.B.5 or a notarized agreement by the owner to comply with those standards if the garage apartment use is approved.
- 8) Any other evidence which the owner believes to be relevant to establish the lawful nature of the existing garage apartment rental use.

c. Agreement to comply with registration requirements. Each applicant for designation, by act of registration, agrees to comply with all provisions of the registration program in return for the benefits obtained herein.

3. **Review of renewal applications for vested garage apartments.** Applications filed pursuant to this section will be reviewed to determine whether the registration may continue to be effective. Upon change of ownership, the new property owner shall apply to the director if the new owner intends to rely upon the designation.

4. **Appeals.** The applicant may appeal the decision not to renew an application, and must be made within 15 days of the decision, by letter delivered to the community development director along with the appropriate fee. The appeal shall be heard by the city council and relief may be granted only on the basis of a mistake of law or fact made in reaching the designation. The decision of the city council shall be final after 14 days from the date of its decision.

5. **Required development standards and effect of designations for vested garage apartments.**

a. All vested garage apartments shall meet the following development standards:

- 1) Garage apartments registration shall be renewed with the city pursuant to this section, except garage apartments as permitted in the Dean Park Historic District must register at the time that the garage apartment use is requested.
- 2) There shall be no rental or leasing of the garage apartment unless the principal residence is occupied by the property owner as a full time resident of the city. Full time resident means living at the residence for at least nine months of the year and possessing a current Florida Homestead Exemption for that property from the Lee County Property Appraiser.
- 3) Every garage apartment shall meet minimum Standard Housing Code Standards as adopted in City Code, section 54-396, or its equivalent Florida Building Code standards, and every garage apartment shall be required to have or to obtain a certificate of occupancy demonstrating compliance with the Life Safety Code regulations.
- 4) Every garage apartment shall be occupied only by one family, which may be different from the family which owns the property.

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- 5) No more than one garage apartment shall be permitted in association with a single-family dwelling.
 - 6) Every garage apartment shall provide a minimum of one and maximum of two paved (or other approved alternative surface acceptable to the public works director) off-street parking spaces for the garage apartment, in addition to the minimum parking required for the single-family dwelling. The garage apartment parking shall be safely and appropriately located, consistent with the standards identified in section 86-69 of the city code. If the garage apartment has been designated a garage apartment as permitted in the Dean Park Historic District, constructed prior to 1953 or located in one of the above referenced historic neighborhoods, the required parking spaces shall be paved or be of other approved alternative surface. The garage apartments to be amortized shall not be required to provide paved parking.
 - 7) No new garage apartments shall be permitted to be constructed in any single-family zoning district except the Dean Park Historic District.
- b. Garage apartments registered pursuant to this section shall be treated as a lawful nonconforming use subject to the additional standards contained in this section.
 - c. Registered garage apartments will be permitted to continue the residential occupancy and rental of the apartment until January 1, 2007, after which the occupancy of the garage apartment shall be limited to only members of the family consistent with single-family residential use. These structures must comply with applicable Life Safety Code regulations.
 - d. Code enforcement of non-designated accessory structures used as garage apartments. Any accessory structure which has not received a written designation as a garage apartment pursuant to the foregoing registration and designation process will be presumed not to be a permitted garage apartment. Residential occupancy and use of an accessory structure for living and sleeping quarters without it being designated and registered as a garage apartment pursuant to the foregoing provisions of the land development code is prohibited and is subject to code enforcement pursuant to the chapter 2 of the city code.
6. ~~**Vesting of uses and structures in the Belle Vue and Dunbar annexation areas.** Uses or structures in the Dunbar/Belle Vue annexation area as shown on the Dunbar/Belle Vue Annexation Map D on page 39, that were in legal existence and compliant with the Lee County land use regulations on or before December 21, 2005, shall be considered vested in the city. Similarly, in the Dunbar/Belle Vue annexation area, previously granted Lee County development approvals as of December 21, 2005, shall be vested pursuant to those approvals and the county land use regulations as of December 21, 2005.~~

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- ~~a. Structures located in the area shown on Map D on page 39 may be replaced or remodeled as built and uses may be continued indefinitely until such time as the occupational license is not renewed. The city shall maintain an inventory of the licensed structures and uses. In order to preserve vesting, a property owner with an existing structure that is to be demolished must apply for building permits to rebuild the structure within one year of its demolition. The rebuilt structure shall comply with city land development regulations with regard to living area, setbacks, parking spaces, and landscaping.~~
- ~~b. Existing structures or uses shall be considered a special nonconformity and any expansion shall be required to seek approval through the conditional use process. No increase in dwelling units is permitted. The fees for conditional uses shall be waived.~~
- ~~c. Any expansion to an existing junkyard or recycling center shall be required to seek approval through the planned unit development process.~~