

**ORDINANCE NO. 2019-13**

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, ESTABLISHING LAND DEVELOPMENT PROCEDURES WITHIN THE CITY OF WESTLAKE; PROVIDING FOR APPLICATION REVIEW AND REQUIREMENTS; PROVIDING FOR PAYMENT OF FEES; PROVIDING FOR SPECIAL APPLICATION REQUIREMENTS; PROVIDING FOR NOTICE REQUIREMENTS; PROVIDING FOR PROCEDURES FOR APPLICATION REVIEW AND APPEAL; AND PROVIDING FOR WHICH SHALL BECOME PART OF THE CODE OF ORDINANCES, ENTITLED 'LAND DEVELOPMENT PROCEDURES', PROVIDING FOR CODIFICATION, PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.**

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**WHEREAS**, on or about May 3, 2018, the Florida Department of Economic Opportunity provided the City with notice of intent to find the City's initial comprehensive plan in compliance and the same is now the effective and controlling Comprehensive Plan for the City of Westlake ("Comprehensive Plan"); and

**WHEREAS**, the City's adopted comprehensive plan contemplates the development of land within the City; and

**WHEREAS**, adoption of this chapter, entitled "Land Development Procedures" will assist the City in carrying out the goals, objectives and policies of the adopted comprehensive plan; and

**WHEREAS**, the City seeks to promote quality development within the City of Westlake in the short and long term; and

**WHEREAS**, the purpose of this ordinance is to promote the efficient and effective review of applications for land development within the corporate limits of the City of Westlake, and to ensure that applicants for land development provide the City with the materials necessary for the City to properly review such application;

**WHEREAS**, Section 163.3202, Florida Statutes encourages the use of innovative land development regulations; and

**WHEREAS**, the City Council finds it is in the public's interest to establish policies and procedures to allow for consistent, flexible, creative, and economically beneficial development within the City of Westlake while protecting health, safety, and general welfare of individuals and the community at large.

**WHEREAS**, the Local Planning Agency has conducted a hearing on October 7, 2019, and made a recommendation to the City Council with respect to the adoption of this Land Development Procedures Ordinance; and

**WHEREAS**, the City Council has conducted two public hearings on October 7, 2019 and October 28, 2019, where it considered the recommendation of the Land Planning Agency, the City staff's presentation, and comments from the public and has determined that the adoption of this Land Development Procedures Ordinance is in the best interest of the public safety and welfare of the City of Westlake;

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY FOR THE CITY OF WESTLAKE, FLORIDA**, as follows:

**Section 1. Incorporation.** The above recitals are confirmed, adopted and are incorporated herein by reference.

**Section 2. Land Development Procedures.** The code of ordinances for the City of Westlake shall contain a chapter entitled "Land Development Procedures" which code shall contain the provisions as specifically set forth herein.

## **CHAPTER 2: LAND DEVELOPMENT PROCEDURES**

### **ARTICLE 2.1 APPLICATIONS, FEES AND NOTICE**

**Section 1: *Applicability.*** The provisions of this Chapter shall apply to all applications provided for in Table 2-2, including but not limited to the following:

- (A) Comprehensive Plan Map Amendment – Large and Small Scale
- (B) Comprehensive Plan Text Amendment
- (C) Conditional Use (Non-Residential and Residential)
- (D) Development Order Modifications
- (E) Landscape Permit
- (F) Master Sign Plan
- (G) Plat (including replats, plat waiver)
- (H) Rezoning
- (I) Modifications to permits and approvals other than development orders
- (J) Site/Land Development Permits
- (K) Site Plans
- (L) LDR Text Amendment
- (M) Variance
- (N) Waiver
- (O) Zoning Confirmation

**Section 2: *Form of Applications; Fees and Costs.*** The City shall make available all applications and its adopted fee schedule. Fees associated with the applications will be set forth on a Fee Schedule adopted by the City Council.

- (A) ***Cost of development order applications.*** It is declared to be the policy of the city council that all applicants for development order approval requesting a rezoning, platting, planned development, conditional use, any type of variance, site plan review, amendments to approved development orders, or any other similar application shall prepare and present at their expense the necessary documentation and information required by this chapter.
- (B) ***Additional documentation requests.*** An applicant may request, through the Planning and Zoning Director, information and documentation from the city engineer, city attorney, or other city department relative to the application. If the request is in excess of the information and documentation normally utilized to review the application, such additional information and documentation shall be provided at the expense of the applicant.
- (C) ***Third Party Experts.***
  - (1) ***Employment.*** The city council, city manager, or Planning and Zoning Director may determine that a third-party expert in the field of land planning, traffic engineering, engineering, architecture, landscape architecture, or other similar area of professional expertise is

necessary to thoroughly review a development order application. Such experts may be employed by the city, with the petitioner paying all reasonable costs for such services.

(2) **Reimbursement for third-party experts.** The applicant shall reimburse the city for any costs associated with the employment of third-party experts. The applicant shall reimburse the city for such costs within 30 days of the date of receipt of an invoice for such services. Failure by the applicant to make such reimbursement when due shall delay the pending application until paid.

(D) **Reimbursement for staff costs.** The applicant shall reimburse the city for any excess time spent by the city engineer, city attorney, or other city staff, together with the cost of any document or drawings not part of the city records. The cost of time billed to the applicant shall be the same cost as billed by the city engineer or city attorney, or the cost of city staff time. The applicant shall reimburse the city for such costs within thirty days of the date of receipt of an invoice for such services. Failure by the applicant to make such reimbursement when due shall delay the pending application until paid.

**Section 3: Applications.**

(A) Table 2-1: Review and Approval Required, below, indicates the approval required for each type of planning and zoning application, and whether an application is subject to review by the Local Planning Agency and Planning and Zoning Board.

(B) If a development order application or request is not one of the types provided for in this Chapter, the Planning and Zoning Director shall determine the specific nature of the review based on the type of application most similar to the application or request.

**Table 2-1: Review and Approval Required**

	<b>Type of Approval Required</b>	<b>Local Planning Agency Review Required</b>	<b>Planning and Zoning Board Review Required</b>
Comprehensive Plan Map Amendment – Large and Small Scale	City Council	✓	
Comprehensive Plan Text Amendment	City Council	✓	
Conditional Use (Non-Residential)	City Council		✓
Conditional Use (Residential)	City Council		✓
Conditional Use Expansion – Large Scale	City Council		✓
Conditional Use Expansion – Small Scale	Administrative		
Development Order Modification that alters	Administrative		

**Table 2-1: Review and Approval Required**

	<b>Type of Approval Required</b>	<b>Local Planning Agency Review Required</b>	<b>Planning and Zoning Board Review Required</b>
density or intensity by 10% or less	SID, if SID approved existing approval		
Development Order Modification that alters density or intensity by more than 10%	Same approving entity as required for existing development order		
Land Development Regulation Text Amendments	City Council	✓	
Landscape Permit	Administrative SID†		
Master Sign Plan	City Council SID†		
Plat (including Replat)	City Council SID		
Plat Waiver	Administrative SID		
Rezoning	City Council	✓	
Modification to Existing Permit/Approval (other than modification to Development Orders)	Same type(s) of approval as existing approval		
Required Improvements Waiver	Administrative		
Site Development Permit – General	Administrative SID		
Site Development Permit – Lakes Outside of Pods	Administrative SID		
Site Development Permit – Roads Outside of Pod	Administrative SID		

**Table 2-1: Review and Approval Required**

	<b>Type of Approval Required</b>	<b>Local Planning Agency Review Required</b>	<b>Planning and Zoning Board Review Required</b>
Site Plan (Containing Non-Residential or Multifamily)	City Council SID†		
Site Plan (Residential Only)	Administrative SID†		
Temporary Signage	Administrative		
Variance	Planning and Zoning Board		
Waiver	Administrative or Council, as applicable		
Zoning Confirmation	Administrative		
SID = Seminole Improvement District SID† = Application will be reviewed by Seminole Improvement District only for conflicts with Seminole Improvement District facilities or rights.			

(C) Table 2-2 shows the required contents of each type of application.

**Table 2-2: Application Requirements for Approvals**

- (D) **Additional Information.** The following additional information applies to the documents required in Table 2-2: Application Requirements, above.
- (1) **Applications.** Complete signed application forms as provided by the City and all required fees and costs.
  - (2) **Project Description/Justification Statement.** The Project Description/Justification Statement should describe the desired outcome of the application.
    - (a) The Project Description/Justification Statement must contain the following:
      - (i) Description of the property history and site conditions;
      - (ii) History of approvals on the property;
      - (iii) Statements addressing the special standards and criteria that may be required for the particular application
      - (iv) Statement of consistency with the Comprehensive Plan; and
      - (v) Statements concerning compliance with applicable LDRs.
    - (b) The Project Description/Justification Statement may also contain aerial photographs.
    - (c) The Project Description/Justification Statement for applications for development orders must identify any cultural, historic, and natural resources that may be impacted by the development.
    - (d) If an applicant is seeking approval for bonus housing units, the applicant must submit the following information as part of site plan application:
      - (i) Number and location of affordable or workforce bonus housing units.
      - (ii) Structure type and dwelling unit sizes of affordable or workforce bonus housing units.
      - (iii) Identification of whether bonus housing units will be for sale or for rent.
      - (iv) Proposed sale or rent price of affordable or workforce bonus housing units.
    - (e) Consistency with level of service standards as required by the Comprehensive Plan.
  - (3) **Plat.** The requirement to submit a plat may be filled by submittal of an approved plat, even if such plat has not yet been recorded, or by submittal of a plat waiver. When applying for a plat, this requirement is filled by submittal of the proposed plat. When applying for a replat, both the existing plat and the proposed plat must be submitted.
  - (4) **Site Plan.** A site plan containing the title of the project and names of the architect, engineer, project planner and/or developer, date, and north arrow, and based on an exact survey of the property drawn to a scale of sufficient size to show:
    - (a) Boundaries of the project, any existing streets, buildings, watercourses, easements, section lines, and water, sewer and reuse water facilities, and other existing important physical features on the site and on property adjacent to the site.
    - (b) Tabular project data, including but not limited to dwelling units, square footage, bed, and waivers from zoning district requirements.
      - (i) Project information on beds, employees, seating, etc. as necessary depending on the type of development.
    - (c) Site data and setbacks.
    - (d) Plans and location for recreation facilities, if any, including buildings and structures for such use.

- (e) All mechanical equipment and dumpster locations, screens and buffers.
- (f) Refuse collection and service areas.
- (g) Access to utilities and points of utilities hookups and location of all fire hydrants close enough for fire protection.
- (h) Proposed plans for signage including size, location and orientation.
- (i) Location of exterior lighting of all parking areas, non-residential buildings, and the overall site.
- (j) Proposed topographic considerations including natural vegetation, berms, retaining walls, privacy walls, and fences.
- (k) Required floodplain management data including Flood zone designation and Base flood elevation consistent with Chapter 5.
- (l) Traffic Circulation.
- (m) The application must contain architectural elevations to demonstrate the style and theme of the project, including representative color for illustrative purposes only. Improvements must be constructed reasonably be in accordance with submitted architectural style and theme.
- (n) The application must contain an aerial photograph of the appropriate section, township and range of the City, outlining the subject property, and delineating all contiguous zoning districts.
- (o) The application must contain an area location map. Vicinity map of the area within one mile surrounding the site, including the following:
  - (i) Principal roadway network, including mass transit routes;
  - (ii) Major public facilities such as public schools, city and county parks and recreation areas, hospitals, public buildings, utilities, shopping areas, etc.;
  - (iii) Municipal boundary lines; and
  - (iv) Important physical features in and adjoining the site.
- (p) Residential site plans must include a school impact statement specifying the anticipated impact on public schools and the need for public school sites in the general area of the proposed development.
- (q) Statement acknowledging that applicant is required to submit application Palm Beach County Fire Rescue for review. Applicant is responsible for submitting application to Palm Beach County Fire Rescue. Approval by Palm Beach County Fire Rescue pursuant to their adopted standards is required for site plan approval.
- (r) Service Availability. Written confirmation from the applicable service providers of the availability of all necessary facilities and systems, as indicated below, for stormwater management, potable water, sanitary sewer, solid waste disposal, and county road capacity.
  - (i) A statement from SID, or other lawful service provider, that the proposed development will be able to connect to the system and that there is sufficient capacity available to meet adopted levels of service for potable water and sanitary sewer.

- (ii) A drainage statement by the applicant's engineer that the site drainage system will be designed to meet the stormwater management requirements of the SFWMD and these LDRs. The statement also will demonstrate the provision of legal positive outfall meeting the adopted level of service. A statement from SID attesting that the proposed drainage is sufficient will satisfy this requirement.
  - (iii) A statement from the Solid Waste Authority of Palm Beach County that the proposed project will not exceed the adopted levels of service standards for solid waste disposal. This requirement may be waived if the Solid Waste Authority provides the city with an annual statement that solid waste capacity is available.
- (s) **Master Site Plan.** A master site plan will be required when a project will be developed in phases. The master site plan must show:
1. Authority and ownership of land to be developed.
  2. Proposed phases of the development.
    - a. Proposed number of project phases, including total acreage in each phase, and gross nonresidential intensity (square feet) and gross residential density of each phase.
    - b. Sequencing of phasing for purposes of determining service availability.
  3. Total land area, and approximate location and amount of open space or lake maintenance easements included in each residential, nonresidential, or mixed-use area, and a summary of the form of organization proposed to own and maintain such areas.
  4. Circulation information, including:
    - a. Approximate location and ultimate right of way widths of proposed and existing roads, pedestrian, and bicycle routes, including interconnections between phases.
    - b. Locations, centerlines and ultimate widths of rights-of-way for existing roads, streets, intersections, and canals within the proposed project.
  5. Information on all easements, including:
    - a. Location and width of proposed and existing utility, drainage, access, electric, and similar easements, provided, however, only general location and widths are required for proposed easements.
    - b. Location, if known, of proposed landscape buffers, open space, and preserve areas.

(5) **Landscape Plan.** A landscaping plan consistent with the requirements of Chapter 4, which includes the location of landscape buffers, landscape plans for entrance features, common areas, parking, and vehicular use areas. The plan should be sufficient to identify potential conflicts and inconsistencies with proposed lighting, hardscape, and utilities and electrical infrastructure.

- (a) Preliminary landscape plans must include the location of landscape buffers, landscape plans for entrance features, common areas, parking, and vehicular use areas. The plan



should be sufficient to identify potential conflicts and inconsistencies with proposed lighting, hardscape, and utilities and electrical infrastructure. Additional details may be required for the final landscape plan associated with the landscape permit.

- (b) Prior to the issuance of the certificate of occupancy for single-family residential lots and single family attached residential structures with 3 units or less the builder shall submit a certification by a Landscape Architect to the City stipulating that the required minimum landscaping has been installed consistent with the requirements of Chapter 4 (Landscaping and Buffers). All common area landscaping, open space landscaping, buffering, streetscape plantings (all plantings within a ROW) shall be certified by the Landscape Architect of record prior to the last certificate of occupancy for a residential pod.
- (6) **Engineering Plan.** Engineering plans include paving plans and site utilization calculations. If the city determines that the plans require independent review for items within the City's jurisdiction, the applicant shall pay for such review by an independent engineer.
  - (a) The engineering plan should contain conceptual utility plan indicating the proposed location of potable water, sanitary sewage, and storm drainage plans for review by SID. The plan shall contain plans for the extraction of fill and mineral resources and alterations or modifications to the slope, elevation, drainage pattern, natural vegetation, and accessibility of the development, for SID review. Utility plans should be sufficient to identify potential conflicts and inconsistencies with proposed landscape, hardscape, lighting, and electrical infrastructure.
- (7) **Conceptual Lighting Plan.** Conceptual lighting plans must contain general locations and types of proposed lighting facilities, but are not required to contain photometric data or product specifications. The plan should be sufficient to identify potential conflicts and inconsistencies with proposed landscape, hardscape, and utilities and electrical infrastructure.
- (8) **Non-Residential Photometric Lighting Plan.** In addition to the requirements of the conceptual lighting plan, the photometric lighting plan must illustrate the height and intensity (photometric data) of the proposed lighting facilities.
- (9) **Residential Lighting Plan.** A plan indicating the general location and lumens of lighting to be used in a residential development. Residential lighting plans are not required to contain photometric data. The plan should be sufficient to identify potential conflicts and inconsistencies with proposed landscape, hardscape, and utilities and electrical infrastructure.
- (10) **Signage Plan.** A signage plan demonstrating consistency with the requirements of Chapter 6, or a proposed Master Sign plan meeting the requirements of Chapter 6. The signage plan should include architectural elevations of all signs indicating the location; size; landscaping; and for illustrative purposes, lettering design, material types, colors, and other features.
- (11) **Survey (Abstracted).** A certified boundary survey by a surveyor licensed by the State of Florida meeting the requirements for surveys established by the Minimum Technical Standards set forth by the Florida Board of Professional Land Surveyors in Chapter 5J-17, F.A.C., pursuant to Sec. 472.027, Florida Statutes. The survey shall have been completed within one year of the date the application is submitted. Where allowed by Chapter 2 or Chapter 5, a certified sketch and legal description may be submitted instead of a survey. The survey shall be prepared at a scale of not less than one-inch equals 200 feet containing the following:
  - (a) A legal description of the property;
  - (b) A computation of the total acreage of the parcel to the nearest tenth of an acre;

- (c) Depictions of existing streets and roadway improvements, existing structures within 100 feet of project boundary, existing utilities, existing easements, and existing trees identified by caliper and species.
- (12)**Owner's Affidavit.** A statement of the applicant's interest in the property and:
  - (a) If joint and several ownership, a written consent to petition by all owners of record, or written authorization by the master association;
  - (b) If a contract purchase, written consent of the seller or owner;
  - (c) If an authorized agent, a copy of the agent's authorized agreement or written consent of the owner;
  - (d) If a lessee, a copy of the lease agreement and written consent of the owner;
  - (e) If a corporation, partnership, or other business entity, the name of the officer or person responsible for the application and written proof that the representative has authority to represent the corporation, partnership, or business entity or, in lieu thereof, written proof that such person is in fact an officer of the corporation;
  - (f) If a group of contiguous property owners are requesting an individual amendment only affecting their specific lots and not impacting property owned by the master association, all the owners of the property described in the petition must provide written consent; or
  - (g) Unity of Title, warranty deed or purchase contract of the subject site.
- (13)**Traffic Statement / Study.** A traffic statement or traffic study consistent with the requirements of Chapter 7.
- (14)**Drainage Statement.** A statement describing the proposed stormwater management for the proposed project, consistent with the requirements of Chapter 5 and any applicable SID requirements.
- (15)**Legal Description.** A formal description of land containing sufficient information to permit the identification of the property to the exclusion of all others, which may be – but is not required to be – accomplished through a description by metes and bounds.
- (E) Applicants may submit additional documents or professional studies in support of an application to assist in satisfactory review of a development order application consistent with the requirements of these LDRs.

**Section 4: Fees waived for applications by the City and SID.** Any fee required for an application made pursuant to this Chapter is hereby waived for all applications made by the City or SID.

## **ARTICLE 2.2 ADDITIONAL PROVISIONS**

### **Section 1: Life of Approvals.**

- (A) **In General.** Unless otherwise specified, all approvals subject to these LDRs shall be valid for 5 years from the date of approval.
- (B) **Specific Approvals.**
  - (1) **Site Plans.** Approved site plans shall be valid for 5 years from the date of approval.
  - (2) **Conditional Uses.** Conditional uses shall expire 12 months after the date of approval of such conditional use unless a longer time period is provided for in the approval, or unless a building permit based upon and incorporating the conditional use is issued within the 12-month period, or, if a building permit is not required, the expiration date shall be 12 months from the date of approval if by that date the use for which the conditional use was granted has not been commenced. An approved conditional use which ceases operation for a period of 12 months shall expire.
  - (3) **PDs.** PDs shall have a build out date established in the development order.

- (4) **Rezoning.** Rezoning do not have an expiration date.
- (5) **Comprehensive Plan Amendments.** Comprehensive Plan Amendments do not have an expiration date.
- (6) **Plats.** Plats must be recorded within 18 months of the date of approval to remain valid. If a plat is not recorded within 18 months of the date of approval, the plat is no longer valid.
- (C) **Extensions.** All development orders may be extended at the discretion of the City.
  - (1) Applications for extensions of 30 days or less may be approved by the Planning and Zoning Director.
  - (2) Applications for extensions over 30 days but less than 90 may be reviewed by the Planning and Zoning Director, who will make a recommendation to the City Council.
  - (3) Applications for extensions of more than 90 days require the same type of approval as the original application.

**Section 2: *Special Applications***

**(A) Small Scale Plan Amendments**

- (1) Comprehensive Plan amendment applications that meet the following criteria will be processed as Small-Scale Plan Amendments. In order to be processed as a Small-Scale Plan Amendment:
  - (a) The proposed amendment relates to a parcel that is less than 10 acres in size;
  - (b) The proposed amendment is only for a site-specific small scale development activity;
  - (c) The parcel that is the subject of the proposed amendment is not located within an area of critical state concern;
  - (d) The City must not have approved more than 120 acres of small scale amendments in the calendar year in which the application is submitted; and
  - (e) Text amendments associated with the Small-Scale Plan Amendment to the Future Land Use Map (“Small Scale Map Amendment”) are directly related to and will be adopted simultaneously with the Small Scale Map Amendment.

**(B) Variances**

- (1) The purpose of a variance is to allow reasonable relief from strict application of one or more land development regulations, when such regulation(s) create an undue burden or a practical difficulty for reasonable development of a property. Variances will be granted on a case-by-case basis.
- (2) Applications for a variance must demonstrate that:
  - (a) Strict application of the LDRs creates an undue burden or a practical difficulty on the development of applicant’s lot(s) or parcels, and was not created by the actions of the applicant.
  - (b) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.
  - (c) Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.
  - (d) No negative impacts are or will be generated by the variance, and/or that any impacts caused by the variance can be adequately mitigated.

- (e) The grant of a variance will not confer upon the applicant any special privilege denied to any other owner of land, buildings, or structures located in the same zoning district.
  - (f) The variance granted is the minimum variance that will make possible the use of the land, building, or structure.
  - (g) The grant of the variance will be in harmony with the general intent and purpose of this chapter and land development regulations.
  - (h) Financial hardship is not to be considered as sufficient evidence of a hardship in granting a variance.
  - (i) The grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
- (3) In granting any variance, the Planning and Zoning Board may approve such conditions and safeguards deemed necessary to conform to the intent and purpose of this chapter. Violations of such conditions shall be deemed a violation of this chapter. The Planning and Zoning Board may also prescribe a reasonable time limit to initiate the action granted by the variance and to complete such action.
  - (4) The Planning and Zoning Board, unless specifically authorized by this chapter, shall not grant a variance to establish a use not allowed as a permitted use or conditional use in any overlay or zoning district. Evidence of nonconforming uses of neighboring lands, structures, or buildings in same zoning district or the permitted use of lands, structures, or buildings in other zoning districts shall not be considered grounds for the authorization of a variance.
  - (5) Denials of applications for variances may be appealed to the City Council.
- (C) Waivers (Other than Plat Waiver)**
- (1) In order to allow for innovative design or unique site conditions, the City Manager may grant, at his or her sole discretion, waivers to allow for minor deviations from the requirements of these LDRs pursuant to the following criteria:
    - (a) The proposed waiver is consistent with the Comprehensive Plan; and
    - (b) The applicant provides alternative standards to the specific land development sections subject to the waiver that meet the intent of the waived regulation.
    - (c) The proposed waiver will not negatively impact the health, safety, and welfare of the residents of the City.
  - (2) Waivers may not be permitted to deviate from the allowable density, intensity, permitted uses, setbacks, or building height within a zoning district.
  - (3) Waivers shall be effectuated through written approval by the City Manager or designee.
- (D) Plat Waiver.**
- (1) Plat waivers must meet the requirements of Chapter 5.
  - (2) Plat waivers shall require a certified boundary survey. The City Engineer, and if applicable the SID Engineer, may accept a certified sketch and legal description in lieu of a certified boundary survey. The certified sketch and legal description shall meet the requirements for certified sketches and descriptions set forth by Chapter 5J-17, F.A.C., pursuant to Sec. 472.027, Fla. Stat. and the applicable City and SID requirements. The certified boundary survey or sketch and legal description shall not require approval of the Council prior to recordation.
- (E) Site Development Permit.**
- (1) Except for those required improvements which have been specifically waived, construction plans and supporting design information for all the required improvements shall be submitted for each residential development parcel. Construction plans and required engineering reports shall comply with the requirements of Chapter 5.

- (2) The developer's engineer shall prepare and submit a certified opinion of cost, which shall include the cost of installing all required improvements required pursuant to Chapter 5. In the alternative, the City Engineer and SID may, at their sole discretion, accept the contract price received by the developer for the construction of the required improvements.
- (3) Submittal of supplementary documentation deemed necessary by the City and SID, such as deeds, easements, covenants and other recorded instruments creating rights or obligations for access, drainage, or utility services, which rights or obligations could not be established through dedications or reservations on the plat may be required.
- (4) The application shall indicate whether the required improvements are to be constructed prior to recordation or after recordation of the plat or certified sketch and description. When the required improvements are to be constructed after recordation, the Developer shall submit a statement acknowledging responsibility for completion of said required improvements. The statement shall be in the form acceptable to the City Attorney and SID Attorney, and shall be executed by all owners shown on the applicable plat. The statement shall be accompanied by a guarantee for completion of required improvements, pursuant to Chapter 5.
- (5) The application must contain a conceptual utility plan indicating the proposed location of potable water and sanitary sewage plans for review by SID. If the City determines that the plans require independent review for areas within the City's jurisdiction, the applicant shall pay for such review by an independent engineer. Plans for the extraction of fill and mineral resources and alterations or modifications to the slope, elevation, drainage pattern, natural vegetation, and accessibility of the development require SID review. Utility plans should be sufficient to identify potential conflicts and inconsistencies with proposed landscape, hardscape, lighting, and electrical infrastructure.
- (6) When applicable, applications shall include an environmental assessment addressing the requirements of all applicable environmental ordinances.

(F) **Land Development Regulation Text Amendments.** Applications for an amendment to the text of the city's land development regulations shall be prepared in detailed narrative form, and shall include:

- (1) The specific text amendment that is requested, including language to be added and language to be deleted;
- (2) The reasons for requesting the amendment; and
- (3) Any material or supporting documentation in support of the request for a text amendment.

(G) **Conditional Uses**

(1) **Conditional use general:**

(a) **Conditional use defined.** A conditional use is a use that would not be appropriate generally or without restriction throughout a particular zoning district, but which may be, if controlled as to number, area, location and/or relation to other development.

(b) **Applicability.** This subparagraph applies to all conditional uses.

- (i) All initial requests for conditional uses, along with their related accessory uses, shall be subject to the requirements of this subsection.

- (ii) In addition, any modification to the use of a previously granted conditional use, except for a modification that changes said use to a permitted use as listed in this chapter, shall be subject to the requirements of this subsection. Requests to expand, enlarge or revise the site of an existing conditional use shall be classified and processed pursuant to the following three categories:
  1. Small scale, interior – interior expansion enlargement or revision of less than ten percent (10%) of the originally approved conditional use site square footage once within any eighteen month period (this category contemplates uses located in existing shopping centers or similar structures, where no change to the overall building footprint is required).
  2. Small scale, exterior – exterior expansion, enlargement or revision of less than ten percent (10 %) of the originally approved conditional use site square footage once within any eighteen month period (this category contemplates a change to the existing structure’s footprint, and other site related revisions that flow therefrom).
  3. Large scale – any expansion, enlargement or revision to the site of an existing conditional use that does not qualify as either small scale interior or small scale exterior. Such expansion, enlargement or revision is subject to standards for approval of conditional use in this subsection.
- (c) **Conformance with approved plans.** A conditional use, as approved by the City Council, may be expanded unless specifically conditioned otherwise, and permitted uses may be added to the parcel or lot, as long as all expansions meet the requirements of these LDRs and do not expand the parcel or lot as described in the resolution approved by the City Council for the conditional use. In addition, the City must determine, after a review of the guidelines and standards listed in subsection (d) of this section, that no changes are being made to the site plan which would adversely affect the development project or surrounding neighborhood.
  - (i) For uses which are not dependent upon the issuance of a building permit, a conditional use is valid for the applicant only. An approved conditional use may be revoked at any time by City Council under the guidelines of subparagraph (d) of this section, upon making a finding that the operation of the conditional use has resulted in the violation of City ordinance or in the violation of the conditions of approval of the conditional use.
- (d) **Standard for approval.** A development order application for conditional use approval shall demonstrate compliance with the criteria listed below:
  - (i) **Comprehensive plan.** The proposed use is consistent with the comprehensive plan.
  - (ii) **Chapter requirements.** The proposed use is consistent with all applicable requirements of this Chapter.
  - (iii) **Zoning District Standards.** The proposed use is consistent with the zoning district standards for such use as provided in Chapter 3.
  - (iv) **Public Welfare.** The proposed use provides for the public health, safety, and welfare by:

1. Providing for a safe and effective means of pedestrian access;
  2. Providing for a safe and effective means of vehicular ingress and egress;
  3. Providing for an adequate roadway system adjacent to and in front of the site;
  4. Providing for safe and efficient onsite traffic circulation, parking, and overall control; and
  5. Providing adequate access for public safety purposes, including fire and police protection.
- (v) **Screening and buffering.** The proposed use utilizes such techniques as landscaping, screening, buffering, site or building design, or business operation procedures to mitigate impacts on surrounding properties, including such impacts as:
1. Noise; glare; odor; ground-, wall-, or roof-mounted mechanical equipment; perimeter, interior, and security lighting;
  2. Signs;
  3. Solid waste disposal and recycling;
  4. Outdoor storage of merchandise and vehicles;
  5. Visual impact negatively impacting use of adjacent property; and
  6. Hours of operation.
- (vi) **Patterns of Development.** The proposed use will result in logical, timely, and orderly development patterns.
- (vii) **Purpose and Intent.** The proposed use will be in harmony with the general purpose and intent of this chapter and the goals, objectives, and policies of the City.
- (viii) **Compatibility.** The overall compatibility of the proposed development with adjacent uses, based on the following standards:
1. **Adverse Visual Impact:** The design of the proposed use and structures will minimize any adverse visual impacts or impacts caused by the intensity of the use.
  2. **Environmental impact.** The design of the proposed use minimizes any adverse impacts that may be created, including impacts on environmental and natural resources including air, water, stormwater management, wildlife, vegetation, and wetlands.
  3. **Other Negative Impacts.** Noise; glare; odor; ground-, wall-, or roof-mounted mechanical equipment; perimeter, interior, and security lighting are adequately screened, buffered, or otherwise mitigated.

**(2) Application Requirements.**

- (i) The justification statement must state the grounds on which the conditional use is being met, and cite the criteria in this subsection (H).
- (ii) The application must contain a conceptual plan on one or more sheets of paper measuring not more than 24 by 36 inches and drawn to a scale not smaller than 100 feet to the inch that provides the following:

1. Scale, date, north arrow, vicinity sketch, title of the project and total gross acreage
2. The boundaries and dimensions of the property and its relationship to the surrounding road system, including the width of the existing road (pavement)
3. The location and dimension of existing manmade features such as easements, existing roads and structures, with indication as to which are to be removed, renovated or altered
4. Identification of surrounding land use, zoning and existing buildings within 100 feet of the petitioned site, as well as the zoning of the petitioned site.
5. A layout of the proposed lots and/or building sites including the following site data.
  - a. Finished floor elevation.
  - b. Common open area.
  - c. Generalized landscaping and buffer areas.
  - d. Internal circulation patterns including off-street parking and loading facilities.
  - e. Total project density.
  - f. The shape, size, location and height of all structures.

(iii) Proposed phasing of project, if applicable.

(iv) Aerial photographs

(v) For non-residential uses:

1. Proposed hours of operation.
2. The estimated square footage of the structure, the number of employees, the estimated seating, and the estimated number of users of the facility, such as members, students and patients.

(vi) Any additional information that will demonstrate that the grant of the conditional use will be in harmony with the general intent and purpose of this chapter.

(3) **Enforcement.** Conditional uses are subject to the enforcement proceedings below.

(a) In addition to the provisions of Code Compliance Chapter of the City Code, conditional uses are subject to the enforcement procedures listed below.

(i) **Revocation.** The City Council shall have the power to revoke conditional uses for noncompliance with conditions of development approval.

(ii) **Inspections.** The planning and zoning department shall review and inspect all conditional uses to ensure compliance with conditions of approval.

(b) All conditional uses which fail to comply with any or all conditions of approval shall be reported to the planning and zoning director. The report shall specify the manner in which the landowner is not complying with one or more conditions of approval. The planning and zoning director may:



- (i) Request timely compliance with the conditions of approval;
  - (ii) Direct initiation of code enforcement proceedings pursuant to Code Compliance Chapter of the City Code; or
  - (iii) Initiate the legal action and procedures necessary to revoke the conditional use.
- (c) All conditional uses which fail to comply with any or all conditions of approval shall be reported in writing to the City Council. The report shall specify the manner in which the landowner is not complying with one or more conditions of approval. The City Council, upon receipt of the written report, may:
- (i) Request timely compliance with the conditions of approval;
  - (ii) Direct initiation of code enforcement proceedings pursuant to Code Compliance Chapter of the City Code; or
  - (iii) Initiate procedures to revoke the conditional use. If the City Council initiates procedures to revoke the conditional use, a hearing on the report shall be scheduled within a reasonable time, and notice of the time and place of the hearing shall be furnished to the landowner. If the City Council finds that the facts alleged in the report are true, and that the landowner has not taken the steps necessary to fully comply with the conditions between the date of the report and the date of the hearing, the City Council may authorize the City Manager to revoke the conditional use. The City Council also may authorize the City Manager and take the necessary legal action to terminate the conditional use and all uses authorized by that approval.

(4) **Prior conditional uses.** Any land use which was legally established prior to the date of adoption of this ordinance, and thereafter is classified by this chapter as a conditional use, will be considered a legal nonconforming use.

**Section 3: *Concurrency.*** All site plan approvals must meet concurrency requirements for sanitary sewer, solid waste, drainage, and potable water established in the Comprehensive Plan. The City may require, as a condition of a development order or permit, that the necessary public facilities (excluding transportation facilities) are in place or are guaranteed in an enforceable development agreement prior to issuance of a certificate of occupancy or its functional equivalent. SID shall have exclusive authority to make concurrency determinations regarding capacity and ability to serve a development for sanitary sewer, drainage, and potable water for the concurrency review. Concurrency becomes reserved upon approval of a site plan.

**Section 4: *Concurrency Availability.*** An applicant may request a concurrency availability determination from the Planning and Zoning Director.

(A) The request must identify the particular lot(s) or parcel(s) for which the determination is requested. If applicable, the applicant may be required to submit a drainage statement along with the request.

(B) The Planning and Zoning Director shall acknowledge receipt of and coordinate with SID to respond to any request within a reasonable amount of time, but no later than 30 days from receipt of the request.

**Section 5: *Notice.*** Notice of all public hearings required by these LDRs shall be consistent with Florida Statutes. If the City initiates an amendment to the Comprehensive Plan, LDRs or Zoning Map, it shall notify by mail each real property owner whose land will be the subject of the amendment.

(A) *Posting of Property.* Property affected by a future land use map amendment, rezoning ordinance, conditional use, and variance applications shall be posted as provided below, if required.

- (1) *Signs.* Signs shall be provided by the applicant, subject to criteria for size, contents, and visibility approval by the Planning & Zoning Director.
- (2) *Posting.* Property shall be posted by the applicant.
- (3) *Installation.* Signs shall be posted in a workmanlike manner, able to withstand normal weather events.
- (4) *Minimum posting requirements.* Privately-initiated applications require that at least one sign be posted per 500 lineal feet of all property located along a public right-of-way, with a minimum of one sign per frontage, or as otherwise required by the Planning & Zoning Director. In the event of unique circumstances affecting a property, additional signs shall be posted as required by Planning & Zoning Director. City-initiated applications require that one sign be posted per frontage along a public right-of-way, except that city-initiated land use map changes for the creation of an overlay shall not require posting for the city council hearings.
- (5) *Deadline.* Signs, if required, shall be posted at least 15 days prior to a public hearing.
- (6) *Affidavit.* An affidavit, including photographs, attesting to the date of installation and number of signs installed shall be provided at least five days prior to the required public hearing.
- (7) *Public Notice.* Public notice, including mailing, publication in a newspaper, and posting of property, shall be provided as required below in Table 2-3 and consistent with the city charter and Florida Statutes.

(a) *Publication.*

- (i) For applications that require publication pursuant to Table 2-3 and for which Florida Statutes require publication, publication must meet the requirements of all applicable statutes including Sections 166.041, 163.3187, and 163.3184, Florida Statutes, as they apply.
  - (ii) For applications that are not required to be published pursuant to Florida Statutes, but are required to be published pursuant to Table 2-3, the publication shall be published in a newspaper of general paid circulation and of general interest and readership in the jurisdiction. The advertisement shall appear in a newspaper published at least five times per week.
- (b) *Mail notice.* Required mail notice shall be provided as indicated below:
- (i) *Contents.* Unless otherwise provided herein, mail notice shall contain the following information:
    1. The title and substance of the proposed ordinance or development order;
    2. The time, date, and location of the public hearing for the applicable Planning and Zoning Board or Local Planning Agency hearing;

3. The time, date, and location of the public hearing for the City Council;
  4. The location of the property affected by the application with reference to the nearest intersection of two or more streets;
  5. The name, address, and telephone number of the office where additional information can be obtained;
  6. The times and place where the proposed ordinance or development order application may be inspected by the public;
  7. A notice that interested parties may appear at the meeting or public hearing and be heard with respect to the proposed ordinance or development order application; and
  8. An area map, indicating location of the affected property, may be provided.
- (ii) *Class of mail.* Mail notice shall be provided by first-class mail.
- (iii) *Postmark.* Mail notice shall be postmarked no later than the minimum number of calendar days as required in Table 2-3 or as otherwise required by Sections 166.041, 163.3187, and 163.3184, Florida Statutes, as amended.
- (iv) *Property owners notified.* Mail notice for applications shall be provided to all property owners, excluding property owned by the applicant, within 300 feet of the site affected by the application.
- (v) *Property owners list.* To the extent permitted by law, the City will provide the applicant with a list of addresses for which applicant must generate mailing labels. The City shall generate any mailing labels for properties which the City may not legally disclose the address but shall not provide such labels to applicant. Applicants who create mailing labels for all addresses provided to the applicant by the City shall be deemed to have complied with this section.
- (vi) *Costs.* The applicant shall provide envelopes with affixed postage and complete mailing labels appropriate to the type of mail service utilized. In the event additional mail notice is required, the applicant shall be responsible for postage, envelopes, and mailing labels.
- (vii) *Procedure.* The City shall be responsible for delivery of mailed notices to the post office.

**Table 2-3: Notice Requirements**

<b>Application</b>	<b>Mail Prior to City Council Meeting/Hearing</b>	<b>Publication Prior to City Council Meeting/Hearing</b>	<b>Post Prior to City Council Meeting/Hearing</b>	<b>Additional Requirements Prior to Local Planning Agency/P&amp;Z</b>
Comprehensive Plan Map Amendment – Large Scale	14 days	N/A	15 days	<i>Prior to Local Planning Agency:</i> <u>Mail:</u> 10 days <u>Publish:</u> 10 days <u>Post:</u> 15 days

**Table 2-3: Notice Requirements**

<b>Application</b>	<b>Mail Prior to City Council Meeting/Hearing</b>	<b>Publication Prior to City Council Meeting/Hearing</b>	<b>Post Prior to City Council Meeting/Hearing</b>	<b>Additional Requirements Prior to Local Planning Agency/P&amp;Z</b>
Comprehensive Plan Map Amendment –Small Scale	N/A	14 days prior to ordinance adoption	15 days	<i>Prior to Local Planning Agency:</i> <u>Mail:</u> N/A <u>Publish:</u> 10 days <u>Post:</u> 14 days
Comprehensive Plan Text Amendment	N/A	14 days prior to ordinance adoption and as required by state law	N/A	<i>Prior to Local Planning Agency:</i> <u>Mail:</u> N/A  <u>Publish:</u> 10 days  <u>Post:</u> N/A
Conditional Use (Non-Residential)	14 days	14 days	15 days	<i>Prior to P&amp;Z:</i> <u>Mail:</u> 10 days <u>Publish:</u> 10 days <u>Post:</u> 15 days
Conditional Use (Residential)	14 days	14 days	15 days	<i>Prior to P&amp;Z:</i> <u>Mail:</u> 10 days <u>Publish:</u> 10 days <u>Post:</u> 15 days
Conditional Use Expansion – Large Scale	14 days	14 days	15 days	<i>Prior to P&amp;Z:</i> <u>Mail:</u> 10 days <u>Publish:</u> 10 days <u>Post:</u> 15 days
Development Order Modification that alters density or intensity by more than 10%	Same as was required for original approval	Same as was required for original approval	Same as was required for original approval	Same as was required for original approval
Land Development Regulation Text Amendments	N/A	14 days prior to adoption ordinance	N/A	<i>Prior to Local Planning Agency</i> <u>Mail:</u> N/A <u>Publish:</u> 10 days <u>Post:</u> none

**Table 2-3: Notice Requirements**

<b>Application</b>	<b>Mail Prior to City Council Meeting/Hearing</b>	<b>Publication Prior to City Council Meeting/Hearing</b>	<b>Post Prior to City Council Meeting/Hearing</b>	<b>Additional Requirements Prior to Local Planning Agency/P&amp;Z</b>
Rezoning	14 days	14 days prior to ordinance	15 days	<i>Prior to Local Planning Agency:</i> <u>Mail: 10 days</u>  <u>Publish: 10 days</u>  <u>Post: 15 days</u>
Site Plan (Containing Non-Residential)	N/A	10 days	N/A	N/A
Site Plan (Residential Only)	N/A	10 days	N/A	N/A
Variance	N/A	N/A	N/A	<i>Prior to P&amp;Z</i> <u>Mail: 10 days</u> <u>Publish: 10 days</u> <u>Post: 15 days</u>

**ARTICLE 2.3 PROCEDURES**

**Section 1: *Pre-application Meeting.*** Before submitting an application, applicants may meet with the City concerning the application, procedures for review, applicable LDR provisions, and/or applicable Comprehensive Plan goals, objectives, and policies as a pre-application meeting. Planning and Zoning Director may require a pre-application meeting.

**Section 2: *Applications.*** Table 2-2 lists all required supporting documents. All applications for development order approval shall be submitted to the Planning and Zoning Department. All applications shall be filed on forms provided for that purpose by the Planning and Zoning Department. All applications shall be accompanied by such supporting documentation as required by these LDRs.

(A) Sufficiency review. Within seven (7) business days, excluding holidays, after receipt of an application, the planning and zoning department shall determine whether the application is complete or incomplete.

(B) Complete application. The planning and zoning director shall notify an applicant in writing if the application is determined to be complete. A complete application includes the following:

- (1) All information required to accompany the application;
- (2) All information required is complete, prepared in accordance with professionally acceptable standards, and is consistent with the development order application;
- (3) All fees required by the city and Seminole Improvement District; and
- (4) The required number of copies.

(C) Incomplete application. If the application is not complete, it shall not be subject to further review until all identified deficiencies have been remedied. The applicant shall be notified in writing that the application is incomplete, and the specific deficiencies that have been identified. Within 30

days of the date of the notification, the applicant shall submit all information necessary to remedy the deficiencies. The director may waive the 30-day requirement if reasonable progress is being made to remedy the application. An application shall not be subject to further review until all deficiencies are remedied. Failure of an applicant to respond within the 30 days to a notice of deficiency shall void the application.

(D) Applications that require both City and SID approval may be submitted to the City.

**Section 3: *Concurrent Processing.*** Notwithstanding any other provision in this code, an application for any approval may be processed concurrently with any other application.

(A) A pre-application meeting is required before submittal of concurrent applications.

(B) Additional fees may be required to address additional staff review time.

(C) All applications to be considered for concurrent review must be submitted on the same day.

(D) All applications must be deemed sufficient before concurrent review process for any application will begin.

(1) In order for an application to be deemed sufficient, the application must include the required statement of consistency with the Comprehensive Plan, which must address the application of the compatibility table in Comprehensive Plan Policy 1.6.5 and explanation LOS standard compliance.

(E) If at any time during the concurrent processing, an applicant fails to satisfy any of the criteria of this section, such as the filing of an objection with the City, then concurrent processing shall immediately cease. The applicant is responsible at all times to comply with the requirements and criteria for concurrent processing and bears all risks for failure of an application to proceed in a timely fashion.

**Section 4: *Distribution.*** Within five business days of receipt of a complete application, the City shall distribute copies of the appropriate application documents to appropriate departments and agencies including, when required, SID and Palm Beach County Fire Rescue.

**Section 5: *Administrative Review.*** Upon determination the application is sufficient, the Planning and Zoning Director will coordinate review of the application for consistency with the Comprehensive Plan and these LDRs. Reviewing entities will provide written comments regarding conformance of the application with the requirements of their respective regulations and program responsibilities. After review of the application, the Planning and Zoning Director will:

- (1) Provide a request for additional information to the applicant with deadlines for resubmittal;
- (2) Approve the application (for applications requiring only administrative approval); or
- (3) Place the application on the agenda of the next available Local Planning Agency or Planning and Zoning Board hearing or City Council hearing as required by Table 2-1, with a staff recommendation.

**Section 6: *Considerations.*** Decisions on applications subject to these LDRs made administratively or by City Council shall only be based on the application and documentation supporting the application, public comment, and applicable Comprehensive Plan and LDR provisions. State law governing municipal review of development permits applies.

**Section 7: *Limitation on Review of Resubmittals.*** The City's review of any resubmitted application should be limited to those items that have not been reviewed by the City, including items that changed

between the initial application and the resubmittal application, items that were submitted after the initial application, and items identified by the City as those that could not reasonably be reviewed prior to the resubmittal or without additional information.

**Section 8: *Review Period.***

- (1) For applications requiring only administrative approval, the City will have 90 days from the date of the original submittal to approve or deny the application.
- (2) For applications requiring Local Planning Agency review or City Council approval, the City will have 90 days to place the application on the agenda of the next regularly scheduled Local Planning Agency, Planning and Zoning Board or City Council meeting, as required by Table 2-1.

**Section 9: *Inactivity.*** If the City has notified an applicant that some action on an application is required, and applicant does not take any action on the application for 30 days, the application is deemed inactive and will be administratively withdrawn. The Planning and Zoning Director shall notify an applicant in writing five (5) days prior to administratively withdrawing an application. The applicant will have five (5) days after receipt of this notice to take the required action necessary to avoid the administrative withdrawal.

**Section 10: *Conceptual Presentation of Developments.*** In order to provide preliminary comments regarding potential applications for large scale development prior to the formal development review process, an applicant may request to present preliminary plans for such projects to the City Council at one or more workshop meetings. The workshop meetings shall be utilized by the City Council to provide nonbinding comments to an applicant as a means to reduce the amount of resources expended in preparation of plans and formal applications for the City's development review process. Conceptual Presentation review meetings are to be scheduled only at the request of the applicant and shall be at the risk of the applicant.

- (1) Requests for preliminary review shall be based upon the requirements provided herein.
  - (a) **Minimum threshold.** The potential application must be of a size that is at or above 5 acres. A potential application must be presented in a conceptual or preliminary design phase.
  - (b) **Request for review.** A request for review of the conceptual presentation shall comply with the standards listed below.
    - (i) The request for review of a conceptual presentation shall be submitted to the planning and zoning department in writing.
    - (ii) The request for review of a conceptual presentation shall be accompanied by such fees as approved by the city council.
    - (iii) A request for review of a conceptual presentation shall include a pre-application conference, prior to any city council workshop.
  - (c) **Staff analysis.** Staff analysis of a request for preliminary review shall be limited to a summary of the application. The analysis shall not include any determination of consistency with the comprehensive plan, land development regulations, or level of service requirements. The preliminary report shall not include any proposed recommendations or conditions of approval.

**Section 11: *Applications requiring action by Planning and Zoning Board or Local Planning Agency.*** The following procedures apply to applications requiring recommendation of approval by the Planning and Zoning Board or Local Planning Agency.

- (A) Administrative recommendation for proceeding to the Planning and Zoning Board or Local Planning Agency will be effectuated as follows:

- (1) The Planning and Zoning Director will send a letter to the applicant with notice of the date and time of the Planning and Zoning Board or Local Planning Agency public hearing, and a copy of the staff report sent by the Planning and Zoning Director to the Planning and Zoning Board or Local Planning Agency members.
  - (2) If the Planning and Zoning Director recommends denial of the application, the Planning and Zoning Director must specifically state the provisions of the Comprehensive Plan, LDRs, or statutes that serve as the basis for the recommendation of denial in the staff report.
- (B) The application will be considered by the Planning and Zoning Board or Local Planning Agency at a duly noticed public hearing. The public will be provided an opportunity to comment on applications before the Planning and Zoning Board or Local Planning Agency. Applicants will be afforded at least 10 minutes at the Planning and Zoning Board or Local Planning Agency hearing to present their application. The applicant will be provided additional time to respond to any public comment on the application.
- (C) At the Planning and Zoning Board or Local Planning Agency hearing at which the Planning and Zoning Board or Local Planning Agency makes a recommendation, the Planning and Zoning Board or Local Planning Agency shall make a recommendation to the City Council of approval, approval with conditions, or denial of the application. If the Planning and Zoning Board or Local Planning Agency recommends denial of the application, it must specifically state the provisions of the Comprehensive Plan, LDRs, or statutes that serve as the basis for the recommendation of denial.
- (D) After the Planning and Zoning Board or Local Planning Agency hearing on an application that requires City Council approval, the application will be placed on the agenda of the City Council at its next regularly scheduled public meeting where a duly noticed public hearing on the application will be held.
- (E) If the Planning and Zoning Board denies an application for a variance, the Planning and Zoning Board shall cite the legal authority for the denial of the application at the hearing, and shall, within 5 days of the hearing, give written notice to the applicant of the denial.

**Section 12: *Applications requiring City Council Approvals***

- (A) **Small Scale Plan Amendments.** Small Scale Plan Amendments and in cases in which the proposed ordinance changes the actual zoning map designation for a parcel or parcels of land involving less than 10 contiguous acres may be adopted at a single duly noticed public hearing before the City Council. The notice shall meet all applicable state statutory requirements.
- (B) **Other Comprehensive Plan Amendments, LDR Amendments, Rezoning.** Amendments to the Comprehensive Plan (other than Small Scale Plan Amendments), the LDRs, and rezonings (other than the rezoning map changes described in Subsection 2.3.12(A) Small Scale Plan Amendments) must be adopted by ordinance at an initial hearing (which may be a transmittal hearing) and an adoption hearing, which must take place on two separate days as follows:
- (1) The initial (transmittal) hearing and the first reading of the ordinance will take place on a weekday at a duly noticed public hearing held at least 7 days after the day that the advertisement of the hearing is published in a newspaper of general circulation within the City. The notice shall meet all applicable state statutory requirements.
  - (2) The adoption hearing and the second reading of the ordinance will take place on a weekday at a duly noticed public hearing held at least 5 days after the day that the advertisement of the hearing is published in a newspaper of general circulation in the City. The notice shall meet all applicable state statutory requirements.
- (C) The public will be provided an opportunity to comment on all applications presented to the City Council. When an application is before the City Council for consideration, applicants will be



afforded at least 10 minutes at the City Council hearing to present its application. The applicant will be provided additional time to respond to any public comment on its application.

- (D) The City Council shall render a decision on any application before it at the hearing. The City Council may approve, deny, or approve with conditions an application. If the City Council denies an application, the City Council shall cite the legal authority for the denial of the application at the hearing, and shall, within 5 days of the hearing, give written notice to the applicant of the denial. The written notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority cited by the City Council for the denial.
- (E) The applicant may request that its application be tabled or continued at any time during any public hearing before the City Council, which request shall be granted by right at least once.
- (F) Denial of any application by the City Council shall constitute final agency action appealable in the Division of Administrative Hearings or the applicable court of law. The date of the denial shall be the date of the written notice of denial.

### **Section 13: Appeals.**

- (A) Appeals of Final City Action. Appeals from a final decision of the Planning and Zoning Director or City Council shall be made in the Division of Administrative Hearings or the applicable court of law within 30 calendar days of the date such decision is rendered, or as provided by operative statute.
- (B) Appeals of Planning and Zoning Board Decisions. Appeals to the City Council of Planning and Zoning Board decisions shall be made by filing a written appeal with the City Clerk within 30 calendar days of the date such decision is rendered.
  - (1) The City Council may reverse or affirm, wholly or partly, or may modify the decision made by the Planning and Zoning Board pursuant to these LDRs.
  - (2) The decision of the Planning and Zoning Board shall be presumed to be correct and the applicant shall have the burden to demonstrate the error which must be proved by a preponderance of the evidence, and such evidence must be competent and substantial.
  - (3) Appeals of decisions of the Planning and Zoning Board shall be heard within 45 days of the day the appeal is filed with the City Clerk.
  - (4) All decisions of the City Council on appeal from a decision of the Planning and Zoning Board shall be final City action.

### **Section 14: Reconsideration.**

- (A) **Variances, conditional uses, and rezonings.** Any application for a variance, conditional use, or rezoning on a parcel or lot that is substantially the same as a previous application on the same parcel or lot for a variance, conditional use, or rezoning which has been denied shall not be eligible for reconsideration for one year from the date such application was denied, unless there has been a material change to the application as determined by the Planning and Zoning Director.

## **ARTICLE 2.4 HEARING OFFICER; APPEALS**

**Section 1: *Scope and Authority*;** The Hearing Officer shall be appointed by the City Council shall have the authority to hear and decide appeals of an interpretation of the LDRs pursuant to the process as set forth herein.

### **Section 2: *Appointment, Removal and Qualifications*; -**

(A) **Appointment.** The City Council may appoint one or more Hearing Officers who shall have the powers and authority to hold hearings as set forth herein.

(B) **Recommendation.** The City manager shall, upon the recommendation and advice of the City Attorney, bi-annually recruit qualified attorneys and retired judges to serve as Hearing Officers. Upon being provided two recommended attorneys and/or retired judges by the City Manager and City

Attorney, the City Council shall appoint, by resolution, at least one Hearing Officer and one alternate Hearing Officer.

**(C) Qualification.** Applicants for the Hearing Officer position must:

- (1) Be a resident of the State of Florida
- (2) Be a retired Florida Judge or be an attorney who has been a member in good standing with the Florida Bar for at least seven; and
- (3) Possess experience and expertise in land use and local government law and a working familiarity with real estate and administrative law.

**(D) Term.** Each Hearing Officer shall have the term of two (2) years. Hearing Officers may be appointed for consecutive two (2) year terms. Hearing Officers are subject to removal, with or without cause, from their positions at any time by the City Council in its sole discretion.

**(E) Not City Employees.** Hearing Officers should not be considered City Employees. However, subject to compliance with documentation required by the City Manager or his or her designee, a Hearing Officer may be compensated at a rate to be determined by the City Manager. Hearing Officers shall serve in an ex officio capacity if the appointed Hearing Officer serves other local governments as a special magistrate. Such service to other local governments does not create duties inconsistent with serving as Hearing Officer to the City of Westlake.

**(F) Jurisdiction.** Hearing Officers shall have the jurisdiction and authority to decide cases appealing the interpretations of the City's Land Development Regulations made by the Planning and Zoning Director, as confirmed by the City Attorney, pursuant to the process set forth in Chapter 1 of these Land Development Regulations.

**(G) Powers.** The Hearing Officers shall have the power to:

- (1) adopt rules for the conduct of its hearings;
- (2) take testimony under oath;
- (3) issues orders interpreting the Land Development Regulations as set forth in this Section.

**Section 3: Procedures** – In the event that an Applicant has sought an interpretation of these Land Development Regulations pursuant to the process set forth in Chapter 1, and thereafter wishes to appeal such interpretation issued by the Planning and Zoning Director as confirmed by the City Attorney to the Hearing Officer, the following procedures shall apply.

**(A) Fees and Costs.** Applicants shall be responsible for fees and costs associated with Appeals pursuant to this Chapter. The City Manager shall establish the appropriate schedule of fees, charges, and expenses related to Appeals pursuant to this Chapter.

**(B) Application Requirements; Standing.**

- (1) Applications governed by this section may be submitted on any day during normal business hours and must be submitted within 30 days of the date of the City's issuance of its written order, requirement, decision or determination from which an appeal is being requested.
- (2) Applications for appeal must state the specific code provisions at issue and the specific error in interpretation or application alleged by the applicant. The Application should include citations to all relevant the legal authority supporting the applicants appeal.
- (3) Only aggrieved parties who have pending applications before the City or who will otherwise be adversely impacted by an interpretation or application of these Land Development Regulations may file an Appeal pursuant to this Section.

**(C) Scheduling; Notice.**

- (1) The City Attorney shall have 10 business days from submittal to forward the application for appeal to the Hearing Officer for review.
- (2) The City Attorney shall schedule the appeal hearing before the Hearing Officer within a reasonable time from the date that the City receives the application for appeal, said date not to exceed 60 days. The applicant who filed the appeal shall be notified in writing of the date, time and location of the appeal hearing.
- (3) Notice of all such Appeal Hearings shall be published in a general circulation newspaper pursuant to the requirements for publication set forth elsewhere in this Chapter 2.

**(D) Format of Hearing.**

- (1) Applicants must submit all supporting written materials with its application for appeal to the Hearing Officer.
- (2) The City shall provide any materials supporting its position to the Hearing Officer with copies to the applicant no later than 10 days before the hearing. The Applicant may submit rebuttal materials to the Hearing Officer with copies to the City no later than 5 days before the Hearing.
- (3) At the hearing, the Hearing Officer shall provide the Applicant and City staff a reasonable opportunity (no less than 15 minutes) to be heard on any matter or issue that is relevant to the proceeding. Either party may appear at the hearing in person or through an attorney or other designated representative. Failure of any person to appear at a scheduled hearing in accordance with this Chapter shall constitute a waiver of that person's right to a hearing, unless the Hearing Officer determines, in its sole discretion, that the person's failure to appear was justified.
- (4) The Applicant and City staff may present relevant testimony and exhibits. All testimony shall be under oath and shall be recorded. The formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

**(E) Ruling.**

(1) Upon consideration of all the relevant testimony and evidence presented by the Applicant and City staff at the hearing, the Hearing Officer may approve an appeal upon his or her conclusions of law that an error in the interpretation or application of these Land Development Regulations was made by the City.

(2) The Hearing Officer shall provide written notice of its decision within 20 days of the hearing. If the decision is denial, the written decision must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority serving as the basis for the denial.

(3) The written decision of the Hearing Officer shall constitute final agency action and the applicant may appeal the decision of the Hearing Officer in the Division of Administrative Hearings or the applicable court of law.

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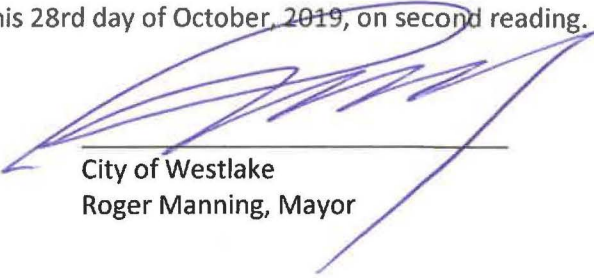
**Section 3 Severability.** Should the provisions of this ordinance be declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall remain notwithstanding the invalidity of any part.

**Section 4. Codification.** It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances for the City of Westlake, Florida, and the sections of this ordinance may be re-numbered or re-lettered to accomplish such intentions, and the word 'ordinance' shall be changed to "section" or other appropriate word.

**Section 5. Effective Date:** This ordinance shall be effective upon adoption on second reading.

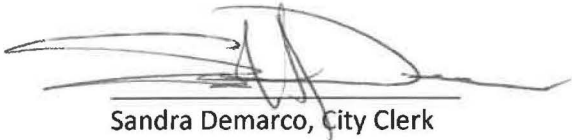
PASSED this 7th day of October, 2019, on first reading.

PASSED AND ADOPTED this 28rd day of October, 2019, on second reading.



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City of Westlake  
Roger Manning, Mayor



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Sandra Demarco, City Clerk

Approved as to Form and Sufficiency



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Pam E. Booker, City Attorney