

CHAPTER 2
REVIEW AUTHORITY, ENFORCEMENT, AND PROCEDURES

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Chapter 2. Review Authority, Enforcement. and Procedures

Part I. Review Authority and Enforcement

Section 2.01. Purpose and Intent

The purpose of this Part is to establish the administrative structure for the implementation and enforcement of the Land Development Code.

Section 2.02. Review Authorities

The following review authorities are established to administer the provisions of this LDC under the authority prescribed by this LDC and Florida law.

2.02.01. City Council

In addition to any authority granted to the City Council by state law or the Code of Ordinances of the City of Palm Coast, the City Council shall have the following powers and duties with regard to this LDC:

- A.** To provide for the approval or denial of applications promoting orderly development consistent with the City's Comprehensive Plan and this LDC.
- B.** To provide for the approval or denial of subdivision plans and other development plans consistent with the Comprehensive Plan and this LDC.
- C.** To conduct public hearings as may be necessary in the discharge of its duties.
- D.** To amend this LDC, after review and recommendation of the Planning and Land Development Regulation Board.
- E.** To hear and decide appeals pertaining to decisions of the Planning and Land Development Regulation Board.
- F.** To set fees as necessary to implement the provisions of this LDC.
- G.** To assess enforcement penalties for failure to comply with this LDC.
- H.** To take such other action not delegated to decision-making and administrative bodies designated in this LDC, as the City Council may deem desirable and necessary to implement the provisions of this LDC and the Comprehensive Plan.

2.02.02. Planning and Land Development Regulation Board

Chapter 2, Article V, Division 4 of the City of Palm Coast Code of Ordinances establishes the Planning and Land Development Regulation Board. In addition to the membership and duties specified in the Code of Ordinances, the Planning and Land Development Regulation Board shall meet the following requirements:

A. Membership

- 1.** The members of the Planning and Land Development Regulation Board shall reside in the City.
- 2.** At least one (1) Planning and Land Development Regulation Board shall be appointed from each City Council district.

3. No Planning and Land Development Regulation Board member shall serve in office for more than two (2) consecutive four (4) year terms. A member whose term expires may continue to serve until a replacement is appointed.
4. Membership shall be based on experience or interest in the field of planning and zoning and may include the following occupations, when feasible. In no event, however, shall the Planning and Land Development Regulation Board include more than two (2) members from the same field:
 - a. An architect or a landscape architect;
 - b. An engineer;
 - c. A realtor or a developer;
 - d. An environmentalist; and
 - e. A lawyer.

B. Removal from Office

1. Planning and Land Development Regulation Board members shall serve at the pleasure of the City Council.
2. If a member of the Planning and Land Development Regulation Board is absent for three (3) regularly scheduled meetings without being excused prior to said meeting by the chair or who misses a total of five (5) meetings in any twelve (12) consecutive months, said member shall forfeit his or her office and it shall be deemed vacant.
3. Any vacancy occurring during the unexpired term of office of any member shall be filled by the City Council for the remainder of the term.

C. Powers and Duties

The Planning and Land Development Regulation Board shall have the following powers and duties:

1. Hear applications for Comprehensive Plan amendments, zoning map amendments, master planned developments, master plans, special exceptions, and variances.
2. The Planning and Land Development Regulation Board is hereby designated as the local planning agency as required by **Sections 163.3161 and 163.3174, Florida Statutes**. The Planning and Land Development Regulation Board shall prepare, or cause to be prepared, the elements of the Comprehensive Plan as required in **Section 163.3177, Florida Statutes**, and any other appropriate elements, and shall make recommendations regarding the Comprehensive Plan to the City Council. It shall have the general responsibility for the conduct of the Comprehensive Planning Program, monitoring and overseeing the effectiveness and status of the Comprehensive Plan, and recommending to the City Council such changes in the Comprehensive Plan as may, from time-to-time, be required. It shall perform any other duties assigned by the City Council and may prepare and recommend to the City Council any other proposals to implement the Comprehensive Plan.
3. The Planning and Land Development Regulation Board is hereby also designated as the land development regulation board in accordance with the provisions of **Sections 163.3161 and 163.3194, Florida Statutes**. The Planning and Land Development Regulation Board shall develop and recommend to the City Council land development regulations that implement the Comprehensive Plan and amendments thereto for consistency with the Comprehensive Plan.

Amendments to the Land Development Code that relate purely to technical matters shall be considered on the basis of the technical matters submitted only.

2.02.03. Land Use Administrator

- A.** The Land Use Administrator shall review and act upon any and all applications for development orders and permits that are issued by any person or body other than the City Council or the Planning and Land Development Regulation Board in which cases the Land Use Administrator shall provide for reviews and recommendations as appropriate.
- B.** The Land Use Administrator is authorized to make necessary interpretations of this LDC and to interpret the permissible, prohibited, and special exception land uses listed in each zoning district upon a written request for an interpretation being submitted to the Land Use Administrator together with any prescribed fee. The request shall contain sufficient information to enable the Land Use Administrator to make the necessary interpretation.
- C.** The Land Use Administrator is authorized to interpret the zoning map and to act upon disputed questions of district boundary lines and similar questions upon an application for an interpretation being submitted to the Land Use Administrator together with any prescribed fee. The application shall contain sufficient information to enable the Land Use Administrator to make the necessary interpretation.

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Part II. Development Orders and Agreements - Applications and Procedures

Section 2.03. Purpose and Intent

The purpose of this Part is to set forth the basic procedures and criteria to implement this LDC with regard to receiving, reviewing, and rendering decisions on applications for development orders, agreements, and amendments to the Official Zoning Map. These procedures shall be applied and interpreted in a manner recognizing both the legislative and quasi-judicial aspects of the local government decision-making process. The Land Use Administrator shall accomplish the administration of this LDC, but may delegate authority as deemed appropriate. The City will not establish procedures and administer policies inconsistent with the Comprehensive Plan, Code of Ordinances, and policies established by City Council.

Section 2.04. Applicability

No person shall undertake the development or subdivision of land within the corporate limits of the City except pursuant to a valid development order issued in accordance with all legal requirements. All development shall be consistent with the Comprehensive Plan. All development shall meet City requirements prior to the approval and issuance of any development order, unless specifically exempted as a condition of the development order. The requirements contained in this section, in addition to the specific requirements noted for each type of application within this Part, shall apply to all development orders.

2.04.01. Development Order Required

Development orders require different levels of approval depending on the intensity and type of project. **Table 2-1** shows the level of approval required for each type of development activity. Before submitting a development order application for review and to determine which level an application falls into, the developer shall provide the Land Use Administrator with sufficient information to make a determination.

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Table 2 - 1 – Development Order Approvals

DEVELOPMENT LEVEL	DEVELOPMENT TYPE/INTENSITY	FINAL APPROVAL AUTHORITY
MINOR <u>Tier 1:</u> Nonresidential projects up to 40,000 square feet of building and/or residential projects not to exceed 40 residential units	Administrative Deviation of Standards	Land Use Administrator ¹
	Nonstatutory Subdivisions	
	Preliminary Plats	
	Technical Site Plans for Tier 1 developments; Tier 2 developments with an approved Master Site Plan; and Tier 3 developments with an approved Master Site Plan	
	Subdivision Master Plans for nonresidential and for residential up to 100 units	
MODERATE <u>Tier 2:</u> Nonresidential projects over 40,000 square feet of building up to 100,000 square feet of building and/or residential projects over 41 residential units not to exceed 100 units	Special Exceptions	Planning & Land Development Regulation Board
	Variances	
	Master Site Plans for Tier 2 Developments	
	Technical Site Plans for Tier 2 developments without a master plan	
	Nonresidential Controlling Master Site Plans for Tier 2 developments	
	Subdivision Master Plans for residential greater than 100 units	
MAJOR <u>Tier 3:</u> Nonresidential projects over 100,000 square feet of building and/or residential projects over 100 residential units	Vested Rights Determinations	City Council
	Zoning Map Amendments/Master Planned Developments	
	Final Plats	
	Development Agreements	
	Master Site Plans for Tier 3 developments	
	Technical Site Plans for Tier 3 developments without a master plan	
	Nonresidential Controlling Master Site Plans for Tier 3 developments	
	Developments of Regional Impact (threshold - 750 residential dwelling units)	

¹The Land Use Administrator shall, on a regular basis, submit a report to the Planning and Land Development Regulation Board listing all minor level developments that have been approved during a specified period.

2.04.02. Exceptions

No development order shall be required when:

- A. The application for development involves minor remodeling or new construction of a detached single-family dwelling or duplex residential building and it meets all the applicable LDC requirements and regulations. Such development may directly make application for a building permit.
- B. The development or redevelopment activity is included as part of a larger plan of development or a phased development for which a development order has been previously issued pursuant to this LDC.
- C. Altering an existing building or structure so long as no increase is made to its nonresidential gross floor area, its use, its height, or the amount of impervious surface on the site.

- D. Changing the use of a property/building provided that:
 - 1. The new use is allowed in the applicable zoning district, and
 - 2. The new use does not increase the density or the intensity of the development on the real property.
- E. Erecting a sign or replacing protected trees on a previously developed site and independent of any other development activity on the site.

2.04.03. Building Permit Required

It shall be unlawful to change the use of an existing structure, modify an approved site plan, commence the clearing of land, excavations for, or the construction of any building or other structure, including accessory structures, or to store building materials, or erect temporary field offices, or to commence the moving, alteration, or repair of any structure, including accessory structures, until the Land Use Administrator has issued a building permit authorizing such development. Review and approval of building permits shall be in accordance with **Article 2, Chapter 15 of the City of Palm Coast Code of Ordinances.**

Section 2.05. Development Orders and Agreements – General Requirements

2.05.01. General Administrative Principles

The following principles apply to the development application process:

- A. Copies of documents, reports, publications, administrative rules, and other similar matters that are referred to in the provisions of this LDC shall be filed and retained in the office of the City Clerk.
- B. When state or federal codes are referenced in this LDC, the most recent enactment or amendment of that regulation shall apply.
- C. When calculations are made in the course of the implementation of this LDC, numbers shall be rounded to the nearest whole number unless otherwise specifically stated in this LDC.
- D. Fees called for in this LDC for the various applications and processes shall be established in a resolution adopted by the City Council; provided, however, that the Land Use Administrator may establish the appropriate fee for actions and activities not specifically set forth in a fee resolution after considering the range of fees set forth in the City Council’s resolution and shall present proposed amended fee resolutions to the City Council, as needed, from time-to-time.
- E. The Land Use Administrator is charged with promulgating the forms and procedures necessary to administratively implement this LDC.
- F. Whenever a reference is made in this LDC to “the City” or “City staff” such reference shall mean the Land Use Administrator unless the context clearly indicates to the contrary.
- G. The City shall adhere to the controlling requirements of state law relative to the processing, hearing and rendering decisions with regard to legislative and quasi-judicial matters. The City shall approve development orders and deny development orders as appropriate and in recognition of the public’s right and the rights of property owners to articulated decisions on land use matters.
- H. Although a glossary of defined terms and various definitions of terms are set forth in **Chapter 14**, not all terms may be defined and, to that end, the City may refer to and rely upon definitions set forth in the Florida Statutes and the Florida Administrative Code in order to assist in the administration of this LDC.

- I. The rendering of a decision shall mean the filing of a written development order or a written denial of a development order in the office of the City Clerk.
- J. Upon a final decision made by the City Council after all internal appeals being timely filed and determined, applicants may seek timely appeals of actions in a court of competent jurisdiction.
- K. A change of use shall require appropriate reviews and permitting if the proposed new use increases the density or intensity of the development on real property. A change of use occurs when an existing use or occupancy of land, or a building, is replaced by another use or occupancy.

2.05.02. Neighborhood Meeting Requirements

A. Meetings Required

Developers are required to hold a neighborhood meeting for the following application types:

- 1. Single-family and multifamily residential developments of forty (40) units or more, unless waived by the Land Use Administrator.
- 2. Development of Regional Impact.
- 3. Master Planned Development.
- 4. Zoning Map Amendments.
- 5. Other projects as deemed necessary by the Land Use Administrator on a case-by-case basis based upon potential impacts to the City or abutting or proximate property owners.

The meeting shall be held prior to an application being heard in the first step of the review/approval process. The Land Use Administrator may waive the requirement for a neighborhood meeting if the project is part of a multiphase project for which meetings have been held previously.

B. Notification Required

Neighborhood meetings shall be noticed to property owners owning property located within three hundred (300) feet of the boundary lines of the property proposed for development. The notice shall state the date, time, and location of the neighborhood meeting. A copy of the notice shall be provided to the City.

C. Meeting Criteria

The neighborhood meeting shall be held in the evening or on a weekend in a location of close proximity to the subject property that is capable of accommodating such meeting. The applicant shall conduct the meeting and provide necessary information and materials to attendees that address the proposed development. The applicant shall provide a sign-in sheet and take notes of public comments. A copy of the sign-in sheet and comments shall be provided to the City prior to the next step in the approval process.

D. Post-Meeting

The applicant shall provide the following materials with the submitted application:

- 1. A copy of the meeting notification.
- 2. A list of who was notified of the meeting.
- 3. A copy of all materials distributed at the meeting.

4. A list of names and addresses of attendees as provided on sign-up sheets from the meeting.
5. A summary of the issues raised by the attendees.
6. A description of how the proposal addresses the issues that were raised at the meeting.

E. Additional Meetings

The Land Use Administrator may require that additional neighborhood meetings be held if the application is substantially modified from that which was presented at the previous neighborhood meeting.

2.05.03. Public Hearing Notice Requirements

- A. All notices for vacating plats, variances, special exceptions, appeals (as applicable), and amendments to the Official Zoning Map or LDC, shall be published as required by state law and, where applicable, City regulations. If there is ever a conflict between the provisions of this LDC and state law relative to notices, the provisions of state law shall prevail and apply.
- B. Prior to the hearings provided for under this chapter, the applicant shall send notices, prepared by City staff, to all applicable property owners as outlined in **Table 2-2**. The names and addresses of the property owners shall be obtained by the applicant from the Flagler County Property Appraiser’s Office. The notice shall be sent via certified mail and shall provide information as to the nature of the requested application and the date, time, and location of the public hearing. No other documents shall be provided within the envelope. The Land Use Administrator shall promulgate rules relating to whether the applicant or the City will be responsible for mailing the notices to the required property owners by certified mail and the costs relating thereto.
- C. Abutting property means any property that is immediately contiguous to property that may be subject to a hearing or that is immediately across any road or public right-of-way from the property subject to such hearings.
- D. Signs, as required, shall be posted in a conspicuous place on the subject property no later than the timeframe specified in **Table 2-2**.
- E. At least ten (10) calendar days prior to the required hearing, if applicable, the applicant shall submit an affidavit to the City stating that the notification requirements have been met in accordance with this section.

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Table 2 - 2: Notification Requirements for Public Hearings
(State law prevails over any provision in this Table)

	Planning & Land Development Regulation Board (PLDRB)	City Council Ordinance 1st reading	City Council Ordinance 2nd reading	Judicial Or DCA
Appeal Administrative Decision	N/A	N/A	N/A	N/A
Appeal PLDRB Decision	N/A	Applicant mails letters, if deemed applicable by the Land Use Administrator, at least 14 calendar days prior to hearing.	N/A	N/A
Vacating Plat	N/A	In accordance with <i>Florida Statutes</i>	N/A	N/A
Variance	Applicant mails certified letters to abutting property owners at least 14 calendar days prior to hearing.	N/A	N/A	N/A
Special Exception	Applicant mails certified letters to abutting property owners at least 14 calendar days prior to hearing.	N/A	N/A	N/A
LDC Amendment		Display ad published at least 7 calendar days prior to hearing.	Display ad published at least 5 calendar days prior to hearing/adoption	N/A
Zoning Map Amendment (owner initiated)	Applicant posts signs at least 14 calendar days prior to hearing.	Applicant posts signs at least 14 calendar days prior to hearing.	Display ad published at least 10 calendar days prior to hearing/adoption.	Petition shall be presented to the Circuit Court within 30 days of final action by City Council.
Zoning Map Amendment (City initiated, less than 10 acres)	Signs posted at least 14 calendar days prior to hearing.	Signs posted at least 30 calendar days prior to hearing. <hr/> Notification letters mailed at least 30 calendar days prior to hearing to each real property owner of parcels to be rezoned.	N/A	Petition shall be presented to the Circuit Court within 30 days of final action by City Council.
Zoning Map Amendment (City initiated, 10 or more contiguous acres)	Signs posted at least 14 calendar days prior to hearing.	Signs posted at least 7 calendar days prior to hearing. <hr/> Display ad published at least 7 calendar days prior to hearing.	Display ad published at least 5 calendar days prior to hearing/adoption.	Petition shall be presented to the Circuit Court within 30 days of final action by City Council.
Development Agreement and Amendments¹	N/A	In accordance with <i>Florida Statutes</i>	In accordance with <i>Florida Statutes</i>	In accordance with <i>Florida Statutes</i>
Comprehensive Plan Amendments	In accordance with <i>Florida Statutes</i>	In accordance with <i>Florida Statutes</i>	In accordance with <i>Florida Statutes</i>	In accordance with <i>Florida Statutes</i>
DRI	In accordance with <i>Florida Statutes</i>	In accordance with <i>Florida Statutes</i>	In accordance with <i>Florida Statutes</i>	In accordance with <i>Florida Statutes</i>

¹ This is not applicable to development agreements related to the zoning of property.

2.05.04. Review Procedures

This section establishes the review process for development orders. More specific requirements for certain development orders are included in those particular sections within this Part.

A. Owner; Owner Representative

If an application relates to a specific real property, it shall be heard only if it is presented by the person(s) owning fifty-one (51) percent or more of that land, or an authorized representative of the owner(s), or upon an administrative application by the City Council.

B. Right of Entry for Survey, Examination, and Inspection

An application submittal shall grant any person acting under the direction of the Land Use Administrator in the performance of functions and duties pursuant to this LDC to enter upon such land and make inspections, examinations, and surveys as necessary in its administration and enforcement.

C. Preapplication Meeting

Prior to filing an application for development, an applicant desiring to develop or plat property within the City may schedule a preapplication meeting with the Land Use Administrator. The applicant shall submit a preapplication package that meets City requirements. Following the preapplication meeting, the applicant shall hold neighborhood meetings as required in this chapter prior to submitting an application for the next step in the approval process.

D. Completeness Review

An application shall be submitted in accordance with City requirements. Compliance review will not commence until such time that the application is deemed complete by the Land Use Administrator.

1. The Land Use Administrator will make a determination of completeness within ten (10) business days from receipt of the application. If the application is deemed incomplete, it shall be returned to the applicant and the same process followed until it is determined to be complete.
2. When the Land Use Administrator has determined that an application is complete, correspondence will be sent to the applicant and the date of that correspondence will serve as the first day of the compliance review period.

E. Revisions to Development Order Applications

If an application is modified after submittal, the following requirements shall apply:

1. **Major modification.** A major modification of plans initiated by the applicant during the compliance review process that is not in response to City comments may be determined to constitute a new application submittal by the Land Use Administrator.
2. **Application/document changes.** Ownership and/or mortgage holder changes shall require a new signed application cover sheet with updated signatures and a new title opinion as well as additional information that may be required. Changes to the application may require additional review by the Land Use Administrator.

F. Applications Withdrawn, Abated, and Abandoned

1. Withdraw

Any application may be withdrawn, prior to any action required, at the discretion of the applicant upon written notice to the City. The withdrawal of an application shall not result in a refund of the application fee.

2. Abated Applications

An application shall be abated when no activity occurs for six (6) consecutive months. The Land Use Administrator shall issue a notice of abated application to the applicant. Any submittal after the issuance of a notice of abated application shall require the payment of an abated application fee and must comply with any amendments to this LDC or other applicable state regulations after the last review of the application.

3. Abandoned Applications

An application shall be abandoned when no activity occurs for twelve (12) consecutive months. The Land Use Administrator shall issue a notice of abandoned application to the applicant. Any submittal after the issuance of a notice of abandoned application shall constitute a new application.

G. Applications for Minor Development - Land Use Administrator Approval

1. Following a completeness determination for a minor development, the Land Use Administrator shall review the application in order to determine compliance with City requirements and, if applicable, state requirements.
2. If the application is not in compliance, a letter shall be sent to the applicant outlining all items that need to be addressed in order for the development to achieve compliance with this LDC.
3. Upon verification of compliance with all applicable requirements, the Land Use Administrator shall issue a development order approving or denying the application.

H. Application for Moderate and Major Development - Planning and Land Development Regulation Board or City Council Approval

The review process for a moderate or major development shall include:

1. Following a completeness determination for a moderate or major development, the Land Use Administrator shall review the submittal in order to determine compliance with City requirements and, if applicable, state requirements. Copies of the application shall be forwarded to all applicable City staff for review and comment. At the discretion of the Land Use Administrator, or at the request of the applicant, a meeting may be scheduled with City staff to discuss issues that may be substantive in nature. If City staff finds that additional information is needed for the proper review of the application, the Land Use Administrator shall notify the applicant in writing, specifying the information needed.
2. If the application is not in compliance, a letter shall be sent to the applicant outlining all items that need to be addressed in order for the development to achieve compliance with this LDC.
3. After verification that the application for a moderate or major development has complied with all applicable requirements of this LDC, the application shall be placed upon the next practicable agenda of the Planning and Land Development Regulation Board in accordance with published schedules and deadlines. After sixty (60) days of application submittal the applicant may request the application be on the next appropriate agenda.

4. The Land Use Administrator shall forward the application, along with its recommendations, to the Planning and Land Development Regulation Board for consideration. Based on the application, the requirements of this chapter, and the recommendations of City staff, the Planning and Land Development Regulation Board may approve, approve with conditions, or deny a development order, or prepare recommendations for the consideration of the City Council if it involves a major development, as defined in **Table 2-1**.
5. If applicable, following review by the Planning and Land Development Regulation Board, the application shall be placed upon the next practicable agenda of the City Council. Based on the application, the requirements of this chapter and the recommendations of the Planning and Land Development Regulation Board, the City Council shall approve, approve with conditions, or deny the application.

I. Conditions and Safeguards

In granting any development order, the approving authority may prescribe appropriate conditions and safeguards in conformity with this LDC. The approving authority shall render a decision to either:

1. Approve the request as submitted; or
2. Approve the request with conditions; or
3. Deny the request.

Violation of conditions and safeguards made a part of the approval shall be a violation of this LDC.

J. Development Order Denial

In the event an application for a development order is denied, the City shall issue a denial development order citing the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the request for a development order or permit. The Land Use Administrator may provide comments and recommendations relating to applications prior to taking action to deny a development order.

K. Due Process

The timeframe for City review, process, and public hearings for all accepted application types shall be determined by the Land Use Administrator. The Land Use Administrator shall provide information depicting all application target timelines for City review and processing which demonstrates its adherence to these timeframes. Although these timeframes are targets and not requirements, all applications shall be duly processed. In no case shall the Land Use Administrator unduly or unreasonably deny comments, reports, decisions, or scheduling of public hearings for applications. After sixty (60) days of application submittal the applicant may request the application to be on the next appropriate agenda, if applicable.

L. Independent Review of Applications

The City may engage necessary technical consultants for the review of an application or a specific technical aspect of an application. The costs of such review shall be paid by the applicant.

2.05.05. Review Findings

When reviewing a development order application, the approval authority shall determine whether sufficient factual data was presented in order to render a decision. The decision to issue a development order shall be based upon the following including, but not limited to:

- A. The proposed development must not be in conflict with or contrary to the public interest;
- B. The proposed development must be consistent with the Comprehensive Plan and the provisions of this LDC;
- C. The proposed development must not impose a significant financial liability or hardship for the City;
- D. The proposed development must not create an unreasonable hazard, or nuisance, or constitute a threat to the general health, welfare, or safety of the City's inhabitants; and
- E. The proposed development must comply with all other applicable local, state, and federal laws, statutes, ordinances, regulations, or codes.

2.05.06. Effect of Development Orders

The issuance of a development order does not authorize the disturbance of any part of the subject property involved. A development order only authorizes the filing of an application for another development order or a building permit.

A. Other Permits Required

In addition to obtaining a development order from the City, the developer must also obtain all other applicable permits or exemptions, as may be required by law. In the event approval from the City is prerequisite to obtaining other required permits, the City shall issue a letter of intent which states that the proposed development is in compliance with this LDC, and that such approval is conditioned upon the developer obtaining all other required permits. The developer must provide proof to the City that all permits or exemptions have been granted prior to receiving a site development permit and, if applicable, a final plat.

B. Valid Period

Development orders shall remain valid for a period of twelve (12) months from the date of issuance. In the event the applicant provides documentation that federal and/or state permits are in the process of being obtained, the expiration date of the development order may be extended in accordance with **Subsection 2.05.06.E**. However, a final plat development order shall remain valid until the subdivision or any part thereof is abandoned in accordance with City and state law.

C. Commencement of Construction Pursuant to a Valid Building Permit

If construction on a site has commenced during the valid period of a final site plan development order and pursuant to a valid building permit, construction may continue after the development order expires as long as the building permit remains valid.

D. Commencement of Construction During Valid Period of a Preliminary Plat

If construction of the required improvements in a subdivision has commenced during the valid period of a preliminary plat development order, the improvements may be completed in accordance with the approved development order beyond its valid period provided the final plat development order has been issued and the subdivision has a valid certificate of concurrency. Construction of the required improvements in a subdivision shall be completed or shall be guaranteed for completion pursuant to City requirements.

E. Extension of a Development Order

Within three (3) months before the expiration of any development order, the developer may request an extension not to exceed twelve (12) months. All requests shall be submitted to the Land Use Administrator in writing and shall state the reason(s) for the extension. A maximum of three (3) extensions may be granted provided the development has a valid certificate of concurrency.

F. Recording

All development orders, except denial development orders, and any extension, or minor modification thereto, shall be filed with the City Clerk and recorded at the expense of the applicant.

2.05.07. Modifications to an Approved Development Order

A. The Land Use Administrator may approve minor technical modifications to an approved development order. In determining whether a proposed modification is minor, all of the following shall apply:

- 1. The proposed modification shall not increase the floor area ratio or impervious surface ratio by more than fifteen (15) percent, provided it meets the requirements of this LDC.
- 2. The proposed modification shall not adversely affect traffic circulation on or off-site.
- 3. The proposed modification shall not increase the density, intensity, or height of the approved development.
- 4. The proposed modification shall comply with all codes, rules, and regulations of the City and any other federal or state agency, and shall not require a variance.

B. Requests for modifications that do not meet the requirements in this subsection shall be reviewed by the applicable approval authority.

Section 2.06. Official Zoning Map Amendments

2.06.01. Purpose

This section is established to provide for zoning map amendments, as may be necessary or desirable from time-to-time, through a review by the Planning and Land Development Regulation Board and the City Council.

2.06.02. Applicability

An application to amend the Official Zoning Map (rezoning) may be filed by the Land Use Administrator, the City Council, the Planning and Land Development Regulation Board, the property owner(s), or agent of the property owner(s) representing fifty-one (51) percent or more of the property involved.

2.06.03. Review Findings

The Planning and Land Development Regulation Board and City Council shall consider the following criteria, in addition to the findings listed in **Subsection 2.05.05**, when reviewing a rezoning application:

A. Whether it is consistent with all adopted elements of the Comprehensive Plan and whether it furthers the goals and objectives of the Comprehensive Plan.

- B. Its impact upon the environment or natural resources.
- C. Its impact on the economy of any affected area.
- D. Its impact upon necessary governmental services such as schools, sewage disposal, potable water, drainage, fire and police protection, solid waste, or transportation systems.
- E. Any changes in circumstances or conditions affecting the area.
- F. Compatibility with proximate uses and development patterns, including impacts to the health, safety, and welfare of surrounding residents.
- G. Whether it accomplishes a legitimate public purpose.

2.06.04. Frequency of Application

A property owner shall not initiate action for the same rezoning affecting the same parcel of land more often than once every twelve (12) months following denial or approval.

2.06.05. Recording Amendments to the Official Zoning Map

The Land Use Administrator shall update the Official Zoning Map as soon as possible after amendments are adopted. Amendments to the Official Zoning Map shall identify the official action by which such amendment was made, the date of such action, and the area involved.

Section 2.07. Special Exception

2.07.01. Purpose

The purpose of this section is to establish procedures for the review of uses that would not normally be appropriate within a zoning district, but if subject to appropriate limitations, conditions, and safeguards, would promote the public health, safety, welfare, convenience, and comfort.

2.07.02. Applicability

The special exception process can only be applied to those uses noted as special exception uses in **Chapter 3** and in **Chapter 4**.

2.07.03. Review Findings

No application for a special exception use shall be approved unless the Planning and Land Development Regulation Board finds that the request meets the findings listed in **Subsection 2.05.05** and the following:

- A. Is consistent with the specific requirements for that particular use as set forth in this LDC;
- B. Meets the concurrency requirements of this LDC; and
- C. Is compatible with the surrounding neighborhoods and promotes the value of surrounding land, structures, or buildings. Compatibility shall be reviewed in light of the following components:
 1. Architectural design;
 2. Fencing and screening, landscaping;
 3. Noise reduction, sign, and light control;
 4. Storm drainage, sanitation collection;
 5. Police and fire protection;
 6. On and off-site traffic control;

7. Off-street parking and loading; and
8. Other matters relevant to assuring that the proposed development site fosters desirable conditions and compatibility with the existing environment.

2.07.04. Effect of a Special Exception

A. Effective Date

In accordance with **Subsection 2.05.01.I**, the rendering of a decision shall mean the filing of a written development order or a written denial of a development order in the office of the City Clerk.

B. Special Exceptions Run with the Land

Special exceptions are not personal in nature and shall run with the land. However, a special exception shall be approved only on the basis of the development plan submitted with the application, and shall be valid only for the location and area shown on the approved development plan which shall include a floor plan, if applicable.

C. Activating a Special Exception

Approval of the special exception shall give the applicant authority to submit an application for development permits and/or other appropriate approval. Where the special exception approval does not require development permits, the applicant shall provide written evidence to the City that the activity granted has been initiated within the time prescribed by the City, or that right or privilege shall expire.

D. Expiration or Abandonment of Special Exception Uses

If a special exception does not begin to serve the purpose for which it was granted within twelve (12) months from the date of rendition it shall expire. Provided, however, that the Planning and Land Development Regulation Board may establish a shorter or longer period of time for a special exception to commence. In addition, the Land Use Administrator may extend the special exception for up to an additional twelve (12) month period of time if the applicant can demonstrate good faith reliance. Good faith reliance may include, but is not limited to, the securing of any required permits from other governmental agencies/jurisdictions or the expenditure of substantial funds in reliance on the approved special exception.

E. Amendments

Minor amendments not altering the intent and purpose of the approved special exception may be approved by the Land Use Administrator after such departmental comment as he or she deems appropriate. Amendments to an approved special exception, which the director deems to be major, shall require the submittal of an application and compliance with the review procedures as set forth in this section and as otherwise provided in this chapter.

Section 2.08. Subdivision of Land

2.08.01. Purpose

The purpose of this section is to determine when platting is required and to establish a review process consistent with **Chapter 177, Florida Statutes**. It is not the intent of this LDC to prohibit the metes and bounds conveyance of real property, but it is the intent of this LDC to ensure compliance with the provisions of State Statutes.

2.08.02. Applicability

A. Platting Required

It shall be a violation of this LDC for anyone who is the owner or agent of the owner of any land to transfer, sell, or offer to transfer or sell such land by reference to, exhibition of, or other use of a plat of a subdivision of such land without having a plat recorded in accordance with the requirements of this section and state requirements. Subdivisions are classified as:

1. Statutory

The division of a parcel of land, whether improved or unimproved, into three (3) or more lots, parcels, tracts, tiers, blocks, sites, units, or any other division of land, and includes establishment of new streets and alleys, additions, and resubdivisions.

2. Nonstatutory

The following activities qualify as nonstatutory subdivisions:

- a. The combination or reconfiguration of previously platted lots or portions of such lots where the total number of lots is not increased and the resultant lots comply with City requirements.
- b. The public acquisition by purchase, acceptance of deed of dedication, or exercise of the right of eminent domain of strips of land for the widening or opening of streets, or acquisition of property for public purposes or public utilities.
- c. The division of land into no more than three (3) lots, parcels, tracts, tiers, blocks, units, or any other division of land, said resulting lots to be twenty (20) acres or more in size, provided that: of twenty (20) acres or more provided that:
 - (1) Said division of land does not create a new street.
 - (2) Each resulting lot, tract, or parcel shall have access to a public street and no public improvement may be dedicated including, but not limited to, any dedication of rights-of-way, easement, or physical improvement of any kind intended for public use.
 - (3) Each lot, tract, or parcel shall meet or exceed the minimum requirements of the zoning district in which it is located adjacent to the public street.
 - (4) The owner of the subject property shall not be allowed to further subdivide under this section.
- d. The division of a platted lot, parcel, or tract in single ownership into not more than two (2) lots, where no street right-of-way dedication is involved and where the lots are equal to or exceed the standards of the **LDC**.
- e. The original parcel to be considered must have been lawfully created.

B. Single Sites not Requiring Platting

No platting shall be required for development within an individual lot, parcel, or tract, provided that such lot, parcel, or tract meets all of the following requirements:

1. Has a property identification number(s);
2. Was lawfully established by the governing authority at the time it was created; and
3. Complies with the minimum lot area requirements of this LDC, or is a legally existing nonconforming lot.

2.08.03. Nonstatutory Land Subdivision Review Procedures

The application shall be processed administratively in accordance with review procedures and requirements for development orders established in **Section 2.05**.

2.08.04. Statutory Land Subdivision Review Procedures

The subdivision of land that does not qualify as nonstatutory subdivision shall meet the requirements of this section after a Subdivision Master Plan approval has been granted as outlined in **Section 2.10**

A. Preliminary Plat

1. Review Procedures

- a. An application for preliminary plat approval may be submitted in conjunction with an application for a subdivision master plan development order.
- b. The application shall be processed in accordance with **Section 2.05**. Once the application is deemed compliant, a development order shall be issued by the approving authority.

B. Final Plat

1. Review Procedures

- a. Following the issuance of a preliminary plat development order, the applicant may submit a complete application for a final plat approval on a form provided by the City.
- b. The application shall undergo a completeness and compliance review as outlined in **Section 2.05** and **Chapter 177, Florida Statutes**.

2.08.05. Effect of Plat Approval

A. Effect of Preliminary Plat Approval

Upon issuance of the preliminary plat development order, the developer may elect to commence construction of the subdivision and apply for a final plat development order. If the developer elects to commence construction prior to or concurrently with final plat review, the developer shall attend a preconstruction meeting as outlined in **Chapter 9, Part I**, and provide the following documentation and materials:

- 1. All required permits from federal, state, county, and regional agencies.
- 2. Commitment letters from the providers for essential services (i.e. electric, telephone, cable, etc.) that adequate service will be available at the time of impact.
- 3. Performance guarantee (in the amount established by the City) for the installation of public improvements that have not been constructed. Such estimate shall include, but not be limited to, landfill costs. An itemization shall be provided showing improvements that have been installed and all outstanding required improvements.
- 4. A statement within the preliminary plat development order noting the developer's intent or a letter authorizing the commencement of construction pursuant to the approved construction plans.

B. Effect of Final Plat Approval

- 1. The execution of the plat by the Mayor shall be deemed to be the execution of a development order.

2. All recording fees, documents, and Mylar (original plat) shall be submitted to the Land Use Administrator. The Land Use Administrator shall then transmit the required fees and documents to the Clerk of the Circuit Court for recordation in accordance with **Chapter 177, Florida Statutes**. Executed plats must also be filed with the City Clerk.

2.08.06. Vacating Plats

The owners of any land subdivided into lots may petition the City Council under the provisions of **Chapter 177.101, Florida Statutes**, to remove (vacate and abandon) the existing plat, or portion of a plat, from the official records of the City of Palm Coast. The application shall undergo a completeness and compliance review as outlined in this chapter. Once the application is deemed compliant as determined by the Land Use Administrator, it shall be scheduled before the City Council for consideration. The execution of a resolution by the Mayor shall be deemed to be the execution of a development order.

Section 2.09. Master Planned Developments

2.09.01. Purpose

The purpose of this section is to establish review requirements for approval of master planned developments, which typically include both a zoning map amendment and a development agreement. This section also addresses the procedures for approving major amendments to approved master planned developments.

2.09.02. Applicability

The requirements of this section apply to any proposed rezoning to the Master Planned Development District. Rezoning to the Master Planned Development District shall be a voluntary procedure to be pursued at the option of the applicant, pursuant to **Section 2.10**. The City may, at the request of the applicant, initiate such rezoning on privately owned property. The approval of the master planned development rezoning rests with the City Council pursuant to the requirements of **Section 2.10**.

2.09.03. Review Procedures

A. Unified Control

No application for a master planned development shall be considered until the applicant furnishes all necessary documents and information, as may be required, to provide the City with sufficient evidence that the applicant is in complete, unified, and otherwise unencumbered control of the entire area of the proposed master planned development, whether the applicant be an individual, partnership, corporation, other entity, group, or agency. The applicant shall provide to the City all necessary documents and information that may be required to assure the City that the development project may be lawfully completed according to the plans sought to be approved.

B. Master Planned Development Site Plan

Review and approval of a master planned development site plan shall be the same as for a moderate or major development site plan, whichever is applicable, pursuant to **Section 2.05**.

C. Master Planned Development Agreement

Review and approval of the Master Planned Development Agreement shall be the same as for a Development Agreement pursuant to **Section 2.14**.

D. Bonds

The City Council may include in the Master Planned Development Agreement requirements for bonds (or appropriate alternatives) for improvements conditioned upon the satisfactory and timely completion of facilities in the development plan, for the benefit of purchasers from the applicant, when the development time limits and phasing schedule do not preclude the sale of individual units prior to the completion of such facilities.

2.09.04. Review Findings

The Planning and Land Development Regulation Board and City Council shall consider the following criteria, in addition to the findings listed in **Subsection 2.05.05**, when reviewing a master planned development application:

- A.** Consistency with all adopted elements of the Comprehensive Plan and whether it furthers the goals and objectives of the Comprehensive Plan.
- B.** Consistency with the general intent of the LDC.
- C.** Degree of departure of the proposed development from surrounding areas in terms of character and density/intensity.
- D.** Compatibility within the development and relationship with surrounding neighborhoods.
- E.** Adequate provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control, and soil conservation as shown in the development plan.
- F.** The feasibility and compatibility of development phases to stand as independent developments.
- G.** The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed development.
- H.** The benefits within the proposed development and to the general public to justify the requested departure from standard development requirements inherent in a Master Planned Development District classification.
- I.** The conformity and compatibility of the development with any adopted development plan of the City of Palm Coast.
- J.** Impact upon the environment or natural resources.
- K.** Impact on the economy of any affected area.

2.09.05. Effect of Master Planned Development Approval

Approval of a Master Planned Development Plan and Master Plan Development Agreement gives the applicant the authority to proceed with a site development plan and plat applications for review.

A. Duration and Extension of Development Agreement

For the duration and extension requirements of a development agreement, refer to **Section 2.14**.

B. Amendment to a Master Planned Development Agreement

- 1.** A request for an amendment to an approved master planned development master plan and/or agreement shall be supported by a written statement demonstrating the reasons the revisions are necessary or desirable. The Land Use Administrator may require additional documentation as part of the amendment application.

2. Amendments to the an approved Master Planned Development site plan or agreement for the developed portions of the property may only be initiated by:
 - a. The property owner, for an amendment to the master planned development applicable to only a single lot or building site; or
 - b. Petition by the owners of more than fifty (50) percent of the property in the Master Planned Development District for an amendment to a master planned development that involves multiple owners; or
 - c. City Council, where necessary to preserve the health, safety, and welfare of the property owners in the master planned development.
3. Minor (*de minimis*) changes, no more than five (5) percent increase in density or intensity, which do not affect the intent or character of the development, may be approved by the Land Use Administrator.

2.09.06. Variances in Master Planned Development Districts

Because the specific development standards of the Master Planned Development District are contained in the approved Master Planned Development Agreement for each planned development, and because the development plan normally takes into account those matters which might otherwise be the subject of variance review, modifications to approved development plans by variance shall be prohibited unless otherwise specifically provided for in the Master Planned Development Agreement.

2.09.07. Status of Previously Approved PUD, PRD, VGC-1, VGC-2 and GCC Plans

- A. Any active or completed Planned Unit Development (PUD), Planned Rural Development (PRD), Village Center (VGC-1, VGC-2), or Golf Course Community (GCC) project approved prior to the adoption of this Code shall continue to be governed by the approved development plan and any development agreements, terms and conditions to which the approval may be subject, as long as the project continues to be actively under development. Any time limitations to which the approved PUD, PRD, VGC-1, VGC-2, or GCC plan may be subject shall also continue to apply. Minor (*de minimis*) changes of no more than five (5) percent increase in density or intensity, which do not affect the intent or character of the development, may be approved by the Land Use Administrator.
- B. Whenever any application is made to substantially modify an approved PUD, PRD, VGC-1, VGC-2, or GCC plan, as determined by the Land Use Administrator, or to undertake a new development on part or all of the property, the application shall be made under the terms and procedures of the Master Planned Development zoning district and shall comply with the provisions of this section. Substantial modifications to an approved development plan or agreement include, but are not limited to change that affects the intent and character of the development, intensity, density, land use pattern, the location, or dimensions of major streets, or similar substantial changes.

Section 2.10. Master Plans

2.10.01. Purpose

The master plan review process is intended to provide a review of the basic development concepts without significant engineering design, prior to proceeding with final plat and technical site plan approval.

2.10.02. Applicability

A. Master Site Plan

A master site plan review is optional for all moderate and major site plans that include residential, nonresidential, and mixed use development occurring on various contiguous sites or outparcels to ensure that development takes place in a coordinated and efficient manner.

B. Subdivision Master Plan

A subdivision master plan is required prior to a preliminary plat application, unless waived by the Land Use Administrator.

C Nonresidential Controlling Master Site Plan

A nonresidential controlling master site plan is optional for all site plans meeting the criteria set forth in **Section 4.15**.

2.10.03. Review Procedures

A master plan review shall be processed in accordance with **Section 2.05 and Table 2-1**.

2.10.04. Review Criteria

Master site plans shall be reviewed to ensure conformance with this Code. However, the following criteria shall be considered when reviewing master plans:

- A. Logic of design
- B. Internal consistency
- C. Impact on neighboring sites
- D. Internal vehicular and pedestrian connectivity
- E. Consolidation of utilities and facilities, including stormwater, parking, signage, etc.
- F. Public benefit derived from the project

2.10.05. Effect of Master Plan Approval

- A. Approval of a master plan development order authorizes an applicant to continue with the preliminary plat or technical site plan review process.
- B. The approved Nonresidential Controlling Master Site Plan Development Order shall act as the controlling document for the development specifying, but not limited to, location of primary buildings and outparcels, landscape buffers, master stormwater, drainage, access drives, parking, and pedestrian facilities. However, site plans and preliminary plats can allow up to a twenty-five (25) percent accumulative design change from the master plan. No deviation from LDC requirements may be approved during the City staff review process.

Section 2.11. Technical Site Plan

2.11.01. Purpose

The site plan review process set forth in this section is intended to ensure that site development, including mixed use development on a single site, takes place in an orderly and efficient manner through a process that provides adequate review based on the size and complexity of the proposed development.

2.11.02. Applicability

The purpose of final site plan review is to ensure compliance with all development regulations. Therefore, the level of detail shall be that of construction plans and technical specifications. The review is based not only on conformance to Code, but also conformance with an approved master plan, if applicable.

2.11.03. Review Procedures

Site plan review shall be processed in accordance with **Section 2.05**.

2.11.04. Effect of Site Plan Approval

Approval of the construction plans and technical specifications represents the final development order. Therefore, approval of a Site Plan Development Order authorizes an applicant to apply for a building permit.

Section 2.12. Variance

2.12.01. Purpose

This section is established to provide standards and procedures for the granting of variances from the provisions of this LDC through review by the Planning and Land Development Regulation Board when it finds that there are conditions peculiar to the property that creates undue construction or development hardships in complying with this LDC.

2.12.02. Applicability

A. Authorized Variances

The variance procedures contained in this section shall apply to the development standards set forth in the following portions of this Code:

1. **Chapter 1, Section 1.10** - Nonconformities
2. **Chapter 3** - Zoning, Uses, and Dimensional Standards
3. **Chapter 4** - Conditions for Limited Specific Uses and Activities
4. **Chapter 5** - Transportation, Connectivity, Access, and Parking
5. **Chapter 10** - Environmental and Cultural Resource Protection
6. **Chapter 11** - Tree Protection, Landscaping, Buffers, and Irrigation
7. **Chapter 12** - Signs and Advertising
8. **Chapter 13** - Architectural Design Regulations

B. Prohibited Variances

A variance shall not be granted under any of the following circumstances:

1. A variance that would permit an inconsistency with the Comprehensive Plan.
2. A variance to permit a use, expressly or by implication, prohibited in the zoning district.
3. A variance to permit a development density or intensity not generally allowable in the zoning district.
4. A variance in connection with any use or activity that has been approved as a special exception, if within the area covered by the special exception approval.

5. A variance based on the permitted or nonconforming use of neighboring lands, structures, or buildings.
6. A variance that would violate requirements or regulations of other departments or agencies.
7. A variance that would violate specific prohibitions (for example, hours of operation), or procedural requirements.
8. A variance based on purely economic considerations.

2.12.03. Review Findings

In addition to the findings listed in **Subsection 2.05.05** for all development orders, variance applications shall be reviewed based on the following:

A. All Variances

No application for a variance shall be approved unless the Planning and Land Development Regulation Board finds that the following standards are met, recognizing that the applicant bears the burden of proof.

1. Special conditions and circumstances exist which are peculiar to the land, use, or building involved and which are not applicable to other lands, uses, or buildings in the same zoning district; and
2. The special conditions and circumstances are not self-imposed and do not result from the actions of the applicant; and
3. Literal interpretation of the provision of this LDC would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this LDC and would work unnecessary and undue hardship on the applicant; and
4. The variance is the minimum relief necessary that will make possible the reasonable use of the land or building; and
5. The granting of the variance will be in harmony with the general intent and purpose of this LDC and that such variance will not be injurious to the area involved or otherwise detrimental to the public health, safety, and welfare or injurious to other property in the area.

B. Alternative Criteria for Specific Variances

There are alternative variance criteria for specific uses within this LDC that shall be adhered to. Such uses are as follows:

1. Marinas – Refer to **Chapter 4**.
2. Flood Damage Protection – Refer to **Chapter 10**.
3. Wellhead Protection – Refer to **Chapter 10**.

2.12.04. Effect of Variance Approval

- A. Approval of a variance application shall give the applicant authority to submit an application for development plan review and/or other appropriate approval. The Planning and Land Development Regulation Board may, within the action for which the variance is required, prescribe a reasonable time limit for which the approved request shall begin, be completed, or both. Unless prescribed as a condition of approval, there is no time limit for a variance.

- B. A variance shall be approved only on the basis of the development plan submitted with the application and shall be valid only for the area of variance shown on the approved development plan. No approved variance shall be construed to be a general modification of the requirements of this LDC in any area outside the area of variance shown on the approved development plan.

Section 2.13. Administrative Deviation of Development Standards

2.13.01. Purpose

This section is established to provide a process for granting administrative deviation with the application of certain standards of this LDC. The process is specifically intended to promote high standards of site design, and to provide flexibility in the administration of standards in recognition of site specific conditions, and to establish conditions to ensure compatibility where standards are modified.

2.13.02. Applicability

- A. The Land Use Administrator may approve an administrative deviation of standards to grant relief from any of the following requirements of this Code, up to a maximum reduction of five (5) percent of the standard:
 - 1. Distance between structures.
 - 2. Parcel dimensions (not area).
 - 3. Setbacks.
- B. The Land Use Administrator may grant a deviation in order to protect a specimen or historic tree, in which case one (1) parking space or two (2) percent of the total parking requirements, whichever is greater, may be eliminated.
- C. The Land Use Administrator may also grant an administrative deviation of standards to the site planning or development standards of this LDC in compliance with this section, based on the finding that the waiver is necessary to accomplish a reasonable accommodation of the needs of a disabled person, in compliance with the Americans with Disabilities Act.

2.13.03. Review Procedures

Administrative deviations of development standards are classified as minor development orders and shall be reviewed as specified in **Section 2.05**. However, the Land Use Administrator may choose to refer the application to the Planning and Land Development Regulation Board for hearing and decision in the same manner as provided for Variances in **Section 2.12**.

2.13.04. Review Findings

The Land Use Administrator may approve an administrative deviation of standards only after first making all of the following findings, in addition to those listed in **Subsection 2.05.05**:

- A. There are special circumstances applicable to the property, including size, shape, topography, location, or surroundings, so that the strict application of this Code deprives the property of privileges enjoyed by other properties in the vicinity and within the same zoning district;
- B. The approval of the administrative deviation of standards includes conditions of approval as necessary to ensure that the adjustment granted does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and within the same zoning district; and

- C. The administrative deviation is consistent with any applicable specific plans in place for the subject property.

Section 2.14. Development Agreements

2.14.01. Purpose

This section is established to outline provisions relating to development agreements, which require approval by the City Council.

- A. A development agreement may be entered into by an applicant and the City Council to provide for matters that relate to the unique conditions of the real property to be developed, the relationship between the public and private aspects of the development, or other terms and conditions that are not typical of a routine development order. Development authorized by a development agreement may be phased. The development agreement may provide that the entire development or any phase thereof shall be commenced or completed within a specific period of time.
- B. Statutory development agreements may be entered into under the authority of the Development Agreement Act as codified in **Chapter 163, Florida Statutes**, and processed in accordance with the requirements of state law.
- C. Nonstatutory development agreements may be entered into under the authority of the home rule powers of the City of Palm Coast under **Article VIII, Section 2** of the **Constitution of the State of Florida** and **Chapter 166, Florida Statutes**.
- D. A development agreement shall be required for the development of property designated a Master Planned Development District on the Official Zoning Map, but the agreements shall not be statutory.
- E. A development agreement is transferable if the land and structure(s) continues to be used for the purposes for which it was issued. No person (including successors and assigns of the person who obtained the development agreement) may make use of the land except in accordance with the conditions and requirements of the development agreement. The provisions of the development agreement run with and burden the real property to which it relates until released or amended in accordance with formal action of the City of Palm Coast. All development agreements shall require mortgagees to subordinate any mortgages on the property.
- F. **Duration and Extension.** The negotiated Master Plan Development Agreement which results from a master planned development application process shall have a maximum duration of five (5) years or be phased to ensure that development under a Master Plan Development Agreement proceeds in good faith and the development of the master planned development is not abandoned and is not suspended in a manner which is adverse to the public interest. Upon the five (5) year term being completed or a phase of the master planned development not being developed in accordance with the phasing schedule set forth in the Master Plan Development Agreement, the City Council may, after obtaining a recommendation from the Planning and Land Development Regulation Board, extend the term of the Master Plan Development Agreement or the master planned development phase. In the interim, no development may be continued or permitted relative to the master planned development and absent an extension approval by means of a development order within three (3) months of the date of expiration, the property shall revert to the zoning district which was assigned to the master planned development property prior to the Master Planned Development District rezoning. A property owner may initiate a request for an extension prior to expiration.

Section 2.15. Vested Rights Determination

2.15.01. Purpose

This section is established to provide standards and procedures for the issuance of vested rights determinations by the City Council. No applicant claiming that the *LDC* as applied to a particular property constitutes or would constitute a permanent taking of private property or an abrogation of vested rights, may pursue such claim in court or before a quasi-judicial body unless the applicant has first exhausted the administrative remedies herein. The application shall set forth the facts upon which the claim is based and shall be accompanied by all contracts, letters, appraisals, reports, or other documents upon which the applicant's claim is based.

2.15.02. Applicability

The owner, or owners of real property, may request a determination of vested rights by filing a complete application with the Land Use Administrator on a form provided by the City.

- A.** The application shall provide a sworn statement to be executed by all owners of the real property or an authorized agent that all information set forth on the application is true and correct.
- B.** The Land Use Administrator shall screen each application for a vested rights determination to determine whether the application is technically complete. If not technically complete, the application shall be promptly returned to the applicant. A technically incomplete application shall be returned to the applicant with written notification of the deficient items. If a response is not submitted to the City within a time specified by the City, the application shall be deemed abandoned.

2.15.03. Review Procedures

Vested rights determinations are classified as major development orders and shall be reviewed as specified in **Section 2.05**. In addition, the following procedural requirements apply.

- A.** The City Council shall hold a public hearing and determine whether or not it has been clearly and convincingly demonstrated that the real property subject to the application has vested status. The City Council may refer the matter to the Planning and Land Development Regulation Board for an advisory opinion and review, or to a special master or hearing officer for findings of fact relative to the matter, or may make both such referrals.
- B.** At the hearing or hearings to which the matter has been referred, the applicant shall present all of the evidence in support of the application. The technical rules of evidence in judicial proceedings shall not be applicable, but all testimony given shall be under oath. The applicant shall have the burden of proof.
- C.** After making a final determination of vested rights status, the City Council shall provide the applicant with a written order setting forth the determination of vested rights status. If the City Council determines that vested rights exist and that development may proceed, the applicant shall have the right to rely upon such written notification that the real property is vested, and the determination that the real property is vested shall be final and not subject to appeal, revocation, or modification. Thereupon, permits may be granted consistent with that decision.
- D.** The City Council's decision to deny vested rights status shall be final, subject to appeal in accordance with state law.

Section 2.16. Appeals

2.16.01. Appeal of Administrative Decision of the Land Use Administrator

City of Palm Coast Unified Land Development Code
Chapter 2 – Review Authority, Enforcement and Procedures

Any person aggrieved by an administrative decision rendered by the Land Use Administrator regarding the provisions of this LDC may appeal such decision to the Planning and Land Development Regulation Board. The appeal shall be initiated within fifteen (15) calendar days of the rendering of the administrative decision by filing an appeal with the Land Use Administrator. Failure to file an appeal within the timeframe specified and exhaust all administrative remedies provided for in this LDC shall constitute a waiver of all rights to appeal the determination by the Land Use Administrator.

A. Submittal

A request for a hearing before the Planning and Land Development Regulation Board for an appeal of any determination made by the Land Use Administrator with regard to the administration of the uses and development regulations of this LDC shall be made as follows:

1. A completed appeal form and related fee shall be filed with the Land Use Administrator. Such application shall state the grounds for review of the decision. Any additional grounds may not be stated at the appeal hearing.
2. The appeal form shall be accompanied by such other materials and drawings as needed by the Planning and Land Development Regulation Board to clearly understand the substance of the appeal.

B. Review Procedures

The application shall be submitted to the Planning and Land Development Regulation Board, which shall review the application and either grant or deny the request in accordance with the following:

1. In exercising the powers granted, the Planning and Land Development Regulation Board may, in conformity with the provisions of this LDC, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determinations of the Land Use Administrator.
2. Any petition for a hearing before the Planning and Land Development Regulation Board may be withdrawn prior to action thereon by the Planning and Land Development Regulation Board at the discretion of the applicant upon written notice to the City. The withdrawal of an application shall not result in a refund of the application fee.
3. When considering an appeal all of the following factors, at a minimum, shall be evaluated:
 - a. Whether the action requested in the appeal is consistent with the Comprehensive Plan; and
 - b. Whether the action requested in the appeal complies with all relevant and appropriate portions of this LDC; and
 - c. Whether there was an error of fact or law in the decision of the Land Use Administrator.
4. At the conclusion of the appeal hearing, the Planning and Land Development Regulation Board shall issue a final decision on the appeal.

2.16.02. Appeal of Planning and Land Development Regulation Board Decision

A. Public Notice Requirements

Notification shall be in accordance with **Section 2.05**, if applicable.

B. Submittal

Within thirty (30) calendar days of the rendering of a decision by the Planning and Land Development Regulation Board, an appeal may be filed with the City Clerk by the owner, an abutting property owner, or the Land Use Administrator. An application together with a fee as established by resolution shall be required.

C. Review Procedures

The application shall be forwarded to the City Council and, if applicable, after due public notice, for a public hearing to consider the application. The public hearing shall be a *de novo* hearing and shall be conducted in accordance with the following:

1. Hearing Steps

a. Preliminary Matters.

- (1) The Mayor shall read the case title.
- (2) Disclosure by City Council members of *ex parte* communications, if any.
- (3) Swearing in of appellant, City staff, and all witnesses collectively. The swearing in of witnesses may be left to the discretion of the Mayor with the concurrence of the appellant.

b. City staff's Presentation.

- (1) City staff's opening statement.
- (2) Calling of witnesses and presentation of evidence by City staff.
- (3) Cross-examination after each witness, if so elected.

c. Appellant's opening statement.

- (1) Calling of witnesses and presentation of evidence by appellant.
- (2) Cross-examination after each witness, if so elected.

d. Public Input. Testimony and presentation of evidence by the public with alternating speakers in support of and in opposition to the appeal and cross-examination after each witness, if so elected.

e. Closing argument by appellant.

f. Closing argument by City staff.

g. Rebuttal argument by appellant, if so elected.

h. Discussion by City Council of the evidence presented as it applies to the requirements of the City of Palm Coast Code of Ordinances and applicable law.

i. After deliberation, a motion should be made which would presumably either:

AFFIRM THE PLANNING AND LAND DEVELOPMENT REGULATION BOARD'S ACTION: "I move that the City Council find that the following facts presented and reviewed here are competent substantial evidence to affirm the Planning and Land Development Regulation Board's action: (list factors)"; or

REVERSE THE PLANNING AND LAND DEVELOPMENT REGULATION

BOARD'S ACTION: "I move that the City Council find that the following facts presented and reviewed here are competent substantial evidence to reverse the Planning and Land Development Regulation Board's action: (list factors)."

2. In the event the applicant is the appellant, the applicant, or City staff as determined by the Land Use Administrator, shall send a letter to the property owners abutting subject property advising them of the date and time of the meeting.
3. In the event that an abutting property owner is the appellant, this person will act as spokesperson or appoint a representative. In this case, a special letter will be sent to the applicant stating that an appeal has been filed and that they or their representative will be called upon to act as an opposition spokesperson.
4. In accordance with **Subsection 2.05.01.I**, the rendering of a decision shall mean the filing of a written development order or a written denial of a development order in the office of the City Clerk.
5. Unless the order specifically states it is an order without prejudice, it is rendered with prejudice.

D. Rehearing

1. If it is alleged that the Planning and Land Development Regulation Board or City Council, as the case may be, has overlooked or misapprehended some facts or points of law, a rehearing of any decision of the Planning and Land Development Regulation Board or City Council may be granted by the Planning and Land Development Regulation Board or City Council either on the motion of any member voting on the prevailing side, or on the motion of any person aggrieved by its decision. That motion shall be in writing, shall be filed with the Land Use Administrator within ten (10) working days after rendition of the decision, and shall state its grounds.
2. If the Planning and Land Development Regulation Board or City Council decide to grant a rehearing, the movant shall notify by certified mail or hand delivery upon the City Clerk and all abutting property owners previously notified of the hearing, together with a notice stating the date, time, and place it will be orally presented to the Planning and Land Development Regulation Board or City Council.
3. The Planning and Land Development Regulation Board or City Council shall not rehear applications based upon the same facts or issues but rather on new evidence not heard before or new law.