# **LAKE WALES**

# OFFICIAL CODE OF ORDINANCES

CHAPTER 23. ZONING, LAND USE AND DEVELOPMENT REGULATION

#### LAKE WALES

# CHAPTER 23. ZONING, LAND USE AND DEVELOPMENT REGULATION

# **Table of Contents**

# Article I. General Provisions

- § 23-101. Title.
- § 23-102. Authority.
- § 23-103. Purpose and intent.
- § 23-104. Findings of fact.
- § 23-105. Applicability.
- § 23-106. Repeal of conflicting local laws.
- § 23-107. Interpretation.
- § 23-108. Authority to enter property in performance of duties.
- § 23-109. Penalties for violation.
- § 23-110. Severability.

#### Article II. Administration And Procedures

- Division 1. Administering Officials And Boards
  - § 23-201. Administering officials and boards established.
  - § 23-202. Administrative official.
  - § 23-203. Building official.
  - § 23-204. Development review committee.
  - § 23-205. Planning board.
  - $\S$  23-206. Board of appeals.
  - § 23-207. City commission.
  - § 23-208. Historic district regulatory board.
- Division 2. Application And Approval Requirements And Procedures
  - § 23-211. In general.
  - $\S$  23-212. Verification of zoning compliance.
  - $\S$  23-213. Certificate of use.
  - $\S$  23-214. Tree relocation or removal permit.
  - § 23-215. Land alteration permit.
  - § 23-216. Special exception use permit.
- § 23-217. Site development permit.
- § 23-218. Zoning map amendment.
- § 23-219. Comprehensive plan future land use map amendment.
- § 23-220. Annexation.
- § 23-221. Vacation of public rights-of-way or public easements.
- § 23-222. Site plans.
- § 23-223. Land subdivision.
- § 23-224. Planned development project (PDP).
- § 23-225. Development of regional impact (DRI).
- $\S$  23-226. Acceptance of developer donations, dedications, contributions, etc.
- § 23-227. Certificate of appropriateness.
- § 23-228. Master Development (MDP) Review Process.

```
§§ 23-229--23-240. Reserved.
```

Division 3. Public Notice Requirements, Review Fees And Appeal Procedures

§ 23-241. Public notice requirements.

§ 23-242. Establishment of review fees.

§ 23-243. Exemption from payment of review fees.

§ 23-244. Appeals and variances.

#### Article III. General Development Regulations

```
Division 1. Land Development
```

§ 23-301. Lots and structures.

§ 23-302. Land preparation.

§ 23-303. Streets.

§ 23-304. General requirements for lots and yards.

§ 23-305. Fire protection.

§ 23-306. Off-street parking and vehicular access.

§ 23-307. Landscaping requirements.

§ 23-308. Drainage.

§ 23-309. Easements.

 $\S$  23-310. Recreation area.

Division 2. Conditional Use Regulations

§ 23-341. Adult entertainment uses.

§ 23-342. Alcoholic beverage sales and service.

§ 23-343. Auctions, sales, and events, temporary.

§ 23-344. Automotive uses.

§ 23-345. Bed and breakfast establishments.

§ 23-346. Boarding houses.

§ 23-347. Day care.

§ 23-348. Home Based Businesses

§ 23-350. Laundromats.

§ 23-351. Newsracks/modular newsracks.

§ 23-352. Nursing care homes.

§ 23-353. Outdoor seating area.

§ 23-354. Tower and telecommunication facilities.

§ 23-355. Communications Facilities in the Public Right-of-Way

§ 23-356. Yard sales.

§ 23-357. Medical Marijuana Dispensaries and Treatment Centers

§ 23-358. Mobile Food Vending/Mobile Food Dispensing Vehicles

§ 23-359. Solar power generation facility

Division 3. Non-Conforming Uses, Lots, And Structures

§ 23-371. Intent.

§ 23-372. Nonconforming regulations.

# Article IV. District Regulations

# Division 1. Zoning Districts

§ 23-401. District classifications.

§ 23-402. Maps.

§ 23-403. Interpretation of zoning district boundaries.

 $\S$  23-404. Criteria for zoning district designations.

§ 23-405. Correspondence of zoning districts to comprehensive plan land uses.

Division 2. Standard Zoning District Regulations

§ 23-421. Permitted and special exception uses allowed in zoning districts.

§ 23-422. Dimensional requirements for use of land.

```
§ 23-423. Downtown Mixed-use Design Standards
```

Division 3. Special Exception Use Regulations

§ 23-431. Special exception uses.

§ 23-432. General standards.

§ 23-433. Review criteria.

§ 23-434. Discontinued use (moved to 23-216.6.b.)

Division 4. Planned Development Project Regulations

§ 23-441. Applicability.

§ 23-442. General standards and regulations.

§ 23-443. Residential PDPs.

§ 23-444. Commercial, industrial, and professional PDPs.

§ 23-445. Mixed-use PDPs.

Division 5. Master Development Plan Regulations

§ 23-450. Master Development Plan (MDP)

# Article V. Accessory Uses And Structures

```
Division 1. General Provisions
```

§ 23-501. Generally.

Division 2. Residential Accessory Uses And Structures

§ 23-521. Accessory uses, residential properties.

§ 23-522. Accessory structures, residential properties.

§ 23-523. Docks and piers.

§ 23-524. Fences and hedges

§ 23-525. Satellite dishes or antennas.

§ 23-526. Signs.

§ 23-527. Swimming pools.

Division 3. Nonresidential Accessory Uses And Structures

§ 23-541. Accessory uses.

§ 23-542. Accessory structures, in general.

§ 23-543. Fences and hedges.

 $\S$  23-544. Satellite dishes or antennas.

§ 23-545. Signs.

§ 23-546. Swimming pools.

#### Article VI. Resource Protection Standards

# Division 1. Development In Flood Prone Areas

§ 23-601. GENERAL

§ 23-601.1. Definitions.

§ 23-602. APPLICABILITY

 $\S$  23-603. DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

§ 23-604. PERMITS

 $\S$  23-605. SITE PLANS AND CONSTRUCTION DOCUMENTS

§ 23-606. INSPECTIONS

§ 23-607. VARIANCES AND APPEALS

§ 23-608. VIOLATIONS

 $\S$  23-609. DEFINITIONS

§ 23-610. BUILDINGS AND STRUCTURES

§ 23-611. SUBDIVISIONS

 $\S$  23-612. SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS

§ 23-613. MANUFACTURED HOMES

§ 23-614. RECREATIONAL VEHICLES AND PARK TRAILERS

- § 23-615. TANKS
- § 23-616. OTHER DEVELOPMENT
- Division 2. Potable Water Wellhead Protection Areas
  - § 23-621. Purpose and intent.
  - § 23-622. Applicability.
  - § 23-623. Wellhead protection area and zones.
  - § 23-624. Modification of requirements.
  - § 23-625. Location of new wells.
- Division 3. Florida Water Star<sup>SM</sup> Certification Required
  - § 23-631. Purpose and Intent
  - § 23-632. Applicability.
  - § 23-633. Definitions
  - § 23-634. Efficient Plumbing Requirements
  - § 23-635. Irrigation System
  - § 23-636. Florida Water Star Certification Effect
  - § 23-637. Enforcement
- Division 5. Historic Preservation
  - § 23-651. Purpose and intent, findings of fact.
  - § 23-652. Criteria for historic designations.
  - § 23-653. Certificates of appropriateness.

# Article VII. Impacts Of Development On Public Facilities

- Division 1. Concurrency
  - § 23-701. Purpose and intent; definitions
  - § 23-702. Components of concurrency management system
  - § 23-703. Inventory of public facilities and concurrency status report.
  - § 23-704. Concurrency review.
  - § 23-705. Level of service standards.
  - § 23-706. Application of level of service standards.
  - § 23-707. Determination of available capacity.
- § 23-708. Criteria for concurrency.
- § 23-709. Transportation proportionate fair-share program.
- Division 2. Development Agreements
  - § 23-731. Utility capacity queue agreement.
- Division 3. Development Exactions And Dedications
  - § 23-751. Dedication of sites for recreational uses or fee in lieu.
  - § 23-752. Dedication of right-of-way.
  - § 23-753. Dedication of utility easements.
  - $\S$  23-754. Conveyance of land, streets or facilities to an owners association.
- Division 4. Public Facilities Impact Fees
  - $\S$  23-761. Definitions.
  - § 23-762. Legislative findings and intent.
  - § 23-763. Adoption of studies and Schedules.
  - § 23-764. Payment of fees.
  - § 23-765. Alternative impact fee calculation.
  - § 23-766. Alternative collection of fees.
  - § 23-767. Exemptions.
  - § 23-768. Change of size or use.
  - $\S$  23-769. Vested rights.
  - § 23-770. Developer contribution credit.
  - § 23-771. Affordable housing.

- § 23-772. Review hearings.
- § 23-773. Refunds of impact fees.
- § 23-774. Water system impact fees.
- $\S$  23-775. Wastewater system impact fees.
- § 23-776. Fire/rescue services impact fees.
- § 23-777. Police services impact fees.
- $\S$  23-778. Parks and recreation impact fees.
- § 23-779. Library impact fees.
- $\S$  23-780. Multimodal Transportation Impact Fees.
- § 23-781. Annual adjustment of impact fees.
- § 23-782. Applicability of revised fees.
- $\S$  23-783. Review of impact fees required.
- $\S$  23-784. Declaration of exclusion from Administrative Procedures Act.

#### Article VIII. Definitions

- $\S$  23-801. Rules for construction of language.
- § 23-802. Definitions.

#### LAKE WALES

# CHAPTER 23. ZONING, LAND USE AND DEVELOPMENT REGULATION

#### **Article I. General Provisions**

#### § 23-101. Title.

This ordinance is a compilation of the zoning, land use and development regulations for the city and shall be entitled "The City of Lake Wales Zoning, Land Use and Development Regulations" and is referred to herein as the "land development regulations."

# § 23-102. Authority.

This ordinance enacting the City of Lake Wales Land Development Regulations is adopted pursuant to the authority of Article VII, Section 2(b), Florida Constitution, the "Municipal Home Rule Powers Act," F.S. § 166.021, et al and the "Local Government Comprehensive Planning and Land Development Regulation Act," F.S. § 163.3202.

### § 23-103. Purpose and intent.

The city has adopted these land development regulations to implement the city's comprehensive plan through the establishment of certain regulations, procedures and standards for reviewing and approving all development orders, permits and all development and use of land within the incorporated area of the City of Lake Wales. This ordinance is enacted in order to protect and preserve the public health, safety, and general welfare and to assist in the orderly and controlled growth and development of the city. It is the further intent of this ordinance that the city's land development regulations offer and establish an efficient, effective and equitable regulatory and procedural code relating to the development of the city while adequately respecting and protecting the rights and interests of the citizens of the City of Lake Wales.

#### § 23-104. Findings of fact.

- a. The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, F.S. ch. 163, requires the City of Lake Wales to enact land development regulations which are consistent with the city's comprehensive plan to implement that plan and control and provide for development within the City of Lake Wales. The land development regulations contain specific and detailed provisions that are necessary and desirable to implement the adopted comprehensive plan and are consistent with that plan.
- b. The control of the location, design and construction of development within the City of Lake Wales is necessary in order to protect the public health, safety and welfare and to maintain and continue the existing quality of life within the City of Lake Wales. The land development regulations accomplish that mandate.
- c. This ordinance establishing and adopting the City of Lake Wales Land Development Regulations was enacted pursuant to the provisions of F.S. § 166.041(1)(c), and F.S. ch. 163, as applicable.

# § 23-105. Applicability.

Sec. 23-105.1 General applicability. Except as provided in subsection 23-105.2, the provisions of the land development regulations shall apply to all development within the City of Lake Wales, Florida. No development shall be undertaken without prior approval and the issuance of the appropriate development order or permit pursuant to the appropriate and applicable provisions of the land development regulations, except as expressly provided herein.

Sec. 23-105.2 Exceptions.

a . The provisions of the land development regulations shall not affect development which has been previously approved for projects with development plans that have not expired at the time of the adoption of the land development regulations and on which development activity has commenced or will commence and proceed in accordance with the time limits, conditions or terms set forth in the regulations under which that development was originally approved. Such excepted development must meet only the requirements of the regulations in effect when the development was approved. However, if the development plan, permit or order expires or is otherwise invalidated, any further development on the site involved shall occur only in conformance with the requirements of these land development regulations.

- b. The provisions of the land development regulations shall not affect development for which a building permit has been issued on or before the effective date of this ordinance, provided that such building permit was lawfully issued and remains in full force and effect and provided that such development activity as authorized has been commenced or will commence within six (6) months of the effective date of the land development regulations. This exception shall apply to development activity so long as such activity continues without interruption until the development is completed. However, if the building permit expires, any further development on that site shall occur only in conformance with the requirements of these land development regulations.
- c. The provisions of these land development regulations relating to concurrency management shall not be applicable to a development order or permit for any single-family residential unit if such single-family residential unit is the only development to be undertaken or constructed by the owner of and upon a legal lot of record.
- d. Utility installations, development by a government entity or public utility, development of railroad facilities and development of public schools shall be governed or regulated by these land development regulations except where specifically exempt as provided by general law or these land use regulations.
- Sec. 23-105.3 Development review. Development review which is not subject to these land development regulations pursuant to the provisions of subsections 23-105.2a. and b. shall be reviewed and approved in accordance with the land development regulations that were applicable and in effect immediately prior to the adoption of these land development regulations.

Sec. 23-105.4 Abrogation. These land development regulations are not intended to abrogate, repeal or interfere with any existing easements, covenants or deed restrictions duly recorded in the public records of Polk County applying to, or lying within, the City of Lake Wales. Furthermore, these land development regulations are not intended to repeal any lawful approval given prior to the effective date of these land development regulations by official city action as it relates to any planned development project, special exception, variance or subdivision.

#### § 23-106. Repeal of conflicting local laws.

Any and all other city ordinances, resolutions, general laws, codes or any part thereof, which conflict with any provision or provisions of this ordinance are hereby repealed.

#### § 23-107. Interpretation.

The provisions of these regulations shall be held to be the minimum requirements adopted to promote the public health, safety and welfare and to implement the comprehensive plan of the city.

# § 23-108. Authority to enter property in performance of duties.

Any person acting under the direction of the city manager in the performance of functions and duties pursuant to these regulations shall be authorized to enter upon any land and make inspections, examinations, and surveys as necessary in its administration and enforcement, subject to the limitations set forth in Florida Statutes.

#### § 23-109. Penalties for violation.

- a. Any person, corporation, partnership or other legal entity under Florida Law, whether owner, lessee, principal, agent, employee, or otherwise who violates any provision of these land development regulations, permits any such violation, fails to comply with any of the provisions or requirements hereof, including any conditions, stipulations, or safeguards attached to any permit, approval for land use and development, variance or other final authorization or approval hereunder; or who erects, constructs or reconstructs any building or structure, or uses any land in violation of these land development regulations, or any written statement or plan submitted by such person and approved pursuant hereto, shall be in violation of these land development regulations, and upon conviction, shall be deemed guilty of a misdemeanor and shall be subject to a fine not exceeding five hundred dollars (\$500.00) for each day that a violation exists, or by imprisonment for a period not exceeding sixty (60) days, or both.
- b. Each and every person who commits, participates in, assists in, or maintains any such violation may individually be found guilty of a separate offense and for each day after the first fifteen (15) days that a violation continues to exist, such date shall constitute an additional and separate offense.

c. Nothing contained herein shall prohibit, exclude or prevent the city from utilizing or undertaking any other enforcement mechanism or procedure that may be available to municipalities for the enforcement of ordinances as provided for by law, including the filing of civil litigation and the obtaining of injunctive relief.

#### § 23-110. Severability.

If any section, subsection, paragraph, sentence, clause or phrase of these Land development regulations is for any reason held by any court of competent jurisdiction to be unconstitutional or otherwise invalid, the validity of the remaining portions of these regulations shall continue in full force and effect, it being the intent of the city commission to have adopted these regulations without such unconstitutional or invalid section, subsection, paragraph, sentence, clause or phrase.

#### **Article II. Administration And Procedures**

# Division 1. Administering Officials And Boards

#### § 23-201. Administering officials and boards established.

The City Commission of the City of Lake Wales, hereby establishes and authorizes the officials and boards designated in this division to administer the provisions of the land development regulations.

# § 23-202. Administrative official.

Sec. 23-202.1 Designated. When used in these land development regulations, "administrative official" shall mean the planning and development director or designee. The director of public works, city engineer, building official, code enforcement official, city attorney and city clerk are empowered by certain sections of these regulations to administer specific provisions of these regulations.

Sec. 23-202.2 Functions and duties. The administrative official shall be charged and provided with the authority to administer and enforce these land development regulations and is charged specifically with the following duties:

- a. To certify the accuracy of the official zoning map of the City of Lake Wales;
- b. To certify and cause to be made all amendments to the official zoning map;
- c. To interpret all provisions of these regulations and maintain a record of all such interpretations;
- d. To accept and process all applications which may be required for rezoning actions, variances, text amendments to these regulations, comprehensive plan amendments, sign permits, site plans, subdivision plats, and all other such applications;
- e. To coordinate the concurrency management system required by the City of Lake Wales comprehensive plan and provided in section 23-701 et seq. herein;
- f. To establish regular meetings of the development review committee, planning board and board of appeals and maintain public records of their actions.
- g. To perform other duties as may be directed by the city manager.

# § 23-203. Building official.

The building official is that person designated by the city manager who is responsible for the issuance of all building and related trade permits in the City of Lake Wales including the inspection of work in progress pursuant to city approved building plans.

#### § 23-204. Development review committee.

Sec. 23-204.1 Designated. When used in these land development regulations, the development review committee shall mean a committee consisting of the planning and development director, the building official, the public works director, the city engineer, the fire marshal, the police chief and other members of city staff as may be designated by the city manager.

Sec. 23-204.2 Functions and duties. The development review committee shall be charged with the following duties:

- a. To review and make recommendations on conceptual and preliminary site plans for commercial and multi-family development projects and for any change of use or expansion of use;
- b. To review and make recommendations on planned development project plans;
- c. To review and make recommendations on subdivision plats and vacations of plats;
- d. To review and act upon applications for site development permits;
- e. To perform other duties as may be directed by the city manager.

#### § 23-205. Planning board.

Effective: Tuesday, January 19, 2016 -- Thursday, July 16, 2015

Sec. 23-205.1 Designated. The City of Lake Wales Planning and Zoning Board is designated as the Local Planning Agency pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, F.S. ch. 163, Part II, and referred to herein, as "the planning board". Except as specifically provided in this section, all provisions of sections 2-13 through 2-26 of the Lake Wales Code of Ordinances shall apply.

Sec. 23-205.2 Composition of planning board and terms of members.

- a. The planning board shall consist of seven (7) regular members who shall be appointed by the governing body. At least four (4) must be residents of the city, and three (3) members must either reside in or own property in the city.
- b. Regular members shall be appointed to three-year terms, staggered so that three (3) regular members are appointed or reappointed in one (1) year, and two (2) regular members are appointed or reappointed in each of two (2) other years. All members serving on the planning and zoning board at the time this ordinance is adopted shall serve the terms to which they were originally appointed.
- c. All vacancies on the planning board shall be filled within thirty (30) days. Any member may be removed by the mayor with the approval of the city commission for inefficiency, neglect of duty, malfeasance, conflict of interest or similar cause, after written notice and a public hearing.

Sec. 23-205.3 Rules of procedure.

- a. The planning board shall elect from its membership one (1) member to serve as chairman and one (1) to serve as vice-chairman.
- b. The term of the chairman and vice-chairman named by the planning board shall be for a period of one (1) year with eligibility for re-election.
- c. The planning board shall hold regular meetings at the call of the chairman on the fourth Tuesday of each month and at such other times as the planning board may determine. Special meetings may be called by the chairman or vice-chairman with twelve (12) hours of notice.
- d. The planning board shall adopt rules for transaction of its business and shall keep a public record of its resolutions, transactions, findings and determinations which record shall be filed with the official records of the city. The planning board may set a limit on the number of applications which may be scheduled for review on an agenda.

Sec. 23-205.4 Functions, powers and duties. To act as Local Planning Agency pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, F.S. ch. 163, part II, and perform all functions and duties prescribed therein;

To advise and make recommendations to the city commission regarding applications for amendments to the official zoning map and comprehensive plan, rezonings of property, preliminary planned development projects and subdivisions;

To consider the need for revision or addition of regulations in these land development regulations and recommend changes to the city commission;

To hear and decide applications for special exception use permits and site plans in compliance with these regulations;

To perform any other duties which are lawfully assigned to it by the city commission.

(Ord. No. 2008-04, § 1, 2-19-08; Ord. No. 2008-28, § 1, 9-2-08; Ord. No. 2015-04, § 1, 7-7-15; Ord. No. 2016-01, § 1, 01-19-16)

#### § 23-206. Board of appeals.

Sec. 23-206.1 Designated. The City of Lake Wales Board of Zoning Adjustment and Appeals is designated, and referred to herein, as "the board of appeals".

Sec. 23-206.2 Composition of board of appeals and terms of members.

- a. The board of appeals shall consist of five (5) regular members who shall be appointed by the governing body in accordance with section 2-26 of the Lake Wales Code of Ordinances, except that all members shall be residents of the city.
- b. Regular members shall be appointed to three-year terms, staggered so that three (3) regular members are appointed or reappointed in one (1) year, and two (2) regular members are appointed or reappointed in each of two (2) other years. Regular members serving on the board of zoning adjustment and appeals at the time this ordinance is adopted shall serve the terms to which they were originally appointed.
- c. All vacancies on the board of appeals shall be filled within thirty (30) days. Any member may be removed by the mayor with the approval of the city commission for inefficiency, neglect of duty, malfeasance, conflict of interest or similar cause, after written notice and a public hearing.

Sec. 23-206.2 Rules of procedure.

- a. The board of appeals shall elect from its membership one (1) member to serve as chairman and one (1) to serve as vice-chairman.
- b. The term of the chairman, vice-chairman and secretary named by the board of appeals shall be for a period of one (1) year with eligibility for re-election.
- c. The board of appeals shall hold regular meetings at the call of the chairman and at such other times as the board may determine. Special meetings may be called by the chairman or vice-chairman with twelve (12) hours of notice.
- d. The board of appeals shall adopt rules for transaction of its business and shall keep a public record of its resolutions, transactions, findings and determinations which record shall be filed with the official records of the city.

Sec. 23-206.3 Functions, powers and duties.

- a. To hear and decide appeals where it is alleged that there is an error in any order, decision or determination of the administrative official in the enforcement of these zoning regulations;
- b. To authorize such variance from the terms of these zoning regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these zoning regulations would result in unnecessary and undue hardship. A variance from the terms of these zoning regulations shall not be granted until a public hearing is held before the board of appeals;
- c. To hear and decide appeals where the planning board has denied an application for a special exception use permit or site plan approval;
- d. To perform any other duties which are lawfully assigned to it by the city commission.

(Ord. No. 2008-28, § 2, 9-2-08)

#### § 23-207. City commission.

- a. To decide comprehensive plan amendments, zoning map and text amendments, annexations, public right-ofway and easement vacations, subdivision plats, developments of regional impact and planned development project plans per the requirements of applicable sections of this chapter;
- b. To accept developer donations, dedications, and contributions;
- c. To approve development agreements;
- d. To decide upon reservations of capacity in public facilities.

# § 23-208. Historic district regulatory board.

Sec. 23-208.1. Designated. The City of Lake Wales Historic District Regulatory Board is designated, and referred to herein as the "historic board." The purpose of the historic board is to administer the regulations within this chapter pertaining to historic districts.

Sec. 23-208.2. Composition of historic board and terms of members.

- a. The historic board shall consist of five (5) regular members who shall be appointed by the governing body in accordance with section 2-26 of the Code. At least fifty (50) percent of the members shall reside or own property within the city. Members shall be chosen to provide expertise in the following disciplines to the extent such professionals are available in the community: historic preservation, architectural history, curation, conservation, anthropology, building construction, landscape architecture, planning, urban design, and regulatory procedures.
- b. No member of the historic board may concurrently serve on any other regulatory board of the city.
- c. Members shall be appointed to three-year terms, staggered so that three (3) members are appointed or reappointed in one (1) year, and two (2) members are appointed or reappointed in each of two (2) other years.
- d. All vacancies on the historic board shall be filled within sixty (60) calendar days. Any member may be removed by the mayor with the approval of the city commission for inefficiency, neglect of duty, malfeasance, conflict of interest or similar cause, after written notice and a public hearing.

Sec. 23-208.3. Rules of procedure.

- a. The historic board shall elect from its membership one (1) member to serve as chairman and one (1) to serve as vice-chairman.
- b. The term of the chairman and vice chairman shall be for a period of one (1) year with eligibility for reelection.
- c. The historic board shall hold regular meetings at the call of the chairman and at such other times as the board may determine. Special meetings may be called by the chairman or vice-chairman with twelve (12) hours of notice. No less than four (4) meetings shall be held each year.
- d. Each board member shall make a reasonable effort to attend state historic preservation office training programs.
- e. The historic board shall adopt rules for transaction of its business and shall keep a public record of its resolutions, transactions, findings, and determinations which record shall be filed with the official records of the city.

Sec. 23-208.4. Functions, powers, and duties.

- a. To hear and decide upon applications for certificates of appropriateness as required under this chapter.
- b. To adopt guidelines for the review and issuance of certificates of appropriateness consistent with the purposes of this chapter, the historic preservation element of the comprehensive plan, and the Secretary of the Interior's standards for historic properties.
- c. To make recommendations to the city commission on matters relating to the establishment of historic districts and regulation of such districts.
- d. To make recommendations to the planning board and the city commission for amendments to the code of ordinances and the comprehensive plan on matters relating to historic preservation.
- e. To make recommendations to the planning board and city commission regarding special permits for properties within an historic district in cases in which the special permit involves work requiring a certificate of appropriateness.
- f. To perform any other duties which are lawfully assigned to it by the city commission.

(Ord. No. 2008-11, § 1, 5-20-08)

#### Division 2. Application And Approval Requirements And Procedures

# § 23-211. In general.

Effective: Tuesday, July 07, 2015

The permits and approvals specified in this division are required for development of any land within the city. Permits may be applied for at the office of the administrative official on forms supplied by that office. Deadlines and information required with applications shall be set forth in a procedures manual maintained by the administrative official. The administrative official may request additional information, including a survey, if such information is necessary for the processing of the application. Incomplete applications shall not be scheduled for review until all required information is submitted in a timely manner by the applicant. Table 23-211 below summarizes approvals that are required for various types of applications. Application fees are set forth in section 23-242. All applications for development approval or changes of use are subject to the concurrency requirements set forth in Article VII, Division 1 (section 23-701 et seq.).

TABLE 23-211

# LAND USE APPLICATIONS—REVIEW, APPROVAL & PUBLIC HEARING REQUIREMENTS

CODE SECTION AND TYPE OF APPLICATION	REVIEW & APPROVAL PROCESS		
	ADMINISTRATIVE	PLANNING BOARD	CITY COMMISSION
23-212 Verification of Zoning Compliance	A		
23-213 Certificate of Use	A		
23-214 Tree Removal Permit	A		
23-215 Land Alteration Permit	A		
23-216 Special Exception Use Permit	R	A - PH	
23-217 Site Development Permit	A		
23-218 Zoning Map Amendment	R	R - PH	A-PH ORD
23-219 Comprehensive Plan Amendment	R	R - PH	A-PH ORD
23-220 Annexation	R		A-PH ORD
23-221 Vacation of Easement	R		A - RES
23-221 /acation of Right-of-Way	R		A-PH ORD
23-222 Site Plan—Minor	A		
23-222 Site Plan—Major	R	A	
23-223 Subdivision Plat—Preliminary	R	R	A
23-223 Subdivision Plat—Final	R		A
23-223 Vacation of Plat	R	R	A - PH
23-224 Planned Dev Project—Preliminary	R	R - PH	A - PH
23-224 Planned Dev Project—Final survey	A		
23-225 Development of Regional Impact		R-PH	A - PH

#### A = Approval Required

R = Review and Recommend PH = Public Hearing Required

ORD = Ordinance Required

RES = Resolution Required

(Ord. No. 2007-14, § 1, 6-5-07; Ord. No. 2015-04, § 2, 7-7-15)

# § 23-212. Verification of zoning compliance.

Sec. 212.1 Applicability. Compliance with zoning district requirements and other provisions of this chapter must be verified by the administrative official prior to:

- a. The processing of any application for a building permit for the construction or alteration of any structure, including temporary structures and accessory structures such as sheds, swimming pools, signs (unless specifically exempted in article V), fences and parking areas, except for recurring maintenance, regardless of cost. Verification of zoning compliance under this section is required for applications for single-family or two-family houses and other developments exempt from the site plan requirements of section 23-222
- b. Approval of applications for alcoholic beverage licenses.
- c. A written zoning determination.

Sec. 212.2 Application and review.

a. Application for a building permit for the construction or alteration of any structure, including accessory structures and signs, shall be accompanied by a survey of the property showing the location and dimensions of the structure and other improvements on the site. For new buildings and additions, the survey shall show the proposed finished floor elevation and a statement of proposed uses of the property. A fee for zoning verification shall be required as set forth in section 23-242. The administrative official shall verify compliance with all provisions of this chapter and any conditions of approval applicable to the property.

Zoning compliance shall be determined within ten (10) business days of the receipt of a complete application. Application for a sign in the downtown historic district must include a certificate of appropriateness (see section 23-227). In the case of a finding of non-compliance, the administrative official shall provide the applicant with a written statement of the reasons for the finding of non-compliance with specific reference to the provisions of these land development regulations.

For improvements requiring a building permit, verification of zoning compliance shall be determined prior to the processing of the building permit.

- b. The zoning compliance forms of an application for an alcoholic beverage license shall be signed by the administrative official only after verification of zoning compliance and receipt of the application fee as set forth in section 23-242
- c. A request for written zoning determination must be submitted in writing to the administrative official and must be accompanied by the fee for a written zoning determination as set forth in section 23-242. The request shall include a valid address and/or the property identification number from the county property appraiser and shall clearly state the information requested.

(Ord. No. 2013-05, § 1, 6-18-13)

#### § 23-213. Certificate of use.

- a. A certificate of use issued by the administrative official is required before a newly erected or altered structure, including parking areas, is occupied or used. A survey showing the finished floor elevations and locations of all structures on the lot is required. The administrative official shall issue a certificate of use when work is substantially complete and in accordance with the approved plans and with the provisions of these land development regulations.
- b. A certificate of use is required prior to the occupancy or use of a structure when the type of use is changed even though no structure was erected or altered. A change from one use classification to another as listed on Table 23-421 "Permitted Uses and Special Exception Uses in Standard Zoning Districts" shall constitute a change of use. The administrative official shall issue a certificate of use if all the provisions of these land development regulations and other applicable ordinances are complied with, including:

- 1. Requirements for site plan approval per section 23-222
- 2. Concurrency requirements of article VII, div. 1 of this chapter for assessment of impacts upon roadways, sewer and water facilities, drainage or recreation facilities;
- 3. Review by the development review committee for compliance with building and fire codes;
- 4. Assessment of impact fees, if applicable, per article VII, div. 4.
- c. A certificate of use is required for the addition of certain accessory uses as stated in article V, accessory uses and structures.
- d. For new buildings, a survey of the property showing the location of all structures on the lot and the finished elevations of principal buildings shall be submitted prior to the issuance of a certificate of use. For multifamily and non-residential projects, a master survey may be updated upon the completion of each building or unit, as applicable.

# § 23-214. Tree relocation or removal permit.

a. *Applicability*. A permit pursuant to this section is required prior to the removal or relocation of any tree meeting the definition of a tree unless specifically exempted.

A tree is defined for the purposes of this section as a woody, self-supporting plant, having a mainstem or cluster of mainstems and having a diameter at four and one-half (4½) feet above the ground of four (4) inches; a tree is further defined as a plant which at maturity grows to at least fifteen (15) feet high in the Polk County area. Also specifically included are significant stands of oak trees defined as a group of four (4) or more oak trees which may have trunk diameters of less than four inches but which constitute a compact unit or grove covering 50 square feet or more in area.

b. *Exclusions and exemptions*. Specifically excluded and exempted from permit requirements are removal of individual citrus trees; however, this exemption is not applicable to massive clearing of trees which will require a land alteration permit. Trees exempt from the tree removal permit requirement include, but are not limited to, the following:

Broussonetia-papyrifera (Paper mulberry)

Castor Bean

Catlainmonosa

Chinese Tallow

Casuarinaceae (Australian pine)

Cupaniopsos-anacardioides (Carrotwood)

Enterolobium cyclocarpum (Ear tree)

Indian Rosewood

Melaleuca leveadenra (Punk tree)

Melia azedarach (Chinaberry tree)

Schinus terebinthinfolius (Brazilian pepper)

Serrenoa repens (Scrub palmetto)

Also exempted are trees destroyed or harmed by storm, provided the administrative official is notified at least two (2) days in advance of the removal so that an inspection can be made. If the administrative official or designee determines that the tree is not severely harmed, the tree shall not be removed except through the approval of a tree removal permit application. If the administrative official or designee does not respond within two (2) working days of the request, the request shall be considered approved. The two-day notification period is waived in instances where a damaged tree must be removed in order to make emergency repairs authorized by the building official.

c. *Dead trees*. Dead trees are exempt from the permit requirements of this section, provided the administrative official is notified at least two (2) days prior to its removal. The administrative official may require removal of a dead tree.

- d. *Tree trimming*. Tree trimming for normal maintenance purposes does not require a permit; however, tree trimming which threatens the life of the tree or deforms the natural canopy is prohibited. Each occurrence will be deemed a tree removal and will require tree replacement in accordance with section 23-302.2.
- e. *Information required for application*. The application shall indicate the type and circumference of the tree or trees proposed for removal, if known, and the reason for a requested removal. Trees to be removed for land development shall be shown on the site plan submitted with the application for certificate of zoning compliance and the tree removal application shall be part of the certificate of zoning compliance application. A tree survey showing the location, type and size of all trees as defined in paragraph (a) above may be required by the administrative official.
- f. *Issuance of permit.* A tree removal permit application shall be approved or denied in accordance with the provisions of section 23-302.2.

# § 23-215. Land alteration permit.

Sec. 215.1 Applicability. A land alteration permit is required prior to undertaking activities listed below unless the activity is specifically authorized under a site development permit pursuant to section 23-217 or the site is a single-family lot. A land alteration permit is intended for authorizing site work not related to imminent development of the land. It may be used to prepare land for agricultural use, improve the appearance or conditions of a property or to prepare land for sale or for future development. For site work in preparation for development, a site development permit is required, pursuant to section 23-217, following the approval of a preliminary site plan, subdivision, or planned development project plan. The removal of trees requiring a tree removal permit pursuant to section 23-214 may be authorized under a land alteration permit if warranted under the provisions of that section; however, it is the intent of this chapter that the removal of trees from a site, other than a single-family lot, to be developed in future be undertaken consistent with an approved preliminary plan (site plan, subdivision, or planned development project) and site development permit pursuant to section 23-217.

- a. *Massive clearing of vegetation*, including clearing or grubbing of more than five thousand (5,000) square feet of land, but not including mowing and cutting of brush for maintenance.
- b. Excavation or filling, defined as the removal or placement of more than one hundred (100) cubic yards of earth or the alteration of the elevation of more than one thousand two hundred fifty (1,250) square feet of land area more than two (2) feet. The application shall be accompanied by a site plan, drawn to scale, showing the location and area to be affected and by drawings showing cross-section of areas proposed for filling or excavation. Additional information such as elevation and drainage data and tree survey may be required by the administrative official if necessary to adequately predict the consequences of the proposal. (See section 23-302).

Sec. 23-215.2 Application. Application shall be made on forms supplied by the administrative official and shall be accompanied by the fee as set forth in section 23-242.

Sec. 23-215.3 Permit. The administrative official and the director of public works, as applicable, shall review and act upon land alteration permit applications in accordance with section 23-215 and article III, division 1, as applicable.

#### § 23-216. Special exception use permit.

Effective: Tuesday, July 07, 2015

Sec. 23-216.1 Requirement.

- a. A special exception use permit is required for certain land uses as indicated in Table 23-421
- b. Expansion of a special exception use will require a new special exception permit, if:
  - 1. The expansion is equal to twenty (20) percent or more of the approved use or structure; or
  - 2. The expansion exceeds the limits or conditions set forth in the original special exception approval; or
  - 3. The expansion is the addition of an accessory use.

Sec. 23-216.2 Application.

- a. If a special exception permit is required, application shall be made on forms supplied by the administrative official, accompanied by information sufficient for review, including at a minimum, a site plan meeting the requirement of section 23-222, information as required by the administrative official, the application fee per section 23-242 and reimbursement for costs of public notice.
- b. An application for a special exception use permit shall also be considered an application for site plan approval. The site plan shall be reviewed per the procedures and requirements of section 23-222 concurrently with the special exception use permit.
- c. The number of site plans and other information required will be set forth in the procedures manual maintained by the administrative official. Any application for construction, certificate of zoning compliance, or certificate of use shall be pending until action of the special exception permit application is complete.

Sec. 23-216.3 Public notice. Public notice shall be given by the administrative official as per section 23-241.

Sec. 23-216.4 Approval/denial. Following a public hearing, the planning board shall approve, approve with stipulations, or deny the application with specific reference to criteria in section 23-433. Appeal of the decision of the planning board may be made by the applicant pursuant to section 23-244.

Sec. 23-216.5 Compliance. The application and accompanying material, as well as any stipulations made as conditions of approval shall be enforced by the administrative official and shall be conditions of issuing the certificate of zoning compliance and certificate of use.

Sec. 23-216.6 Expiration regulations

- a. A special exception use permit shall expire one (1) year after approval if the approved use has not been established, unless an extension of time is granted by the planning board prior to the end of the one-year period.
- b. Whenever an approved special exception use has been discontinued for a period of one (1) year, no such use may be reestablished on those premises unless a time extension is granted by the planning board prior to the end of the one-year period. Expiration of the one-year period without the granting of a time extension, shall require application, review and approval in accordance with section 23-216 to resume the special exception use.

(Ord. No. 2015-04, § 3, 7-7-15)

#### § 23-217. Site development permit.

Effective: Wednesday, December 02, 2020

Sec. 23-217.1 Applicability. A site development permit is required prior to any site clearing or grading and is required prior to the commencement of construction of any site improvements, including public or private infrastructure, such as roadways and utilities. A site development permit is required also prior to the application for any building permits for structures proposed on the site. Site clearing and grading not related to imminent development of a parcel of land may be granted a land alteration permit pursuant to section 23-215 in lieu of a site development permit.

Sec. 217.2 Eligibility. Application for a site development permit will be accepted by the administrative official only following approval of a preliminary plan of the development as a preliminary subdivision plat, preliminary Planned Development Project plan, or preliminary site plan, as applicable under the requirements of this ordinance.

Sec. 217.3 Application package. Contents of a complete application package for a site development permit are set forth below. The number of copies of application forms and plans, deadlines, and required supplementary information are set forth in a procedures manual maintained by the administrative official. All items listed shall be required prior to the processing of an application except as noted below.

- a. Completed application on forms provided by the administrative official.
- b. *Itemized estimate of site development construction costs*. An itemized estimate of site development construction costs, excluding the cost of buildings must be submitted for review for determining the site development permit fee. All estimates shall be prepared and signed by a registered professional engineer and verified by the building official.

- 1. A preliminary estimate verified by the building official shall be submitted with any application for site development permit.
- 2. No later than ten (10) days prior to the pre-construction meeting, a final estimate shall be submitted for determining the final site development permit fee.
- c. Construction time line showing any phasing of improvements.
- d. Application, review, and inspection fee. A fee as set forth in section 23-242 for review and inspections. Site development permit applications submitted prior to June 1, 2009 shall be considered dormant if the site development permit is not issued by June 1, 2010 unless an application fee is paid per the fee schedule in effect at that time.
- e. Site development construction plans prepared by a registered professional engineer. Plans shall correspond to the preliminary plan or for the development as approved by the city and shall reflect any applicable conditions of the city's approval. Plans shall include any off-site improvements required as a condition of approval or agreed to by the applicant. Construction plans shall include detailed engineering drawings for the following, as applicable:
  - 1. Water system. Water system plans shall be prepared in accordance with section 21-4 and utility standards promulgated by the director of public works.
  - 2. Sanitary sewer system. Sanitary sewer system plans shall be prepared in accordance with section 21-4 and utility standards promulgated by the director of public works.
  - 3. Reclaimed water system. If a reclaimed water system is proposed or required under section 21-124 of this Code, reclaimed water system plans shall be prepared in accordance with the requirements of section 21-128 and utility standards promulgated by the director of public works.
  - 4. Storm water drainage facilities.
  - 5. Public street improvements/details.
  - 6. Sidewalks, bicycle paths, and pedestrian trails.
  - 7. Grading plans. Grading plans shall indicate existing topography and illustrate all proposed changes.
  - 8. Topography. Contour intervals of one (1) foot, except where determined to be unreasonable by the city engineer, and flood zone boundaries. All elevations shall be referenced to United States Geological Survey datum.
  - 9. Soil classification.
  - 10. Lot grading plan. Detailed grading plans, including pad elevations and spot elevation of lot corner and midpoint of side lot lines.
  - 11. Erosion control plan.
  - 12. Paving and pavement markings for paved areas including roadways and parking areas.
  - 13. Landscaping plans with plant locations, specifications and irrigation system notations (meter size and number of zones); Unless waived by the administrative official, a tree survey by a professional forester or arborist providing the following:

Map and data base indicating the location, type, caliper, and condition of all trees on site meeting the definition of a tree in section 23-214,

An analysis in a format provided by the administrative official indicating all trees to be retained or removed,

The number of trees required to meet the replacement requirements of section 23-302, and

A plan to protect retained trees during construction (see section 23-302.3).

14. Site lighting plan, showing locations and photometrics.

Plans for any structures requiring building permits, exclusive of buildings, such as free-standing signs, fences and walls, and dumpster pads and enclosures.

f. *Utility agreements*. Draft utility agreements (if applicable) in formats provided by the administrative official:

- 1. Utility Agreement (if required by utilities director): setting forth requirements and responsibilities of the applicant and the city in regard to infrastructure, both on-site and off-site. The agreement shall specify agreements, if applicable, for any impact fee credits or pioneering payments to be made to the applicant for improvements to be used by other developments.
- 2. Utility Capacity Agreement (required for residential developments per section 23-731.2.f.): establishing reservations of capacity in the wastewater and potable water systems and setting forth a schedule for development and payment of utility impact fees as required in section 23-731
- g. Permits from other agencies as applicable. If such permits have not been issued at the time of application for a site development permit, copies of all required permits should be submitted prior to the issuance of the site development permit. Required permits may include:

Southwest Florida Water Management District (SWFWMD) permit;

National Pollution Discharge Elimination Permit (NPDES);

Department of Environmental Protection (DEP) sewer construction permit;

Department of Transportation (FDOT) access permit, if applicable,

Polk County Health Department water construction permit.

(Ord. No. 2007-14, § 1, 6-5-07; Ord. No. 2008-45, § 1, 12-16-08; Ord. No. 2009-15, §§ 1—4, 6-2-09; Ord. No. 2018-07, § 1, 09-19-18)

Sec. 217.4 Review and permitting. Review of the application package shall be conducted by the development review committee and coordinated by the administrative official.

- a. The administrative official shall review the application for completeness within seven (7) business days of receipt. An incomplete application will be accepted for commencement of review provided the applicant submits a list of items to be provided at a later date and that ½ the permit fee is paid per Table 242. Applications not meeting these minimum requirements shall be rejected and the applicant shall be notified. In no case shall a site development permit be issued prior to the review of all required information.
- b. After initial review for completeness, the application package will be forwarded to the development review committee members for detailed review against the preliminary plans as approved by the city. The review shall verify compliance with detailed city standards and specifications for construction of facilities, erosion control, tree protection, currently accepted engineering practices, provisions of all city codes, and requirements of permits from other(Outside City)agencies. At the end of a 14-day review period, comments will be summarized and sent to the applicant. Submission of additional information or revised plans shall trigger an additional 14-day review period.
- c. A preconstruction conference is required unless specifically waived by the administrative official. Following the conference and upon a finding that the plans meet all applicable requirements, including concurrency requirements of Article VII of this chapter, the administrative official shall issue a site development permit, provided the review fee has been paid.

(Ord. No. 2007-14, § 1, 6-5-07; Ord. No. 2020-30, § 1, 12-02-20)

- Sec. 217.5 Construction of site improvements. Prior to the issuance of a construction permit for site improvements, a preconstruction conference with city staff is required. Upon issuance of a site development construction permit, construction of on-site and off-site improvements may commence, subject to any conditions of the permit. Inspections by the city shall be required to verify construction in compliance with the approved plans and city standards.
  - a. *Final plan*. Prior to final approval of site improvements by the city, the development review committee may require a final site plan or final planned development project plan for residential developments other than subdivisions pursuant to section 23-222 or 23-224, as applicable.
  - b. *As-built drawings*. For all improvements to be dedicated to the City of Lake Wales, one (1) set of as built drawings shall be submitted along with itemized documents showing construction costs of improvements to be dedicated. All cost documents shall be signed and sealed where appropriate. This requirement shall also apply to all off-site improvements constructed by the developer on behalf of the city in accordance with the terms of an approved development agreement for which impact fee or other credits are to be granted to the applicant. Dedication of public facilities must be accepted by resolution of the city commission in accordance with section 23-226

#### c. Building permits.

#### 1. Residential subdivisions.

Site improvements must be completed, inspected and approved by the city in accordance with conditions of the site development permit and phasing plan, if applicable, a minimum of two (2) weeks prior to the city commission meeting at which the final plat is scheduled for review.

No building permit shall be issued for units within a single-family residential subdivision prior to final plat recording except that permits for model houses, consistent with provisions of the procedures manual maintained by the administrative official and provided that there is adequate roadway access and water supply to the site. For the purposes of this section, "single-family" shall not include attached units such as townhouses, provided that the builder agrees that no certificate of occupancy for a unit is issued until the plat is recorded.

Building permits for structures (such as walls) and common buildings may be issued prior to the completion of site improvements.

#### 2. Other developments.

Site improvements must be completed, inspected, and approved by the city prior to the issuance of a certificate of use pursuant to section 23-213.

Building permits for construction of buildings in non-residential and residential developments that are not subdivisions may be issued prior to the completion of site improvements only if consistent with a phasing plan approved by the development review committee.

(Ord. No. 2006-24, § 2, 6-6-2006; Ord. No. 2007-02, § 1, 3-6-07; Ord. No. 2014-08, § 1, 09-03-14)

#### § 23-218. Zoning map amendment.

The city may amend the official zoning map by the enactment of an ordinance after two (2) readings and public hearings in accordance with F.S. ch. 166.

Sec. 23-218.1 Eligibility.

- a. An amendment to the official zoning map may be requested by a property owner or may be initiated by the administrative official, planning board, or the city commission. For a group of property owners to qualify as an applicant, at least fifty-one (51) percent of the property owners of the area proposed for change must make the request. For the creation of a new historic district or for changes to an existing historic district, notarized affidavits requesting the amendment are required from the owners of at least fifty-one (51) percent of the properties in the proposed district or in the area to be added, as applicable.
- b. Whenever a zoning map amendment application has been denied by action of the city commission, no reapplication for the same property which is substantially similar to or equivalent to that application previously denied shall be filed with the city, considered by the planning board or submitted to the city commission unless a period of six (6) months has elapsed between the date of the original denial of the application and the subsequent re-filing.

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(Ord. No. 2008-11, § 2, 5-20-08)
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Sec. 23-218.2 Application. An amendment of the zoning map may be requested by filing a completed application with the administrative official and additional information as required by the procedures manual maintained by the administrative official, including, at minimum the following:

- a. The application fee and reimbursement of the cost of public notice as set forth in section 23-242
- b. Legal description(s) of the subject property, including street addresses;
- c. Typewritten petition, if application is made by more than one (1) property owner, signed by fifty-one (51) percent or more of the property owners of the area proposed for the amendment, along with the names and addresses of all petitioners, a letter stating the reason for the request, and a plan of the applicant area showing surrounding streets and property owners.
- d. Other information as required by the administrative official.

Sec. 23-218.3 Public notice. Public notice shall be given by the administrative official as per section 23-241.

Sec. 23-218.4 Planning board recommendation. A recommendation of the planning board shall be required prior to any amendment to the zoning map. The planning board shall review the proposed amendment and, following a public hearing, make a written recommendation to the city commission. The recommendation shall be approval of the requested zoning designation, approval of a change to a zoning designation deemed more appropriate than the one applied for, or denial of any zoning change. The recommendation may also include a change in the boundaries of the applicant area.

The following criteria shall be used to review the proposed amendment.

- a . Consistency with the comprehensive plan. All zoning amendments shall be consistent with the comprehensive plan, including the future land use map and future land use element goals, objectives and policies. The zoning designation shall be consistent with the land use designation of the land on the future land use map, but may be more restrictive than that designation.
- b. Land use compatibility. The zoning designation shall promote compatibility of adjacent land uses.
- c. *Adequate public facilities*. The requirements of article VII, division 1 Concurrency (section 23-701 et seq.) shall be considered in reviewing the proposed amendment and there shall be reasonable assurance that the demand for services allowed in the proposed zoning district can be met.
- d. *Public interest*. The proposed zoning designation shall not be in conflict with the public interest and will promote the public health, safety and welfare.
- e. *Consistency with land development regulations*. The proposed zoning designation shall be consistent with the purpose and intent of these land development regulations.
- f. *Historic overlay districts*. A proposed historic overlay district shall be consistent with the criteria for establishing such districts, set forth in section 23-652.2 in article VI, Resource Protection Standards, division 5. Historic Preservation.

(Ord. No. 2008-11, § 3, 5-20-08)

Sec. 23-218.5 City commission decision. The city commission shall hold a public hearing on the proposed ordinance after due public notice in accordance with F.S. § 166.041, and the planning board recommendation shall be read into the record. The city commission shall approve the zoning amendment as proposed by the applicant, approve a change to another zoning designation deemed more appropriate than the one applied for, or deny the change. If the recommendation of the planning board is adverse to the proposed change, such change shall not be effective except by the affirmative vote of three-fifths (3/5) of the governing body.

Sec. 23-218.6 Amendment of the zoning map. The administrative official shall revise the official zoning map to reflect any change made by the action of the city commission.

#### § 23-219. Comprehensive plan future land use map amendment.

The city may amend the future land use map of the comprehensive plan by ordinance in accordance with F.S. ch. 163. Deadlines, application forms, and required information are set forth in the procedures manual maintained by the administrative official.

Sec. 23-219.1 Amendment cycle.

- a. Small scale amendments—Parcels of ten (10) acres or less in area. Amendments for parcels of ten (10) acres or less will be processed throughout the calendar year in accordance with a schedule and procedures developed by the administrative official, and pursuant to s. 163.3187 F.S.
- b. Large scale amendments— Parcels in excess of ten (10) acres in area. Amendments for parcels in excess of ten (10) acres in area will be processed throughout the calendar year in accordance with a schedule and procedures developed by the administrative official and pursuant to s. 163.3184 F.S.

Sec. 23-219.2 Application. An amendment to the city's comprehensive plan may be requested by filing a completed application with the administrative official that consists of the following:

- a. Completed application form signed by the property owner or authorized agent;
- b. The application fee and reimbursement of the cost of public notice as set forth in section 23-242
- c. Legal description(s) of the subject property, including street addresses;

- d. Typewritten petition, if application is made by more than one (1) property owner, signed by fifty-one (51) percent or more of the property owners of the area proposed for the amendment, along with the names and addresses of all petitioners, a letter stating the reason for the request, and a plan of the applicant area showing surrounding streets and property owners;
- e. Other information as required by the administrative official.

Sec. 23-219.3 Criteria for approving comprehensive plan amendments.

- a. The character of the area or adjacent land has changed enough to warrant a different land use designation or is required by annexation to incorporate the property into the Future Land Use Element and to designate the property on the future land use map;
- b. Consistent with the concurrency requirements of section 23-704, facilities and services are available or can reasonably be expected to become available at adopted level of service standards concurrent with projected development of the site;
- c. The site can accommodate the types of uses allowed in the proposed land use category and comply with other development regulations and standards;
- d. The proposal meets any other special provisions of the law;
- e. The land uses allowed in the proposed land use category are compatible with surrounding development in terms of appropriate buffers, setbacks, development intensity, off-site odor, noise, and visual and traffic impacts;
- f. The proposed land use designation is consistent with other elements of the comprehensive plan.
- Sec. 23-219.4 Review and action. The proposed change shall be decided by the city commission upon a recommendation of the planning board.
  - a. *Planning board*. The planning board shall review the requested amendment using the criteria stated in section 23-219.3 and, following a public hearing, shall make a recommendation to the city commission for approval or denial.
  - b. *City commission*. The city commission shall hold public hearing(s) on the proposed ordinance as required below, and the recommendation of the planning board shall be read into the record. The city commission may approve the amendment as requested by the applicant, approve a change to another land use designation deemed more appropriate than the one applied for, or deny the change.
    - 1. Small-scale amendments— Parcels of ten (10) acres or less in area. Small-scale amendments shall require one (1) public hearing and shall be adopted in accordance with the public notice and public hearing requirements provided in F.S. § 166.041, for adoption of ordinances.
    - 2. Large-scale amendments— Parcels in excess of ten (10) acres in area. Large-scale amendments shall require a transmittal public hearing and an adoption public hearing in accordance with the provisions of F.S. ch. 163.
  - c. *Administrative official*. The administrative official shall forward proposed and adopted amendments to the future land use map to the Department of Economic Opportunity for review and approval as required by F.S. ch. 163.

Sec. 23-219.5 Amendment of the Future Land Use Map. The administrative official shall change the future land use map to reflect any change made by the action of the city commission.

(Ord. No. 2014-08, § 2, 09-03-14)

#### § 23-220. Annexation.

Annexation is the incorporation of land into an existing community with a resulting change in the boundary of that community. The annexation process requires the adoption of an ordinance in accordance with the provisions of F.S. ch. 171.

Sec. 23-220.1 Involuntary annexation. Annexation may be initiated by the City of Lake Wales in accordance with the provisions of F.S. §§ 171.0413—171.043.

Sec. 23-220.2 Voluntary annexation. The owner or owners of real property in an unincorporated area of the county may petition the city commission for the property to be annexed into the municipal limits through provisions set forth in F.S. ch. 171, for voluntary annexation.

- a. *Application*. Application for annexation shall be made on forms supplied by the administrative official and accompanied by the following:
  - 1. Application for annexation and future land use and zoning map amendment;
  - 2. Complete legal description of the applicant property;
  - 3. Application fee and reimbursement of the cost of public notice as set forth in section 23-242
  - 4. Other information as may be required by the administrative official.
- b. Review and action.
  - 1. Administrative official. The administrative official shall forward a report to the city commission stating the fiscal impact of the annexation and its anticipated effect on existing levels of service for public facilities.
  - 2. *City commission*. The city commission shall hold a public hearing on the proposed annexation, and if the city commission decides to annex, the annexation shall be approved by the adoption of an ordinance meeting the requirements of F.S. § 171.044.
- c. Comprehensive Plan and Zoning Map Amendments. If the city commission annexes the applicant property, the process shall be initiated to incorporate the property into the future land use element and to designate the property on the future land use map using the procedures in section 23-219. The process shall also be initiated to assign a zoning designation of the property using the procedures in section 23-218. If the area annexed was subject to a county land use plan and county zoning regulations, these designations and regulations shall remain in full force and effect until the city adopts a comprehensive plan amendment that includes the annexed area. It is the desire of the city that amendments of its comprehensive plan and zoning map occur promptly following annexation, but in no case shall these amendments occur later than twelve (12) months following annexation.
- Sec. 23-220.3 Amendment of boundary, future land use and zoning maps. Upon passage of annexation, comprehensive plan amendment, and zoning map amendment ordinances, the administrative official shall amend official maps of the city designating the municipal boundary and designating the future land use and zoning classifications assigned to the annexed property.

Sec. 23-220.4 Recording of annexation. The city clerk shall file the adopted annexation ordinance with the department of state, the county property appraiser and other agencies as required by F.S. ch. 171.

#### § 23-221. Vacation of public rights-of-way or public easements.

Effective: Tuesday, December 06, 2016

Rights-of-way, easements or other parcels of land dedicated for public purpose may be vacated by the city commission by adoption of an ordinance.

Sec. 23-221.1 Application. Owners of property adjacent to right-of-way or owners of property with public easements may request their vacation by applying on forms provided by and administrative official and submitting the application fee as set forth in section 23-242. The complete legal description of the property shall be included on the application form.

Sec. 23-221.2 Review and approval.

- a. City staff. The administrative official and director of public works shall prepare a report to the city commission or planning board, as applicable, stating all known city and non-city uses of such right-of-way, easement or property. The report shall include a diagram showing the location of the right-of-way, easement or property in relation to adjacent properties and shall show the names of all adjacent property owners. The administrative official, the director of public works, or the city commission may request a planning board recommendation on the proposed vacations.
- b. *Planning board*. If a recommendation is requested on a proposed vacation, the planning board shall evaluate any request for vacation of right-of-way or other dedicated property to determine whether vacation would be detrimental to the public health, safety or welfare. The planning board shall make a recommendation to the city commission to approve or deny the request for vacation. In cases where the right-of-way is used only for utilities, the planning board may recommend the vacation provided that an easement is provided for such utilities.

- c. City commission.
  - 1. Easement. The city commission may enact a resolution vacating an easement. The city commission may approve the vacation of an easement only with a favorable recommendation from the director of public works. Such approval may be conditioned upon the relocation of the easement and the utilities therein at the applicant's expense.
  - 2 . Right-of-way or other dedicated property. The city commission shall determine in light of the planning board's recommendation and public comments whether the vacation is in the public interest. If a positive determination is made, the city commission may enact a resolution vacating the requested right-of-way or property and reverting said right-of-way or property to all adjacent owners in equal portions.

Sec. 23-221.3 Recording of vacation. The city clerk shall correct the records of the clerk of the circuit court as necessary to vacate the right-of-way, easement or other property and revert the vacated right-of-way, easement or property to the appropriate owners.

(Ord. No. 2015-04,§4, 7-7-15;Ord. No. 2016-21,§1, 12-06-16)

#### § 23-222. Site plans.

Effective: Tuesday, October 20, 2020

Sec. 23-222.1 Purpose and intent.

- a. The public health, safety, comfort, and welfare require the harmonious, orderly, and progressive development of the land within the corporate limits of the City of Lake Wales. Once land has been developed, the correction of defects is costly and difficult. Substantial public responsibility is created by each new development, involving the maintenance of streets and drainage facilities, and the provision of additional public services. As the general welfare, health, safety, and convenience of the community are thereby directly affected by the use of land, it is in the direct interest of the public that developments be conceived, designed, and developed in accordance with sound rules and proper minimum standards.
- b. Consideration shall be given in the review of site plan applications to the character of an area and the availability of public facilities to ensure the compatibility and coordination of land uses and facilities within a given geographic unit and to ensure the following:
  - 1. The establishment of standards for site design which will encourage the development of sound and stable areas within the corporate limits of the City of Lake Wales.
  - 2. The adequate and efficient supply of utilities, streets, and services to new land developments.
  - 3. The prevention of haphazard, premature, or scattered land development.
  - 4. The prevention of traffic hazards and congestion from excessive ingress and egress points along major traffic arteries, and the provision of safe and convenient traffic circulation, both vehicular and pedestrian, in new land development.
  - 5. Safety from fire and other dangers to promote health and the general welfare.
  - 6. Protection from flooding hazards and to ensure proper water management.
  - 7. The provision of public open spaces in new land developments through the dedication or reservation of land for recreational, educational, and other public purposes.
  - 8. The maintenance of minimum standards for visual, design and aesthetic development of properties in the city.
  - 9. Protection of the natural and scenic resources of the city, including surface waters and groundwater recharge areas.

Sec. 23-222.2 Applicability.

- a. The procedures contained in this section are applicable to all projects which involve:
  - 1. the construction of any facility other than a single-family dwelling on an individual lot or major appurtenances thereto (e.g. private swimming pool, yard, fence, newsrack, etc.) or one (1) duplex (two (2) dwelling units) on an individual lot. (See section 23-212 for requirements for single-family and duplex structures);

- 2. substantial improvements to a site or building and the expansion or conversion of existing structures, including expansions or changes in parking area layouts;
- 3. the change of use of a site or structure if for establishment of the new use, changes in the site (such as the addition of parking spaces) are necessary to achieve compliance with this chapter;
- 4. a special exception use permit.

No building permit shall be issued by the city and no site work shall be commenced by the developer until a preliminary site plan has been approved by the administrative official or the planning board, as applicable.

Upon preliminary site plan approval and issuance of a building permit, the development shall be built in strict accordance with the approved preliminary site plan and these regulations.

The provisions of this section shall not apply to public construction projects undertaken by the City of Lake Wales except to the extent that the city manager determines that a particular project will benefit from review by the development review committee.

(Ord. No. 2007-02, § 2, 3-6-07)

Sec. 23-222.3 Application requirements for submittal of site plans.

a. *Preapplication conference*. It is required that the applicant schedule a pre-application conference with the administrative official to discuss the proposed development no less than two (2) weeks prior to submitting formal application for the preliminary site plan. The purpose of this conference is to review the feasibility of the proposed development and any potential waivers or variances.

The applicant must submit a boundary survey or conceptual plan illustrating lot dimensions to scale, existing site conditions including stands of trees, the locations of water bodies and wetlands, existing structures and other site improvements, and a written description of the proposal. Information sufficient to identify natural features of the property shall be provided by the applicant, such as aerial photographs, topographic maps, flood maps, vegetation surveys, and wetlands maps.

The administrative official shall advise the applicant regarding the proposed development in relation to the provisions of this chapter, particularly the land development requirements of article III, div. 1, the district regulations of article IV, div. 1 and the concurrency requirements of article VII, div. 1.

- b. Determination of major and minor projects. Following the pre-application conference, a preliminary determination shall be made by the administrative official as to whether the proposal is a major or minor project, based upon the criteria below. A major project requires review by the development review committee and review and decision by the planning board. A minor project requires review by the development review committee and a decision by the administrative official.
  - 1. Major project. An application meeting any of the criteria below shall be classified as a major project:
    - A. The project will have more than one (1) principal building on the site or meets the definition of a "shopping center" or "business center";
    - B. A special exception use or a significant change to a special exception use is approved.
    - C. The project involves a request for waiver of strict compliance with requirements of the land development regulations.
    - D. A change is proposed which affects a condition of approval or commitment by the applicant on an existing major site plan or special exception use permit.
    - E. The proposal increases the non-conformity with provisions of this chapter.
  - 2. *Minor project*. All projects not meeting the criteria for a major project shall be considered minor projects unless determined by the administrative official to warrant review as a major project. Construction or alteration of a single-family residence or duplex on a single lot requires review under section 23-212, verification of zoning compliance.
- c. Preliminary site plan application.
  - 1. The application for preliminary site plan approval shall include a completed application form, a site plan meeting the requirements of section 23-222.8, and the application fee pursuant to section 23-242. The application form, number of copies of plans, and deadlines for submission shall be set forth in the procedures manual maintained by the administrative official.

- 2. If waivers of strict compliance from the design standards of this chapter are requested, the application shall state the specific waivers requested and reason(s) for the waiver.
- 3. Projections of impacts of the development upon roadways, sewer and water, public drainage and recreation facilities shall be submitted with the preliminary plan as required under subsection 23-704.4(c).
- 4. In a multi-phased project, all phases must be addressed on the preliminary site plan.
- 5. An incomplete application will not be accepted and will be returned to the applicant without review.

Sec. 23-222.4 Preliminary site plan review and approval.

- a. Development review committee. Upon acceptance of the application as complete, the administrative official shall schedule the application for review by the development review committee at its next regular meeting. All preliminary site plans shall be reviewed by the development review committee to determine that the plan meets the requirements of this chapter.
  - 1. *Minor projects*. For a minor project, the administrative official shall determine, after consultation with the development review committee, if the project complies with the requirements of this chapter. The administrative official shall approve the preliminary plan if the project is found to be in compliance or may approve the plan with conditions if adjustments are necessary for compliance. If the proposed project is found not to be in compliance with this chapter, the administrative official may, after consultation with the applicant, request a revised plan, deny the plan with specific reference to the deficiencies, or submit the plan to the planning board as a major project requesting waivers. The site plan shall also be reviewed under the concurrency provisions of Article VII, Div. 1. The site plan shall not be approved if the concurrency provisions of Article VII, Div. 1 are not met.

The administrative official shall have the authority to direct any site plan to planning board review and approval, regardless of the criteria for major and minor projects. The administrative official's decision shall be based upon an assessment of the project's potential for negative impacts upon nearby properties or public facilities, the need for protection of the public interest by formal planning board review of the project, and/or the existence of unusual conditions associated with a site, project or an application.

- 2. For major projects, after completion of review by the development review committee in accordance with paragraph A., B. or C. below and based upon the findings of the development review committee, the administrative official shall make a written recommendation to the planning board for approval, approval with conditions, or denial of the preliminary site plan.
  - A. The development review committee shall review the application in relation to the purpose and requirements of the land development regulations and may forward the application for review to the planning board or administrative official, as applicable, with recommendations or may continue their review with a request for further information or revisions. Within three (3) days of the meeting, the administrative official shall inform the applicant in writing of the decision of the development review committee with specific reference to their findings.
  - B. If the application review is continued by the development review committee, the applicant shall provide the administration official with the requested information or revised plans at least two (2) weeks prior to the next regularly scheduled meeting of the development review committee in order to be placed upon the development review committee's agenda.
  - C. In the case of applications which are continued by the development review committee, the applicant shall be granted, upon his request, a one-month extension of time for review by the development committee. Further requests for extensions may be granted at the discretion of the development review committee. Upon expiration of any extension granted by the development review committee, the application may expire and the fee shall be forfeited.
  - D. At the request of the applicant prior to the expiration of any extensions granted by the development review committee, the application shall be forwarded to the planning board for review and decision without a recommendation from the development review committee. In making its decision, the planning board shall consider the reasons stated by the development review committee for continuing the review.
- 3. For Master Development Plans (MDPs), preliminary site plans shall be prepared for individual phases or subphases of development.

- A. The administrative official shall determine, after consultation with the development review committee, if the project complies with the approved MDP and Development Order, as well as Master Development Plan requirements set forth in sections 23-450 and 23-228.
- B. If the preliminary site plan is found to be in compliance with the Master Development Plan, the administrative official shall approve the plan. Approval may include conditions of approval, if adjustments are necessary for compliance.
- C. If the preliminary site plan is not found to be in compliance with this chapter, the administrative official may, after consultation with the applicant, request a revised plan, or deny the plan with specific reference to the deficiencies.
- D. The site plan shall be reviewed to confirm compliance with provisions of Article VII, Div. 1. The site plan may be approved if concurrency provisions of Article VII, Div. 1 are met.
- b. *Planning board review.* The planning board shall review the application with reference to the requirements of this chapter, particularly the land development requirements of Article III, Div. 1, the district regulations of Article IV, and the concurrency requirements of Article VII, Div. 1. Based upon their review of the information presented by the application, the recommendations of the administrative official, and in consideration of the express purpose and intent and requirements of this chapter, the planning board shall either approve, approve subject to stated conditions, or deny the preliminary site plan. Where the planning board either denies or approves with conditions, they shall enter specific findings of fact delineating their reasons.

(Ord. No. 2007-14, § 1, 6-5-07)

Sec. 23-222.5 Waiver of strict compliance. Upon a finding that there is reasonable cause for granting a request for a waiver, the planning board may waive strict requirements of this chapter in regard to the number and paving of off-street parking spaces, landscaping requirements, and dimensional requirements for site circulation and access.

In deciding upon requests for waivers, the planning board shall endeavor to adhere to the requirements of this chapter to the extent possible and to minimize deviations from its requirements. The granting of waivers may be subject to conditions. Waivers may not be granted for required building setbacks. (See appeals procedures in section 23-244.) Waivers shall be granted only if safety is not compromised.

Reasons for granting such waivers may include:

- a. The waiver is requested because existing legal non-conformities on the site present difficulties in meeting the provisions of this chapter. Redevelopment of sites shall be facilitated through the granting of waivers, provided such waivers do not result in over-development or use of a property.
- b. The planning board finds that off-street parking requirements are excessive based on the particular circumstances of the application or proposed characteristics of use such as shared parking arrangements, hours of operation or scheduling, or proximity of public parking.
- c. Granting of the waiver allows for a superior site layout or buffering in terms of safety or compatibility with the neighborhood.

(Ord. No. 2007-02, § 3, 3-6-07)

Sec. 23-222.6 Appeal of administrative determination. The planning board shall hear and decide appeals of administrative determinations regarding a preliminary site plan. Such administrative determinations include, but are not limited to, administrative denial of an application, conditions associated with administrative approval of an application, or administrative interpretation associated with the processing of the application.

Sec. 23-222.7 Time limit on approval. The approval of the preliminary site plan shall expire two years from the date of approval unless an application for a site development permit has been received or a building permit for a principal building has been issued. An extension of time may be applied for (and granted in one-year increments) by the developer by submitting a letter of request to the administrative official and the required fee. (See Table 23-242.) The request for time extension may be approved by the administrative official or the planning board in accordance with the manner in which the original approval was granted.

(Ord. No. 2007-14, § 1, 6-5-07; Ord. No. 2016-21, § 2, 12-06-16)

Sec. 23-222.8 Preliminary site plan requirements. The preliminary site plan shall be twenty-four (24) inches by thirty-six (36) inches and shall be drawn at a scale sufficient for clear presentation of existing and proposed site features, preferably one (1) inch equals twenty (20) feet or one (1) inch equals forty (40) feet.

The following information shall be shown on the plans, except that some of the following requirements may be waived by the administrative official for minor site plans:

- a. Location. North arrow, graphic scale and vicinity map showing the location of the proposed site, relationship to surrounding streets and thoroughfares, existing zoning on the site and surrounding areas, names of adjacent property owners, existing land use on the site and surrounding areas within five hundred (500) feet.
- b. *Title block*. Name of name and address of the owner of the tract proposed for development; the name of the applicant, if different from the owner, and the name, address, and telephone number of the engineer and surveyor engaged to prepare the design and the preliminary development plans. Date of plan and any revisions.
- c. Legal description and boundaries. Legal description with reference points used for determining the point of beginning of description, and project boundary lines with bearings and distances. Boundary lines of any proposed phases. Easements, existing and proposed, and their locations, widths, bearings and distances.
- d. Site information.
  - 1. Contours, existing and proposed, at not greater than five-foot intervals.
  - 2. A topographic survey including flood-prone delineations. The most recent FEMA and SWFWMD topographical survey and flood-prone mapping may be utilized.
  - 3. A soils survey, which may be based on the most recent Polk County Soils Survey, drawn to the same scale as the preliminary site plan, clearly identifying all soil types especially those which are apparently not suitable for buildings or major structures due to soils limitations.
  - 4. All lakes, wetlands, water courses, stands of trees and areas of other vegetation, and other pertinent features will be indicated. An aerial photograph at a scale sufficient to identify natural features may be required by the administrative official. Tree cover will be compared with road locations. Natural features, including trees, to be preserved shall be indicated.
  - 5. Tree survey showing all trees over four (4) inches in caliper at four and one-half (4-½) feet above ground, except that those trees exempt under section 23-214 need not be shown. (Note: may be shown on separate sheet. May be waived by administrative official.)
- e. Proposed development.
  - 1. Streets and rights-of-way, existing and proposed, on and adjacent to the project and their names, locations, widths, bearings and distances.
  - 2. Utilities, existing and proposed, on and adjacent to the project including sanitary sewers, storm water drainage, storm water retention areas, potable water supply, water supplies for fire protection, and overhead utility lines.
  - 3. Parking lot access points, interior traffic circulation, arrangement and number of parking spaces and aisles widths.
  - 4. Building envelopes with dimensions and distances from water bodies, adjacent buildings and rights-of-way.
  - 5. Proposed green areas with dimensions and acreage. Proposed recreation areas, showing dimensions of any proposed building or facilities including pedestrian and bike paths.
  - 6. Proposed buffers, walls or other features, with dimensions.
  - 7. Dumpster and recycling pad locations and proposed screening method.
  - 8. Landscape plan on separate sheet; plan must indicate all sewer lines, water lines, and overhead utility lines in order to prevent planting of trees in easements where they will interfere with public utilities.
  - 9. Widths and materials for proposed sidewalks.
  - 10. All projects shall include a minimum of two (2) architectural elevation drawings, of proposed building types with colors and materials noted.
- f. Data, clearly marked on plan or in tables, showing the following for each phase:
  - 1. Acreage of project and phases, if applicable.
  - 2. Total number of units (residential) or building floor areas.

- 3. Typical building characteristic, including dimensions, building footprints, floor area, number of units, density, and number of stories.
- 4. Intensity information:
  - A. Total acreage of building footprints;
  - B. Total acreage of paved areas, including access ways, streets, parking areas;
  - C. Total acreage of retention ponds or other water and wetlands;
  - D. Total acreage of conservation area;
  - E. Total acreage of recreation area and open space, listed by parcel;
  - F. Number of parking spaces, broken down by area which they serve, and showing parking spaces provided and required by use;
  - G. Square footage of unit types;
  - H. Percent impervious and percent building coverage.
- g. Assurances. Statement assuring perpetual ownership and maintenance of common areas, if applicable.
- h. A statement on the plan, requesting any waivers, if any.
- i. *Development impact data*. Data required for concurrency review under subsection 23-704.4(a) shall be provided.
- Sec. 222.9 Final Site Plan. A final site plan shall be required when deemed necessary by the administrative official to reflect changes required or agreed to during the review process. However, the applicant must comply with the survey requirements of section 23-212.

Sec. 23-222.10 Enforcement provisions.

- a. *General*. No site development permit, building permit, or certificate of use shall be issued, except in compliance with the approved site plan.
- b. *Site maintenance obligation*. The owners and successors of property developed under an approved site plan shall not remove, destroy, modify, subvert or render inoperable, through act or omission, any of the improvements, designs, standards or conditions required either directly or indirectly by these regulations.
- c. *Penalties for violations*. Any person, whether as owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this section, or permits any such violation to continue, or otherwise fails to comply with the requirements of this section or of any plan or statement submitted and approved under the provisions of this section, shall be guilty of an ordinance violation and subject to prosecution. Upon conviction such person shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than sixty (60) days, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. At the option of the city, any violation may be processed through the city's code enforcement board as an alternative to prosecution under this subsection. Nothing herein contained shall prevent the city from taking such lawful action, including, but not limited to, resorting to equitable action, as is necessary to prevent or remedy any violation.

(Ord. No. 2006-24, § 1, 6-6-2006; Ord. No. 2016-21, § 2, 12-06-16; Ord. No. 2020-27, § 1, 10-20-20)

#### § 23-223. Land subdivision.

Effective: Tuesday, October 04, 2022

Sec. 23-223.1 Applicability.

- a. The recording of a final subdivision plat approved as set forth in these land development regulations is required prior to the subdivision of property. For the purposes of these regulations, "subdivision" is defined as:
  - 1. The division of a parcel of land (which in this context is defined to mean the totality of contiguous land holdings by a single owner regardless of how described, recorded or zoned) into three (3) or more lots or parcels of land less than five (5) acres each, for the purpose, whether immediate or future, of transfer of ownership or building development;

- 2. Any division of land, regardless of the size of the parcels where the applicant proposes to create a street, right-of-way, or easement that joins or connects to an existing public street.
- 3. Exception for minor subdivisions. Where property abuts an existing street and no new improvements for water, sewer or drainage are required and where the proposed subdivision contains four (4) or fewer commercial lots having common access to existing public roads or seven (7) or fewer residential lots, the administrative official with the concurrence of the development review committee, may waive preliminary subdivision review and permit a final plat to be presented to the city commission for approval in accordance with this section.
- b. In accordance with authority granted by F.S. § 498.025, it shall be unlawful for any owner of land, or agent of any owner, to transfer, sell or negotiate to sell such land by reference to or exhibition of a plat, or by other use of said plat without having first submitted such plat to the city for approval. If unlawful use is made of a plat before it is properly approved and recorded, the owner or agent of the owner shall be subject to the penalties provided in section 23-109. The governing body, or any appropriate official of the governing body, shall also enjoin such transfer, sale or agreement. Failure to comply with the provisions of this section shall not impair the title of land so transferred or affect the validity of the title conveyed. However, a purchaser of land sold in violation of this section shall, within two (2) years from the date of purchase thereof, be entitled to bring appropriate action to avoid such sale or to bring action against the seller for any damages which he suffers as a result of the seller's unlawful act or both.
- c. The provisions of the subdivision plan requirements found in this section are applicable to all single-family residential development projects and multi-family residential, commercial, industrial, recreational, or any other non-residential development project where the subdivision of land, subdivision infrastructure improvements, and plat recording will precede individual site development. Where multi-family residential, commercial, industrial, recreational, or any other non single-family residential site development will occur within the subdivision concurrent with or after plat recording, the developer of said site must also adhere to the requirements provided in section 23-222 for site plans.
- d. A resubdivision will be required if a proposed change to an approved or recorded subdivision plat affects any street layout or any lot line so as to increase residential density or involves the establishment of a new street or a change in any street line or easement.
- e. Property subdivided prior to the effective date of this ordinance shall comply with all requirements of this ordinance unless such property fully complied with the terms of all requirements in effect at the time such property was subdivided. Where a final plat has not been recorded, owner(s) of all or part of undeveloped or partially developed plats shall have one (1) year from the effective date of this ordinance to apply to the city for a determination of vested rights. Failure to so apply shall result in all such plats being vacated for purposes of this section.
- f. Plats may also be filed for streets, rights-of-way, or easements. All plats filed shall meet all requirements and follow all procedures as herein set forth.
- Sec. 23-223.2 Preliminary subdivision plat application. The purpose of the preliminary subdivision plat is to provide for the initial review of the proposed subdivision. An executed utility capacity queue agreement, if required per section 23-731, shall be submitted prior to commencement of review for any project.
  - a. *Pre-application conference*. Prior to the preparation of a preliminary subdivision plat, the developer of a subdivision shall meet with the administrative official and the director of public works to discuss the concept of the proposed subdivision and the requirements of these land development regulations. The pre-application conference and informal review is designed to prevent costly and avoidable revisions in the layout. The developer shall provide a sketch plan showing the tract of land, its relationship to the surrounding properties and general development scheme. Information sufficient to identify natural features of the property shall be provided by the applicant, such as aerial photographs, topographic maps, flood maps, vegetation surveys, and wetlands maps.
  - b. *Preliminary subdivision plat application*. Plats must be prepared by a registered surveyor. Application forms, deadlines for submission, and the number of copies of documents required shall be as set forth in the procedures manual maintained by the administrative official. The fee shall be as required per section 23-242

The preliminary subdivision plat shall constitute the totality of land the applicant plans to develop. When a subdivision is being developed in phases, the preliminary subdivision plan shall indicate phasing lines and connecting roadways, and a phasing schedule shall be submitted for subdivision development. Phased subdivision development plans must meet all requirements of a stand-alone subdivision development plan providing for adequate utilities and infrastructure.

The preliminary plat shall demonstrate compliance with the land development requirements of article III, as applicable, and the district regulations of article IV applicable to the zoning district in which the property is located.

All submittals shall be as outlined below:

- 1 . Application form. The application form for a preliminary subdivision plat, provided by the administrative official, shall be submitted with the review fee as set forth in section 23-242
- 2. Preliminary subdivision plat.
  - A. Scale and size of drawings. The preliminary plat shall be at a scale adequate to show details clearly and adequately. Sheet sizes shall not exceed twenty-four (24) inches by thirty-six (36) inches. If multiple sheets are used, they shall be accompanied by an index sheet showing the entire development and on each sheet there shall be a properly oriented and labeled key plan and a title box.
  - B. *Title block*. A title block shall be included that indicates the title or name of the proposed subdivision in large bold letters, the name and address of the owner of the tract proposed for development, the name of the applicant, if different from the owner, and the name, address, and telephone number of the engineer and surveyor engaged to prepare the design and the preliminary development plans.
  - C. Legend. A legend shall be included on each sheet that indicates the date (including the date of any revisions), scale, and north arrow. The first sheet shall show the current zoning of site and abutting properties, total number of lots, lot dimensions, lot size ranges, and minimum lot size.
  - D. Legal description. A full and detailed legal description of the tract to be platted and its approximate acreage shall be included. Boundaries of the property with bearings and distances shall be shown. All existing covenants, private restrictions, easements and rights-of-way affecting the use and development of the property shall be stated on the plat.
  - E . Surrounding properties. All contiguous properties shall be identified by the Polk County Appraiser's property identification number, and by the subdivision title, plat book and page, or, if unplatted, land shall be so designated.
  - F. *Vicinity map*. A vicinity map or inset shall be included that shows the relationship between the area proposed for development and surrounding properties, streets and public facilities at a scale of not less than one (1) inch equals two thousand (2,000) feet.
  - G. Existing streets. The name, location, and right-of-way and pavement widths of all existing streets which abut the proposed subdivision shall be shown. Locations of all median openings in the vicinity and access points on both sides of all abutting roadways must also be shown.
  - H. Other natural features. All lakes, wetlands, water courses, stands of trees and areas of other vegetation, and other pertinent features will be indicated. An aerial photograph at a scale sufficient to identify natural features may be required by the administrative official. Tree cover will be compared with road locations. Natural features, including trees, to be preserved shall be indicated.
  - I. Limits of floodplain. Flood elevation of 100-year flood as established by the Federal Flood Insurance Administration and as supplemented by the current flood insurance rate map shall be indicated on the site plan. The actual acreage above the 100-year flood elevation, plus that area below the antecedent water level shall be listed numerically. Usable lot area shall be clearly delineated.
  - J. Topography. Existing and proposed contour lines shall be shown at a minimum of five-foot intervals.
  - K. Dedications and reservations. All parcels of land proposed to be dedicated or reserved for public use such as roads, easements, parks, sidewalks, and bike or pedestrian trails shall be indicated on the plan. Proposed rights-of-way and street names shall be indicated. Mini-parks and neighborhood parks required under section 23-310 shall be shown with proposed facilities. Specific information on plantings need not be provided.

#### L. Proposed development.

i. Lot lines and lot numbers. The proposed lot lines, with appropriate dimensions and lot numbers, shall be shown. Lots shall be numbered in consecutive order starting with the numeral one (1) for the first lot in each block, or other manner as approved by the city.

- ii. Proposed building and setback lines. Proposed building setback lines from side, front and rear lot lines shall be shown.
- iii. *Proposed streets and sidewalks or walkways*. Proposed rights-of-way, easements, and common areas shall be shown. Typical cross-sections of proposed streets shall be provided.
- iv. *Buffers along exterior streets*. Location and width of buffers proposed along exterior streets required in residential subdivisions under section 23-307.2 to screen the rear yards of lots fronting on interior streets shall be shown. Location and type of wall, if proposed, shall be shown. Specific details of plantings need not be provided.
- v. *Entrance features*. Medians, landscaped areas, sign locations, and other entrance features shall be shown. Specific details of plantings need not be provided.
- vi. Right-of-way and street cross sections. Right-of-way widths, pavement widths, sidewalks, curbs and gutters, and sidewalks shall be shown for each classification of street proposed in the subdivision.
- vii. *Parks*. Locations and size of proposed parks. Calculations showing compliance with recreation requirements per section 23-310
- 3. *Development impact data*. Data required for concurrency review under subsection 23-704.4(a) shall be provided.

(Ord. No. 2007-14, § 1, 6-5-07)

Sec. 23-223.3 Preliminary subdivision plat review.

- a. Development review committee.
  - 1. All preliminary subdivision plats shall be reviewed by the administrative official to determine that the preliminary subdivision plat application is complete in accordance with the requirements of this section. Completed applications will be distributed to the development review committee members.
  - 2. The development review committee shall review all preliminary subdivision plats for compliance with the purpose and intent of the subdivision requirements of this section and land development requirements of article III, division 1, district regulations of article IV, concurrency requirements of article VII, div. 1, and other applicable sections of this chapter to determine if any problems exist and to determine any adverse impact which bears upon the public interest. The applicant or his designee may meet with the development review committee in their review of the preliminary subdivision plat.
  - 3. After completion of review by the development review committee and based upon the findings of the development review committee, the administrative official may approve transmittal of the preliminary subdivision plat to the planning board or require resubmittal by the developer with modifications or corrections.
  - 4. The administrative official shall inform the applicant in writing of the final review comments which were received from the development review committee.
  - 5. If the administrative official approves transmittal of the preliminary subdivision plat to the planning board, the developer will provide twelve (12) additional sets of the plan and plat (or the number as determined to be adequate by the administrative official). The administrative official shall prepare a report indicating the recommendations of the development review committee and submit the report to the planning board at its next scheduled meeting.
  - 6. The following instances shall be considered new applications and shall require payment of an additional fee:
    - A. Any review beyond an initial submittal and two (2) resubmittals, including review for minor technical corrections required by the development review committee.
    - B. Any submission requiring corrections that is not resubmitted within sixty (60) days shall be considered expired.
    - C. If during the review process, the development review committee determines that the preliminary subdivision plan and plat do not meet preliminary subdivision plan and plat submittal requirements or substantially fails to meet the design standards and other criteria of these regulations, the preliminary subdivision plan and plat will be rejected on that basis and resubmittal will not be accepted until the next deadline for applications, at which time a new processing fee and application will be required.

- D. Any formal approval by the planning board or city commission which is conditioned on or subject to correction or modification of plans.
- b. *Planning board review.* At its regularly scheduled meeting, the planning board shall review the preliminary subdivision plat for compliance with the land development requirements of article III, including the street right-of-way and design standards, the district regulations of article IV, and the concurrency requirements of article VII. The planning board shall recommend to the city commission to approve, approve with stated conditions or stipulations, or deny with specific reference to specific requirements of this chapter.
- c. City commission action. After receiving the recommendation of the planning board, the city commission shall approve, approve with stated conditions or stipulations, or deny with specific reference to the requirements of this chapter.
  - 1 . *Concurrency*. A preliminary subdivision plat shall not be approved unless the concurrency requirements of this chapter have been met. (See section 23-704.4.c.)
  - 2. *Time limit on approval*. Approval of the preliminary subdivision plat shall be valid for two years. An extension of time may be applied for(and granted in one-year increments) by the developer by submitting a letter of request to the city commission through the administrative official and a fee per section 23-242

(Ord. No. 2007-14, § 1, 6-5-07; Ord. No. 2016-21, § 3, 12-06-16)

- Sec. 23-223.4 Final subdivision plat and supplementary information. Plats must be prepared by a registered surveyor and shall comply with the requirements of F.S. ch. 177. Application forms, deadlines for submission, and the number of copies of documents required shall be as set forth in the procedures manual maintained by the administrative official. The fee shall be as required per section 23-242.
  - a. *Pre-requisites*. Unless the proposed subdivision is exempt pursuant to subsection 23-223.1(a)3, a final plat application shall not be accepted for review unless a preliminary plat has been approved by the city commission under section 23-223.2, and site improvements have been completed pursuant to a site development permit under section 23-217. Although not preferred, the City of Lake Wales will accept a performance bond, letter of credit or other surety in lieu of constructing street improvements, drainage improvements, street lights or traffic signs prior to the approval and recording of the final subdivision plat. The surety shall be a minimum of 120% of the cost of the improvements, based on the engineer's cost estimate that is approved by the City.
  - b. Administrative review. The administrative official shall review the application and plat for completeness, compliance with the approved preliminary plat and conditions of approval, as applicable. Any significant changes to the plat from the approved preliminary plat shall require approval by the City Commission with a recommendation from the planning board. The administrative official shall consult with the planning board chairman to determine whether a proposed change is significant. The application and plat shall be returned to the applicant within ten (10) days of receipt for correction of any deficiencies.
  - c. Submittals. Required submittals for an application for final plat approval are:
    - 1. *Application form and fee.* A completed application form, provided by the administrative official, and a filing fee as set forth in section 23-242 are required.
    - 2. Final subdivision plat. The final subdivision plat shall constitute the totality of land the applicant plans to develop. When a subdivision is being developed in phases, the final subdivision plat shall constitute only that portion of the approved development plan which the applicant proposes to record and develop at the time, provided, however, that such portion conforms to the phasing schedule approved with the preliminary subdivision plan and all requirements of these regulations. The final subdivision plat shall be consistent with the preliminary plat approved by the city commission and shall conform with all requirements of these regulations. The number of reproducible plats and copies shall be as set forth in the procedures manual maintained by the administrative official.
      - A. The final subdivision plat shall conform to the requirements of F.S. ch. 177.
      - B. An executed dedication of public improvements to the city shall be made on the title page.
      - C. The title page shall provide a signature block for the city's surveyor to certify that the plat has been reviewed for conformity with the requirements of F.S. ch. 177.
    - 3. Required supplementary documents.

- A. *Covenants*. Any protective deed covenants to be placed on the property shall be notarized and in a form suitable for recording.
- B . Homeowners' association documents or evidence of maintenance of private facilities. Where infrastructure such as roads or lift stations will remain private, evidence of an established homeowners association or other legal entity responsible for continued operation and maintenance shall be provided. Following the recording of the plat and prior to the issuance of building permits for structures within the subdivision, the homeowners' association documents shall be recorded.
- C. *Title certification*. Original and four (4) copies of a title opinion of an attorney-at-law licensed in Florida or a certification by an abstractor or title company, in a form acceptable to the City Attorney and showing that apparent record title to the land as described and shown on the plat coincides with the names shown on the dedication (parties executing plat are owners of the land embraced by the plat). The title certification shall also show all mortgages not satisfied or released of record not otherwise terminated by law, show that all city taxes and assessments are paid to date, that the description of the plat is correct, and that no conflicting rights-of-way, easements, or plats exist. Four (4) copies of all referenced documents shall be provided with title certification.
- D. Dedicated public facilities. Dedications executed by the owner on the plat shall be accepted by the city through the process outlined in sec. 23-226 at such time as the city commission determines appropriate. The city may undertake re-inspection of such facilities and if necessary require corrective action by the owner prior to accepting the dedication(s). An itemized list with costs of all improvements to be dedicated shall be provided by the applicant at the time of platting.
- d. *Review and certification process*. Each final-subdivision plat shall be subjected to a standard review and certification process as follows.
  - 1. All final subdivision plats shall be reviewed by the development review committee for consistency with the preliminary subdivision plat and conditions approved by the city commission. Plats found not to be in compliance shall be returned to the applicant for corrections.
  - 2. Prior to forwarding the final plat to the city commission for approval, a Surveyor's Certificate of Approval must be obtained certifying that the plat has been reviewed for conformity with the requirements of F.S. ch. 177. Certification will be made by an independent surveyor approved by the city.
  - 3. Prior to forwarding the final plat to city commission for approval, the public works director must certify that all improvements have been completed satisfactorily and in conformance with the applicable standards of the city and may be accepted by the city. The public works director may require a maintenance bond to cover the cost of cleaning of all catch basins within the development and to correct damage caused to infrastructure during construction of buildings in the development.

#### 4. Maintenance Bonds.

- a. Public Improvements To ensure that any improvements dedicated to the City (such as, but not limited to, streets, drainage, water, reclaimed water, sanitary sewer, storm sewer facilities, street lights and traffic signs) do not contain construction, design, or material defects or failures, a letter of credit or other surety shall be required. The surety shall be 10% of the cost of the improvements, based on the engineer's cost estimate approved by the City. Said surety shall be reviewed and approved by the City prior to final plat. The surety shall be held by the City for a minimum of 24 months. The City reserves the right to hold the surety for a maximum of 60 months if special conditions encountered during design or construction make normal inspection and testing insufficient to assure structural integrity. Examples of special conditions include the use of marginal soils in construction, application of geotextile material precludes the removal of unsuitable material, and construction practices resulting from experimental design concepts.
- b. Project Landscaping A letter of credit or other surety shall be required in order to ensure that landscape improvements in project common areas remain viable and are not diseased, damaged or dying. The surety shall be for 120% of the total landscaping cost, based on the review and approval of the project costs by the Administrative Official. Said surety shall be reviewed and approved by the City prior to final plat. The surety shall be held by the City for a minimum of 24 months. The City reserves the right to hold the surety for a maximum of 60 months to ensure that the project common area landscaping remains healthy and viable.

- e. Action of the city commission.
  - 1. If the final subdivision plat is substantially in accord with the approved preliminary subdivision plat, fulfills all attached conditions and stipulations, is complete and contains all of the required certifications, the city commission shall approve the plat, and the mayor shall indicate such approval on the final subdivision plat by signing the certification of approval for recording.
  - 2. If the final plat is disapproved, the grounds for disapproval shall be stated in the records of the city commission and in writing to the applicant.

#### f. Recording of the final plat.

- 1. No plat of lands in the city subject to these regulations shall be recorded, whether as an independent instrument or by attachment to another instrument entitled to record, unless and until such plat has been approved by the city commission and fees required for recording have been received by the city clerk.
- 2. The city clerk shall record the plat with the clerk of circuit court as an official plat of record. A second reproducible and fully certified copy shall be filed with the administrative official for permanent record.
- g. Single-Family Residential Subdivision Design Requirements.

Single-family residential subdivisions with 20 lots or more, shall submit to the Development Review Committee (DRC), prior to final plat approval, the following:

- 1. A plan to encourage architectural building variety. Similar residential units shall be separated by a minimum of 120 feet or four units, whichever is greater.
- 2. Proposed building design details including: architects style, building materials and colors. The approved standards shall be incorporated into the homeowner association documents prior to final plat approval or the sale of building lots.

#### Sec. 23-223.5 Vacating of plats.

#### a. Eligibility.

- 1. The owner of any land subdivided into lots may petition the city under the provisions of F.S. ch. 177, to remove (vacate and annul) the existing plat, or portion of a plat, from the official records of Polk County.
- 2. The city commission may, upon its own motion or recommendation by the planning board, order the vacation and reversion to acreage of all or any part of a subdivision within its jurisdiction. This includes the vacation of streets and/or other parcels as permitted in section 23-221
- b. *Application*. The applicant for vacating of a plat, or a part of a plat, shall file with the administrative official a letter of petition for plat vacation, proof of publication of notice of intent, certificate of title, statement of taxes and resolution, and fees established by the city commission. Following review of the development review committee and recommendation of the planning board, the petition shall be acted upon by the city commission following a public hearing. The applicant shall be responsible for recording the petition and the proof of publication with the clerk of the circuit court.
- c. Action by city commission.
  - 1. The city commission may order the vacation and annulment of all or any part of a subdivision within its jurisdiction, provided that:
    - A. The subdivision plat was lawfully recorded not less than five (5) years before the date of such action by the city commission; and
    - B. No more than ten (10) percent of the total subdivision or part thereof has been sold as lots by the original subdivider or his successor in title.
  - 2. Such action shall be based on a finding by the city commission that:
    - A. The proposed vacation and annulment of the plat will result in greater conformity with the comprehensive plan of the area; and
    - B. The public health, safety and welfare will be promoted thereby.
  - 3. Before acting on a proposal for vacation and annulment of subdivided land, the city commission shall hold a hearing with due public notice (notice of intent).

- d. Access to individually owned parcels. No owner of any parcel of land in a subdivision shall be deprived by the vacation and annulment of a plat, or portion of a plat, of reasonable access to such parcel nor of reasonable access therefrom to facilities to which such parcel has access. Such access remaining or provided after such vacation need not be the same as that theretofore existing.
- e. *Correction of county records*. If a subdivision plat is vacated by the city commission, the city clerk shall correct the records of the clerk of the circuit court accordingly.

Sec. 23-223.6 Replat and resubdivision.

- a. Substantially similar plats. If a platted area is proposed to be replatted and if the proposed plat is substantially similar in design, layout, and concept to the original plat, as determined by the administrative official, and, if all lots, roads, and easements are in conformance, without variance, to these land development regulations or other appropriate standards, only a final plat complying with the requirements of these regulations needs to be filed. The fact of its being a replat shall be stated in the same size lettering and type following the subdivision name as a title to the dedication and wherever it appears on the plat. Submittal and approval procedures shall be the same as in section 23-223.3.
- b. Substantially dissimilar plats. If a platted area is proposed to be replatted and if the proposed plat is not substantially similar in design, layout, and concept to the original plat, as determined by the administrative official, the procedures required by section 23-223.2 and 23-223.3 will apply.

Sec. 23-223.7 Corrective plats.

In the event that an appreciable error or omission in the data shown on any plat duly recorded under the provisions of these regulations and F.S. ch. 177, is detected by subsequent examination or revealed by a retracement of the lines during the original survey of lands shown on such recorded plat, the land surveyor who was responsible for the survey and the preparation of the plat as recorded may file an affidavit confirming that such error or omission was made. However, the affidavit must state that he has made a resurvey of the subject property in the recorded subdivision within the last ten (10) days and that no evidence existed on the ground that would conflict with the corrections as stated in the affidavit. The affidavit shall describe the nature and extent of such error or omission and the appropriate correction that, in his opinion, should be substituted for the erroneous data shown on such plat or added to the data on such plat. Said affidavit shall be filed and recorded in accordance with F.S. ch. 177.

(Ord. No. 2015-04, § 5, 7-7-15; Ord. No. 2016-21, § 3, 12-06-16; Ord. No. 2020-30, § 1, 12-02-20; Ord. No. 2021-09, § 1, 6-02-21; Ord. No. 2022-45, § 1, 10-04-22)

# § 23-224. Planned development project (PDP).

Effective: Tuesday, December 06, 2016

Sec. 23-224.1. Applicability. Planned development project (PDP) approval may be applied for in any zoning district for the purpose of allowing flexibility of site design through waivers of strict compliance with the dimensional and design standards of this chapter.

PDP approval is required for any multi-family development with more than twelve (12) units.

PDP approval is also required for non-residential developments with two (2) or more outparcels, regardless of whether the property is subdivided for separate ownership of outparcels or the outparcels are to be leased.

A PDP requires the approval by the city commission upon recommendation of the planning board.

See article IV, division 4 for design standards for planned development projects.

(Ord. No. 2008-04, § 2, 2-19-08)

Sec. 23-224.2 Application requirements for submittal of planned development project plans. Applications for preliminary planned development project approval shall include information as required in this section. An incomplete application will not be accepted and will be returned to the applicant without review. An executed utility capacity queue agreement, if required per section 23-731, shall be submitted prior to commencement of review for any project.

- a. Pre-application conference and conceptual plan review. Prior to the preparation of a preliminary planned development plan, the applicant shall meet with the administrative official and the director of public works to discuss the concept of the proposed development and the requirements of these land development regulations. The pre-application conference and informal review is designed to prevent costly and avoidable revisions in the layout. A pre-application conference is required for all proposed projects, including amendments to approved PDP site plans. A conceptual plan must be presented at the conference to show the property boundaries; existing site conditions, including topography, wetlands, water bodies, and existing vegetation; any existing site improvements; and a generalized plan of the proposed development. Information sufficient to identify natural features of the property shall be provided by the applicant, such as aerial photographs, topographic maps, flood maps, vegetation surveys, and wetlands maps.
- b. *Preliminary plan application requirements*. The number of copies of plans and deadlines for submission of applications shall be as set forth in the procedures manual maintained by the administrative official. Applications for preliminary PDP plans shall include:
  - 1. Application form and fee. An application for preliminary PDP site plan approval shall include a completed application form and the fee as set forth in section 23-242
  - 2. Master plan. For multi-phased projects and for the addition of acreage to an approved PDP for expansion of the development, approval of a PDP master plan is required. The master plan must be approved prior to or in conjunction with the approval of the first phase for any new project. A revised master plan for the entire project is required prior to or in conjunction with approval of a preliminary plan for development of acreage not shown on the original master plan.
    - A. The master plan is a general plan showing the overall layout, roadways, and phases of the project.
    - B. The boundaries of the project with dimensions and acreage shall be shown.
    - C. The boundaries of all existing and proposed phases with dimensions and acreage of phases shall be shown. The names or numbers of all existing and proposed phases.
    - D. The master plan shall provide information as required in subsection 23-445.1 (a) for residential and mixed use projects or [section] 23.445.2 for non-residential projects.
  - 3. *Preliminary plan*. The preliminary plan shall show information as required in section 23-222.8 for preliminary site plans. If a subdivision is proposed within the PDP, requirements for a preliminary subdivision plat under section 23-223 shall also apply.
  - 4. Projections of impacts of the development upon roadways, sewer and water, public drainage and recreation facilities shall be submitted with the preliminary plan as required in subsection 23-704.4(c) for concurrency review.
  - 5. A complete list of requested waivers to the provisions of this chapter shall be provided with the application.

(Ord. No. 2007-14, § 1, 6-5-07)

Sec. 23-224.3 Preliminary plan review.

- a. Development review committee (DRC) review. Upon finding that the preliminary PDP application is complete, the administrative official shall schedule the application for review by the development review committee (DRC) at its next scheduled meeting.
  - 1. The DRC shall review the plan and provide comments with reference to the purposes and requirements of this chapter, including the standards for PDPs set forth in article IV, div. 4 and concurrency requirements of article VII, div. 1. Recommendations for specific conditions of approval or modifications to the plan may be made by the DRC.
  - 2. Upon completion of the DRC review, the application shall be scheduled for planning board review.
  - 3. The DRC may continue its review to their next meeting with a request for further information or revisions. Within three (3) days of the DRC meeting, the administration official shall inform the applicant in writing of the decision of the development review committee with specific reference to their findings.

If the applicant fails to provide information or revisions to the DRC within three (3) months of the request for such information, the application shall expire and the fee shall be forfeited. Extensions of time may be granted by the DRC upon request by the applicant.

- If, following the review of additional information or revisions to the proposal, the DRC requests further information or revisions, the applicant may decide not to comply with the DRC's request and may request that the application be forwarded to the planning board at its next regularly scheduled meeting and the administrative official shall forward the application to the planning board with a report detailing the DRC's review and comments.
- b. *Planning board review and recommendation*. Following completion of the DRC's review of the application, the administrative official shall schedule a public hearing on the application at the next available planning board agenda and shall provide public notice in accordance with section 23-241
  - 1. Staff report to planning board: The administrative official shall prepare a staff report to the planning board in advance of the meeting at which a PDP application is to be heard. The report shall provide an analysis of the proposal and plan with reference to the requirements of this chapter and shall include any comments and suggested conditions from the development review committee.
  - 2. Planning board public hearing: The planning board shall hold a public hearing on the application and shall review the plan in relation to the purposes and requirements of this chapter, with special consideration given to the regulations for planned development projects in article IV, div. 4.

The planning board may request modifications to the plan to improve the site plan in regard to the intent of the land use regulations and may defer action on the application to allow the applicant to submit revisions. The consent of the applicant shall be required for deferral of planning board action more than once.

- 3 . Planning board recommendation: Based upon their review of the information presented by the applicant, the recommendations of the administrative official and the development review committee, and public comments, the planning board shall make a recommendation to the city commission to either approve, approve subject to stated conditions, or deny the application. Where the planning board recommends denial, they shall state specific reasons based upon provisions of the land development regulations. The planning board recommendation shall address the concurrency requirements of article VII, div. 1.
- c. City commission review and decision. Following a recommendation by the planning board, the administrative official shall schedule a public hearing on the application to be heard at the next available city commission meeting and shall provide public notice in accordance with section 23-241
  - 1 . *Staff report to city commission:* The administrative official shall forward the planning board recommendation and a staff report, providing an analysis of the proposed PDP plan with regard to the provisions of this chapter, to the City Commission and to the applicant in advance of the meeting at which the application is to be heard.
  - 2. City commission public hearing: The city commission shall hold a public hearing on the application and shall review the plan, planning board recommendation, and staff report.
  - 3. *Decision:* Based upon their review of the information presented by the applicant, the recommendations of the development review committee, the administrative official and the planning board, and comments received from the public, the city commission shall either approve, approve subject to stated conditions, or deny the application for preliminary PDP plan. Where the city commission denies the application, they shall delineate reasons with reference to the land development regulations.
  - 4. A preliminary planned development project (PDP) plan shall not be approved unless the concurrency requirements of this chapter have been met. (See section 704.4.c.)
  - 5. If changes in the plan are required or agreed during the city commission review, a revised PDP plan showing changes shall be filed with the administrative official prior to application for a site development permit.

(Ord. No. 2007-14, § 1, 6-5-07)

Sec. 23-224.4 Time limit on PDP plan approval. The preliminary PDP plan approval shall be valid for two (2) years, and at the end of the time, the approval shall expire, along with the reservation of capacity in city utilities, unless a complete application for site development permit has been submitted One-year extensions may be granted by the city commission upon the recommendation of the planning board, provided the extension is requested prior to the expiration of the plan approval.

Sec. 23-224.5 Site development permit and completion of site improvements. Following approval of a preliminary PDP plan by the city commission, the administrative official shall notify the applicant that an application for a site development permit may be submitted. The administrative official may require an updated plan reflecting conditions of approval made by the city commission. See section 23-217 for the site development permit requirements.

Sec. 224.6 Final plat or survey. For residential subdivisions, a subdivision plat must be recorded prior to the issuance of building permits for dwelling units. See section 23-223 for subdivision plat requirements.

A final PDP plan may be required by the administrative official to reflect changes made in the plan during the review process or to comply with conditions of approval. For all structures, the survey requirements of section 23-212 must be met prior to the issuance of building permits.

Sec. 224.7 Amendment of approved plan. The process for review and approval of amendments to approved PDP plans depends upon the extent of the changes proposed, as set forth below:

a. *Administrative*. Amendments meeting the criteria below are reviewed and approved by the administrative official; however, the administrative official may refer the application to the planning board and city commission if there are issues deemed to warrant such review.

Criteria for administrative amendments:

- Changes in layout involve less than twenty (20) percent of the area of the development; and
- Any increase in number of units or non-residential square footage is less than one (1) percent and the change does not cause violation of density or intensity standards; and
- No waivers of development standards are requested requiring planning board or city commission action; and
- No conditions of approval are violated with the exception of those obviated by the proposed amendment.
- b. *Planning board*. Amendments meeting the criteria below are reviewed and approved by the planning board; however, the board may refer the application to the city commission if there are issues deemed to warrant such review.

Criteria for planning board amendments:

- Any waivers requested are those within the powers of the planning board to grant per the site plan review process; and
- Any increase in number of units or non-residential square footage is less than five (5) percent and the change does not cause violation of density or intensity standards; and
- Any changes requested in conditions of approval pertain to matters in the board's purview under the site plan review process (section 23-222) and do not require city commission approval.
- c. City commission. Amendments not meeting the criteria for administrative or planning board approval must be reviewed and approved as for a new planned development project. These include amendments that:
  - Entail major changes as determined by the administrative official or planning board in terms of the magnitude of the change in regard to affected area, density or intensity of the development, or
  - Change the approved housing type (e.g. single-family to multi-family); or
  - Significantly change the configuration of lots, buildings, roadways, common areas, parking areas or other major features; or
  - Have a significant impact upon the quality of the development with reference to the design guidelines for PDPs in this chapter; or
  - Violate conditions of approval; or
  - Deviate significantly from representations by the developer pertaining to the character and quality of the development.

(Ord. No. 2008-04, § 3, 2-19-08; Ord. No. 2016-21, § 4, 12-06-16)

## § 23-225. Development of regional impact (DRI).

Applications for developments of regional impact or amendments to developments of regional impact, as defined by F.S. ch. 380, except for reviews of existing approved development orders that have not expired as of the effective date of this ordinance, shall adhere to the following procedures for review.

- a. The applicant for a Development of Regional Impact shall contact the city and Central Florida Regional Planning Council (CFRPC) and hold a pre-application conference with these agencies to establish issues to be addressed in the application as required by [F.S.] § 380.06(9).
- b. The application for development approval (ADA) shall be filed with the administrative official and all other agencies as required by CFRPC. The application shall fully detail the proposed development, all commitments by the applicant, and all issues established in the pre-application conference. The application shall be accompanied by the fee established by resolution of the city commission and included in the procedures manual maintained by the administrative official.
- c. Upon receipt of a notice of sufficiency from CFRPC, the city shall initiate public notice procedures as required by [F.S.] § 380.06(9).
- d. A public hearing by the planning board announced in accordance with section 23-241 shall be held and a recommendation made regarding the conditions of approval to be stipulated in a development order. Such recommendations shall be forwarded to the city commission in writing.
- e. The city commission shall hold a public hearing, and within thirty (30) days of that hearing, shall render a decision on the application unless an extension is requested by the developer.
- f. A notice of adoption of the development order shall be recorded by the developer with the clerk of the circuit court.

# § 23-226. Acceptance of developer donations, dedications, contributions, etc.

Effective: Tuesday, July 07, 2015

- a. The city commission shall accept all donations or dedications of roads, sidewalks, water and sewer improvements, land or other developer contributions by enacting a resolution that includes the following:
  - 1. The location of donated or dedicated land or improvements, if any.
  - 2. The value of donated or dedicated land, if any; said value shall be based upon a written appraisal of fair market value by a qualified and professional appraiser based upon comparable sales of similar property between related parties in the bargaining transaction.
  - 3. The value of donated or contributed capital facilities or infrastructure, if any; said value shall be actual construction costs.
  - 4. The value of donated or contributed apparatus and equipment, if any; said value shall be actual cost.
  - 5. The date of dedication.
- b. All statements of value by the developer shall be supported by itemized documents showing construction cost of improvements to be dedicated. All cost documents shall be signed and sealed where appropriate.
- c. A copy of the resolution accepting and stating the value of developer donations, dedications or other contributions shall be forwarded by the administrative official to the finance director. The finance director shall adjust the value of the city's fixed assets to reflect the value of said donations, dedications or other contributions.

(Ord. No. 2015-04, § 5, 7-7-15)

### § 23-227. Certificate of appropriateness.

Effective: Tuesday, October 04, 2022

A certificate of appropriateness is a written approval issued by the historic preservation regulatory board for work proposed on buildings or sites within an historic district designated under this chapter. See section 23-802 for definitions of terms used in this section.

Sec. 227.[1]. Applicability.

- a. Certificate of appropriateness. Unless otherwise provided herein, no person may undertake the following actions affecting any property in an historic district designated under this chapter without first obtaining a certificate of appropriateness from the historic regulatory board.
  - 1. Alteration of the exterior part of any building or structure, regardless of whether a building permit is required for the work.
  - 2. Demolition of a building, structure or object or removal of a significant exterior feature of a building or structure. (Demolition delay only. See section 23-227.3.b.)
  - 3. Installation of a new sign or alteration of an existing sign; removal of existing signs integral to the architecture of any building. (See exemption for incidental signs.)
  - 4. Construction of a new building or an addition to an existing building.
  - 5. Construction of fences, not including hedges.
- b. Exemptions. The following actions are exempt from the requirement of a certificate of appropriateness:
  - 1. Ordinary maintenance and repairs, provided the work involves repairs to existing features of a structure or site or the replacement of elements of a structure with pieces identical in appearance and provided that the work does not change the exterior appearance of the structure or site
  - 2. Landscaping, not including non-vegetative features such as walls, fences, and paving.
  - 3. The administrative official may determine that work is exempt from the requirement for a certificate of appropriateness if the alteration will not be visible from a public street or pedestrian way. The administrative official may impose reasonable conditions on the approval in keeping with the guidelines of the historic board.
  - 4. Murals, provided they do not meet the definition of a sign under this chapter.
  - 5. Alterations meeting guidelines adopted by the historic board for paint color or other materials.
  - 6. Directional and other incidental signs exempt from permitting requirements under this chapter.
- c. Other permits. No building permit, demolition permit, land alteration permit, or site development permit shall be issued for work on a building or site in an historic district designated under this chapter unless a certificate of appropriateness has been issued for the work or the work has been verified as exempt by the administrative official. The issuance of a certificate of appropriateness shall not relieve the applicant from obtaining other required permits and approvals. A building permit or other permit issued by the city shall be invalid if it is obtained without the presentation of the certificate of appropriateness required for the proposed work.
- d. Violations; stop work. A stop work order shall be issued for any work undertaken in violation of the requirement for a certificate of appropriateness or the conditions of a certificate of appropriateness.

#### Sec. 23-227.2. Application.

- a. Pre-application conference. A pre-application conference with the administrative official is required prior to submission of an application for a certificate of appropriateness for construction of a new building or an addition or for any alteration of the exterior of a building within an historic district designated under this chapter. An applicant for any work within an historic district may request a pre-application conference with the administrative official or with the historic board to obtain information or guidance regarding a proposed project. The purpose of the pre-application conference is to discuss and clarify preservation objectives and guidelines of the historic board in relation to a proposed project.
- b. Application for certificate of appropriateness. Application shall be made on forms supplied by the administrative official and shall be accompanied by the fee as set forth in section 23-242. The number of copies of required support documents, application deadlines, and review guidelines shall be determined by the administrative official.

The following support documents are required as applicable:

- 1. A site plan, rendering, sketch or drawing of the proposed work, specifically indicating the proposed changes in appearance, color, texture of materials, dimensions, architectural design of the exterior of the structure, including the front, sides, rear (if visible from a public right-of-way), roof, and any alterations to or additions of any outbuilding, courtyard, fence, or other accessory structure or improvement.
- 2. Photographs of the existing building, structure, or sign as applicable.
- 3. Photographs of adjacent buildings.
- 4. Any other information which may be reasonably required by the administrative official in order to convey a clear understanding of the applicant's proposal.

#### Sec. 23-227.3. Review of application for certificate of appropriateness.

- a. Administrative review.
  - All applications for certificates of appropriateness shall be reviewed by the administrative official within ten (10) working days of
    receipt to determine that the application is complete in accordance with the requirements of this section. Incomplete applications will
    be returned to the applicant with reference to deficiencies.
  - 2. Upon a finding that an application is complete, the administrative official, in consultation with other department as necessary, shall

- review the application for compliance with the purpose and intent of these regulations including the provisions of article IV, Resource Protection Standards, division 5, Historic Preservation (section 23-651 et seq.). The administrative official may request modifications or additional information if necessary.
- After completion of review the administrative official may approve transmittal of the application to the historic board or require resubmittal with modifications or corrections.
- 4. If the administrative official approves transmittal of the application to the historic board, The administrative official shall prepare a report with recommendations and shall submit the report to the historic board in advance of its next scheduled meeting in accordance with the schedule established for agendas and public notice.
- 5. An application for a Certificate of Appropriateness for vinyl, painted, etched, or other types of non-structural signs may be reviewed and approved by the Administrative Official. The Administrative Official's decision shall be based on an assessment of compliance according to section 23-545 and section 23-653. In any case, the Administrative Official has the right to determine that formal review and approval by the Historic Board is necessary.

b. *Historic board review and action*. The historic board shall hold a public hearing on the application except those for signs and shall review the application with reference to these regulations, with particular attention to the historic preservation resource protection standards (section 23-651 et seq.).

- 1. Except for application for demolitions, the board shall approve with stated conditions or stipulations, or deny an application with specific reference to the requirements for this chapter and standards adopted by the historic regulatory board. The board may continue the hearing until the next regularly scheduled meeting if further information or modifications to plans for proposed work are requested. However, the board shall make a decision at the continued hearing unless the applicant agrees to further delay.
- 2. For applications for building demolitions, the issuance of a certificate of appropriateness may be delayed for up to sixty (60) days for the purpose of exploring alternatives to demolition, including relocation of the structure. Upon the request of the historic board, an additional sixty-day delay may be granted by the city commission with reference to the criteria for certificates of appropriateness for demolitions under section 23-652. In no case, however, shall a certificate of appropriateness for a demolition be denied.

Sec. 23-227.4. Appeal of decision on certificate of appropriateness. See section 23-244.

(Ord. No. 2008-11, § 4, 5-20-08; Ord. No. 2008-31, 10-7-08; Ord. No. 2016-01, § 3, 01-19-16; Ord. No. 2021-20, § 1, 09-10-21; Ord. No. 2022-45, § 1, 10-04-22)

## § 23-228. Master Development (MDP) Review Process.

Effective: Tuesday, October 20, 2020

Sec. 23-228.1. Applicability. Master Development Plan process is designed to promote a form of development that is intended to encourage high quality master planned community development on large tracts of land, in order to promote a jobs/housing balance and a development pattern that may reduce reliance on the personal automobile by allowing a greater variety of land uses closer to work and home; protect and enhance environmental assets and provide for an orderly transition of land uses through a planning process that incorporates a build out vision with proper timing and location of adequate public facilities. This process is intended to facilitate the implementation of planned development zoning and Policy 2.18 of the Comprehensive Plan.

Sec. 23-228.2 Application requirements for submittal of Master Development Plan Projects. Applications shall include information as required in this section. An incomplete application will not be accepted and will be returned to the applicant without review.

- a. Pre-Application conference and conceptual plan review. It is required that the applicant schedule a pre-application conference with the administrative official to discuss the proposed development no less than two (2) weeks prior to submitting formal application for the preliminary site plan. The purpose of this conference is to review the feasibility of the proposed development.
- b. Master Development Plan application.
- 1. The application for Master Development Plan approval shall include a completed application form, a site plan meeting the requirements of section 23-450, and the application fee pursuant to section 23-242. The application form, number of copies of plans, and deadlines for submission shall be set forth in the procedures manual maintained by the administrative official.
- 2. An incomplete application will not be accepted and will be returned to the applicant without review.

Sec. 23-228.3 Master Development Plan review and approval.

- a. Development review committee. Upon acceptance of the application as complete, the administrative official shall schedule the application for review by the development review committee at its next regular meeting. All master development plans shall be reviewed by the development review committee to determine that the plan meets the requirements of this chapter.
- 1. After completion of review by the development review committee and based upon the findings of the development review committee, the administrative official shall make a written recommendation to the planning board for approval, approval with conditions, or denial of the master development plan.

- Planning Board Review. Upon issuance of written comments by the DRC, the MDP shall be scheduled for a public hearing before the
  planning board where they may request modifications to the plan to improve the site plan in regard to the intent of the land development
  regulations.
- City Commission Review. The Board shall conduct a public hearing on the review of the MDP, the planning board recommendation, and staff
  report per the requirements of this Chapter.
- b. Review Criteria. Based upon their review of the information presented by the applicant, the recommendations of the development review committee, the administrative official and the planning board, and comments received from the public, the city commission shall either approve, approve subject to stated conditions, approval with modifications or deny the application for MDP plan. In its decision, the City Commission shall consider whether the proposed plan is consistent with the Comprehensive Plan and this Code. In making such determination, the approving authority shall consider the approval criteria for the Planned Development Mixed-use zoning district.
- c. Concurrency. MDPs are intended for large tracts of land that anticipate a long-term build-out vision. As such, concurrency reservation for sanitary sewer, potable water, solid waste, roads, public schools, recreation and open space and drainage may not be deemed appropriate. Development Orders may be conditioned to require that public facility improvements or capacity will be in place concurrent or at the time the facility or service is needed by proposed development.

An impact assessment for concurrency will be required for individual phases or subphases of development, at the time of a site development permit application. As an alternative, the applicant may enter into a development agreement with the City to secure the completion of improvements or performance of other developer obligations in consideration for any procedural or substantive right or entitlement, as may be authorized and required by this Code, the Comprehensive Plan and applicable law, in accordance with F.S. §§ 163.3220 – 163.3243.

- d. Effect of MDP Approval. Upon approval of a MDP, the applicant may proceed with the submittal of Preliminary Site Plans, as described in section 23-222.4.a.3, followed by Site Development Permits, as described in section 23-217, for individual phases or subphases of development. In the case of residential subdivisions, a Preliminary Plat/Site Plan shall be filed and approved prior to the Site Development Permit. Upon approval of a Site Development Permit, a Final Plat shall be submitted for City Commission review and approval.
- e. Expiration of MDPs. MDPs shall not expire, unless and except it is mutually agreed that such approval should be rescinded.
- f. Monitoring. Preliminary Site Plans and Site and Development Plans must include a tracking chart to show cumulative development of the MDP.

(Ord. No. 2020-27, § 1, 10-20-20)

#### §§ 23-229--23-240. Reserved.

Effective: Tuesday, October 20, 2020

(Ord. No. 2015-04, § 2, 7-7-15; Ord. No. 2020-27, § 1, 10-20-20)

### Division 3. Public Notice Requirements, Review Fees And Appeal Procedures

## § 23-241. Public notice requirements.

Sec. 23-241.1 General requirements.

- a. Where relevant public notice requirements are specifically provided by Florida Statutes, such notice provisions shall control. Public notice requirements are provided by Florida Statutes for the following:
  - 1. Development of regional impact. F.S. § 380.06.
  - 2. Annexation. F.S. § 171.0413 and F.S. § 171.044, as applicable.
  - 3. Zoning map amendment. F.S. § 166.041.
  - 4. Text amendment to zoning, land use, and development regulations. F.S. § 166.041.
  - 5. Comprehensive plan amendment. F.S. § 163.3184 and F.S. § 163.3187, as applicable.
- b. Where public notice requirements are not specifically provided by Florida Statutes, the public notice requirements of this section shall apply wherever a public hearing is required by this chapter. Public hearings are required for:

- 1. Planned development project approval.
- 2. Special exception use permit.
- 3. Variance.
- 4. Vacation of public right-of-way or public easement.
- 5. Vacation of subdivision plat.
- 6. Appeal of decision or interpretation by the administrative official, planning and zoning board, or historic regulatory board.

### Sec. 23-241.2 Public hearings.

- a. *Newspaper advertisement*. The administrative official shall publish an advertisement no less than ten (10) days before each public hearing in a newspaper of general circulation in Polk County. The notice shall include the following information:
  - 1. The time and place of the public hearing;
  - 2. A description of the subject property or site location;
  - 3. The purpose of the public hearing;
  - 4. That persons may appear and be heard;
  - 5. That written comments filed with the administrative official will be heard and considered;
  - 6. The location where the public may review the file on the matter to be heard.
  - 7. That the hearing may be continued from time to time as necessary;
  - 8. That if any person determines to appeal any decision made by the city commission or board conducting the public hearing, as applicable, with respect to any matter considered at this public hearing, such person will need a record of the proceedings for that purpose and will need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which any appeal is to be based.

#### b. Written notice.

- 1. No less than ten (10) days before a public hearing for a special exception use permit or a variance, the administrative official shall mail a notice by first class mail to owners of all lands within three hundred (300) feet in any direction of the applicant property. The notice shall be in the same form as that specified in paragraph (a) and shall be mailed to the owners at their current address of record as shown on the latest ad valorem tax records. In the event that the owners are members of a condominium association, notice shall be mailed to the condominium association in lieu of individual notices.
- 2. A notice of the public hearing shall be posted in the municipal administration building in the place designated for public notices.
- c. *Notice of multiple public hearings at a single public meeting*. If more than one (1) public hearing is scheduled for a single public meeting, notice of each public hearing may be combined in a single newspaper advertisement at the discretion of the administrative official.

## Sec. 23-241.3 Cost of public notice.

- a. The applicant shall pay the cost of public notice for any public hearing required in connection with an application at the time of filing such application. However, notice of public hearing resulting from staff-initiated zoning actions or annexations will be paid by the city.
- b. No action shall be taken by the city commission or a city board, as applicable, on any application until all required costs of public notice have been paid in full by the applicant.

(Ord. No. 2014-08, § 3, 09-03-14)

## § 23-242. Establishment of review fees.

Effective: Tuesday, February 01, 2022

Any application for a permit, review, or approval required under the provisions of this chapter shall be accompanied by fees as set forth in Table 23-242. The schedule of fees established by this section shall be automatically adjusted annually beginning on October 1, 2008 to reflect an increase based on June's annual CPI or two and one-half (2.5) percent, whichever is greater, without further need for commission action.

TABLE 23-242 LAND USE APPLICATIONS—REQUIRED FEES

TYPE OF APPLICATION	REQUIRED FEES		
	REVIEW FEE	REIMBURSEMENT	
23-212 Verification of Zoning Compliance			
a) For building permit	None	None	
b) Alcoholic beverage license			
Package sales except grocery stores	\$100.00		
Bars, wine and beer	\$100.00	None	
Restaurants, grocery stores	\$50.00		
Change of name, renewal	\$30.00		
c) Written zoning determination or administrative approval	\$30.00	None	
23-213 Certificate of Use	None	None	
23-214 Tree Removal Permit	\$11.00/tree Max. \$110.00 per application Single-family - exempt from fee	None	
23-215 Land Alteration Permit, Review Fee	No fee for one- and two-family lots; \$110.00/acre or fraction up to 5 acres; for more than 5 acres, \$550.00 plus \$11.00/acre above 5 acres, except one or two-family driveway \$165.00	Extraordinary expenses ***	
23-216	None (included in site plan fee)	Public notice**	
Special Exception Use Permit Note: for fee for special permit for expansion of a non-conforming single-family house or duplex, see 23-372.3.a. on this table.		Extraordinary expenses ***	
23-217 Site Development Permit Review Fee and site construction inspections	2-1/2% of the cost of infrastructure, not including buildings. 50% of fee is due with application; remaining 50% at permit issuance	Extraordinary expenses ***	
23-218	\$550.00	Public Notice**	
Zoning Map Amendment		Extraordinary expenses ***	
23-219 Comprehensive Plan Amendment (CPA)	Small-scale (10 acres or under)—\$1,100.00 Large-scale (over 10 acres)—\$1,650.00	Public Notice** Extraordinary expenses ***	
23-220	Small-scale (10 acres or under)—\$2,200.00	Public Notice**	
Annexation (incl. CPA & zoning)	Large-scale (over 10 acres)—\$2,750.00	Extraordinary expenses *** Cost of recording \$10.00/page	
23-221 Vacation of Easement	\$275.00 \$275.00	\$100.00 Public Notice**	
Vacation of Right-of-way, Reimbursement		Extraordinary expenses ***	
23-222 Site Plan	Pre-application conference/conceptual plan Under 10,000 sq. ft. land—\$30.00 Over 10,000 sq. ft. land: \$110.00 for first 5 acres plus \$30.00/acre* over 5 acres Minor site plan (administrative approval) Under 10,000 sq. ft. land—\$165.00 Over 10,000 sq. ft. land—\$330.00 + \$30.00/acre* Major site plan (planning board approval) Under 10,000 sq. ft. land—\$220.00 \$550.00 plus \$30.00/acre*	Extraordinary expenses ***	
Waiver of strict compliance only (per section 23- 222.5) or review of application for temporary outdoor sale or event (per section 23-343	\$50.00		

23-223	Pro amplication confavance/concertual	Extraordinary avnances ***
23-225 Subdivision Plat—Preliminary, Review Fee	Pre-application conference/conceptual review: \$110.00 for first 5 acres plus \$5.50/acre* over 5 acres Subdivision—\$550.00 plus \$11.00 per acre above 10 acres  Master plan—\$110.00 plus \$5.50/acre	Extraordinary expenses ***
23-223 Subdivision Plat—Final	\$385.00	City surveyor's fee and recording fee
23-223 Vacation of Plat	\$825.00	Public Notice**
23-224 Planned Dev Project—Preliminary	Pre-application conference/conceptual review: \$110.00 for first 5 acres plus \$5.50/acre* over 5 acres Planned Development Project plan: \$550.00 up to 10 acres plus \$11.00/acre for each acre above 10 acres Amendment, minor: \$110.00 plus \$5.50/acre Master plan: \$110.00 plus \$5.50/acre	Public Notice** Extraordinary expenses ***
23-224 Planned Dev Project—Master Plan	\$100.00 plus \$5.00/acre* over 5 acres	Extraordinary expenses ***
23-224 Planned Dev Project—Final survey	None	None
23-225 Development of Regional Impact	Fees per F.S. § 380.06	None
23-227 Certificate of appropriateness	\$25.00 for estimated cost of work \$2,500.00 and under; 1% of estimated cost of work over \$2,500.00, maximum \$200.00. No fee for signs	Public Notice—\$75.00 (if public hearing required)
23-244	\$220.00	Public Notice**
Appeals		Extraordinary expenses ***
23-302 Tree Replacement Fund	\$75.00/caliper inch	Extraordinary expenses ***
Extension of time on approval	Administrative approval—\$30.00 Planning Board approval—\$85.00 City Commission approval—\$165.00	
23-372.3.a. Special permit - expansion of non-conforming dwelling	\$50.00	Extraordinary expenses ***
23-545 and 23-526	\$32.00	None
Signs not requiring a building permit		
Other fees:		
Xerox or FAX copies	\$0.15 one-sided; \$0.25 double-sided	None
Maps, including Future Land Use and Zoning	\$25.00 each	
Plans	\$20.00 per sheet	
Research	\$38.00 per hour; minimum 1 hour	

<sup>\*</sup> Per acre fees apply to any fraction of an acre.

<sup>\*\*</sup> Public notice cost reimbursement: The applicant is responsible for paying public notice costs at the time of application. The administrative official shall maintain a schedule of public notice costs for each type of application, based upon typical costs for newspaper advertising, abutters' notices and site signs as required under the provisions of this ordinance. The schedule shall be updated at least annually to reflect current costs incurred by the city for such notice.

\*\*\* EXTRAORDINARY EXPENSES. In addition to the fee schedule set forth above, the applicant shall also be responsible for the payment of any and all extraordinary expenses, which may be incurred by the City in analyzing or reviewing all or any part of an application. These expenses may include the City's retention of a third party consultant. These expenses will be billed at-cost, separately from and in addition to the development review fees set forth herein. The applicant will be advised of the necessity of such expenses prior to such expenses being incurred. The owner/developer and the Development Director, with the advice and consent of the City Manager, shall jointly approve in writing an estimated cost amount before these charges can be authorized. The cost for any such expenses shall be paid in advance to the City prior to incurring such expenses. Upon request of the owner/developer, the City Commission may review such expenses as to the necessity and amount.

(Ord. No. 2006-24, § 3, 6-6-2006; Ord. No. 2007-45, § 1, 9-18-2007; Ord. No. 2008-11, § 5, 5-20-08; Ord. No. 2008-31, 10-7-08; Ord. No. 2008-45, § § 2, 3, 12-16-08; Ord. No. 2009-15, § 5, 6-2-09; Ord. No. 2010-07, § 1—3, 4-20-10; Ord. No. 2012-04, § 1, 3-6-12; Ord. No. 2022-03, § 1, 2-01-22)

#### NOTATION

Section 3 of Ord. No. 2007-45 provided for an effective date of Oct. 1, 2007.

## § 23-243. Exemption from payment of review fees.

Effective: Tuesday, January 19, 2016

- a. Property owners residing in property with a homestead exemption are exempt from board review fees when appealing an administrative decision or action taken against the property of residence.
- b. At the specific direction of the city manager, board review fees may be waived if payment of such fees will create a financial hardship for the applicant or if the applicant is a non-profit organization.
- c. At the specific direction of the city manager, board review fees may be waived if board review is required to correct an administrative error.
- d. Exemption from payment of board fees shall not apply to advertising costs or other costs which may be necessary to provide public notice if such notice is required.

(Ord. No. 2016-01, § 4, 01-19-16)

## § 23-244. Appeals and variances.

Effective: Tuesday, January 19, 2016

- a. Upon appeal, the board of appeals may reverse, affirm or modify, wholly or partly, any order, requirement, decision or determination made by the administrative official provided that the board has first determined that the administrative official's application of these zoning regulations is not reasonable. In conformity with the provisions of said zoning regulations, the board of appeals may make any necessary order, requirement, decision or determination, and to that end shall have all the powers of the administrative official from whom the appeal is taken.
- b. Upon appeal, the board of appeals may reverse, affirm or affirm with conditions a decision of the planning board to deny an application for special exception use provided that the board has first determined that the planning board's denial of said application is not reasonable under these zoning regulations.
- c. The concurring vote of at least three (3) members of the board of appeals shall be necessary to reverse any order, requirement, decision or determination of the administrative official or planning board or to decide in favor of the applicant on any matter upon which the board of appeals is required to pass under this chapter.

Sec. 23-244.1 Appeals. An appeal of a decision made pursuant to these land development regulations shall follow the procedures provided by this section.

a. Petition for appeal. Any person appealing a decision shall file a petition with the administrative official on forms provided for that purpose within thirty (30) days of the decision being appealed. The petition shall set forth, at minimum, the nature, circumstances and basis of the appeal, and contain any materials relevant to the appeal, along with the fees as set forth on Table 23-242

The administrative official shall schedule a hearing on the petition at the next available meeting of the board authorized to hear the appeal, based upon the review and public notice schedule established by that board.

Boards authorized to hear appeals:

- 1. Appeal of decisions of the administrative official or the planning board shall be heard by the board of appeals.
- 2. Appeal of decisions of the historic district regulatory board shall be heard by the city commission.
- b. Stop work. During the period between the submission of the petition and the appeal hearing the administrative official may issue a stop work order on any permits related to the appeal if such permits may be affected by the appeal. Costs, lost time or other expenses incurred by the applicant stemming from such a stop work order shall be the responsibility of the applicant.
- c. Public notice. The administrative official shall give public notice for a public hearing as per section 23.241.2.
- d. Appeals hearing. The board authorized to hear the appeal shall hold a public hearing on the appeal. Following the public hearing, the board shall rule on the appeal and shall issue a written order setting forth the findings of fact and the conclusions of law and the resulting decision.

The board hearing the appeal may reverse, affirm or modify, wholly or partly, any order, requirement, decision or determination made under these regulations, provided that the board has first determined that the decision was not based upon a reasonable application of these zoning regulations. In conformity with the provisions of said zoning regulations, the board may make any necessary order, requirement, decision or determination, and to that end shall have all the powers of the board or official from whom the appeal was taken.

The concurring vote of at least four (4) members of the board hearing an appeal shall be necessary to reverse any order, requirement, decision, or determination or to decide in favor of the applicant on any matter appealed under this chapter.

e. Appeal of a decision by the board of appeals or city commission shall be filed with the circuit court within thirty (30) days of the decision.

(Ord. No. 2008-45, § 4, 12-16-08)

- Sec. 23-244.2 Variance. A variance is permission granted by the board of appeals to depart from a dimensional requirement of these land development regulations. Variances are allowed to relieve a property owner, who, because of property characteristics beyond his control, is unable to meet a dimensional requirement of these land development regulations. Waivers granted under various sections of these land development regulations are exempt from the requirements of this section.
  - a. *Eligibility*. An application for a variance may be submitted to the administrative official by a property owner or his designated agent (by power of attorney) if all of the following criteria are met:
    - 1. 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;
    - 2. The special conditions and circumstances do not result from the actions of the applicant;
    - 3. Literal interpretation of the provisions of these regulations would deprive the applicant of a reasonable use of his property, cause him unnecessary hardship, or deprive him of other rights commonly enjoyed by other property owners in the same zoning district;
    - 4. The granting of the variance would not confer on the applicant any special privileges denied to other property owners in the same zoning district;
    - 5. The grant of the request will be harmonious with the general intent and purpose of these regulations, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare;
    - 6. The application is for a dimensional variance and would not authorize a use otherwise prohibited by these land development regulations;
    - 7. The variance is the minimum variance that will allow reasonable use of the property;
    - 8. The application does not meet all of the criteria above, but environmentally sensitive areas or trees as defined in section 23-215.1 will be saved by the granting of the variance.
  - b. *Application*. An eligible applicant may file a request for variance on forms provided by the administrative official. Such application shall be accompanied by all of the following:
    - 1. The application fee set forth in section 23-242
    - 2. A letter stating what dimensional variance is being requested and specifically identifying the characteristics of the property that necessitates the granting of a variance from the requirements of these land development regulations;
    - 3. Reimbursement for costs of public notice;
    - 4. Other information as required by the administrative official.

- c. *Public notice*. Public notice shall be given as required in section 23-241, and the cost of such notice shall be paid by the applicant prior to board of appeals action on the application.
- d. Review and action. The board of appeals shall hold a public hearing on the application. If the eligibility criteria in paragraph (a) are satisfied, the board may grant the variance as requested or a modification thereof if more appropriate. If the application is for a variance of a flood requirement, the variance granted shall comply with drainage requirements of section 23-308
- e. Conditions and safeguards. In granting any variance, the board may prescribe appropriate conditions in conformity with zoning regulations. Violations of such conditions shall be deemed a violation of these regulations and shall be grounds for revocation of the variance. Unless otherwise specified by the board, variance approvals shall be in effect throughout the site plan review process and shall expire when and if the corresponding site plan expires. If there is no corresponding site plan, the time limit for variance shall expire twelve (12) months after the effective date of such action unless a building permit has been issued within the twelve-month period and work is active or the property for which the variance is granted is within a subdivision under active development. For the purposes of this section, "active" shall mean that work is continuing without cessation for a period of six (6) months or longer.
- f. Limitations on power to grant variances.
  - 1. Under no circumstances shall the board of appeals grant a variance to permit a use not permitted under the terms of the land development regulations in the zoning district involved, or any use expressly or by implication prohibited by the terms of these regulations in the said zoning district.
  - 2. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district, and no permitted use of lands, structures or buildings in any other district shall be considered grounds for the granting of a variance.
- g. Recording of dimensional variance. All approved dimensional variances, including any attached conditions or restrictions, shall be recorded with the clerk of the circuit court at the applicant's expense. The original record of the dimensional variance shall be filed by the city clerk in the official records of the city. In the event that the variance expires or is revoked in accordance with paragraph (e), a notice of variance revocation shall be recorded with the clerk of the circuit court and the city clerk.

(Ord. No. 2008-04, § 4, 2-19-08; Ord. No. 2016-01, § 5, 01-19-16)

# **Article III. General Development Regulations**

# **Division 1. Land Development**

### § 23-301. Lots and structures.

Effective: Tuesday, January 19, 2016

Sec. 23-301.1 Requirements of other applicable sections.

- a. See sections 23-212 and 23-213 for permit requirements.
- b. The dimensional requirements of section 23-422, set forth in Tables 23-422A and B shall apply to all new lots except those not intended for the construction of structures.
- c. Structures shall meet the requirements of section 23-422, dimensional and area regulations, article V, accessory uses and structures, and article VI, resource protection standards, as applicable.
- d. If a proposed structure is in a planned development project, structures will be permitted only as shown on the approved planned development project plan or as allowed in article IV, division 4.
- e. A certificate of appropriateness may be required prior to commencement of work on a property within a historic district, per section 23-227

(Ord. No. 2008-11, § 6, 5-20-08)

Sec. 23-301.2 General regulations for structures.

- a. Only one (1) principal building shall be permitted per lot, except as follows:
  - 1. In zoning districts allowing multi-family uses, multiple buildings on a lot are permitted through the site plan approval process for major projects (section 23-222), provided the development has twelve (12) or fewer dwelling units.
  - 2. Multiple buildings on a lot may be permitted through the planned development project approval process (section 23-224) for single-family cluster developments and for multi-family developments with more than twelve (12) dwelling units.

- 3. Up to four (4) principal buildings on a lot are permitted in non-residential and mixed use developments through the site plan approval process for major projects (section 23-222).
- 4. Non residential and mixed use projects with **more** than four (4) principal buildings on a lot may be permitted through the planned development project process (section 23-224).

b. Temporary structures. Temporary structures are those which are designed, constructed and intended to be used on a short-term basis. Temporary structures, including non-motorized trailers, are permitted for use as offices by developers during construction of housing developments with more than three (3) living units and of non-residential developments. The use of temporary structures, motor homes, mobile homes, or similar facilities for living quarters is prohibited, except during a city emergency, such as a hurricane, declared by the city manager upon a recommendation of the building official. Tents and booths for short-term special events or auctions and sales are permitted in conjunction with a special event or sale pursuant to Table 23-541. The following regulations apply to temporary structures:

- 1. No temporary structure, except those permitted for short-term events, shall be permitted on a property until a site plan for the principal development on the parcel has been approved.
- 2. Temporary structures shall be tied down as required by the building official, and except for those intended for short-term events, shall be provided with electrical and sewer service in accordance with current building, electrical, and plumbing codes. The structure shall be accessible to emergency vehicles via a stable surface.
- 3. The location of a temporary structure on a site shall be at the discretion of the administrative official. Such structures shall be located in the side or rear yards when feasible. Storage pods shall be allowed to remain on site for longer than a total of one week in a given month only if the pod is being used for storage in conjunction with the renovation, reconstruction, or repair of a building on the site and only while there is a valid building permit for the work being performed. A site plan showing the property, the dimensions of the proposed temporary structure, and the proposed location shall be submitted with the application.
- 4. A verification of zoning compliance in accordance with section 23-212 must be issued for a temporary structure prior to construction or its placement on the lot. Storage pods located on site for less than one week during a given month are exempt from the requirement for zoning verification.
- 5. Temporary structures are not exempt from the provisions of the Building Code. Tent permits are required for their use for a special event or sale pursuant to section 23-343
- c. *Outparcel structures*. The design of structures on outparcels shall be coordinated with the main structure on the parcel. At a minimum, similar colors and materials shall be used on exterior surfaces. Compatibility in roof shape and material, signage, lighting and landscape material is encouraged.

#### d. Utilities.

- 1. Water and sewer facilities. No dwelling unit or principal structure shall be permitted on a lot unless building plans provide for connection to city sewer and water systems as required under chapter 21 of this Code.
- 2. Reclaimed water system. No dwelling unit or principal structure shall be permitted in a development where a reclaimed water system is required under chapter 21 of this Code unless plans submitted with the permit application provide for connection to that system or a waiver has been approved by the director of utilities.
- e. Adequate access. No building shall be permitted on a lot unless the lot has adequate access in accordance with section 23-303
- f. Right-of-way. Structures shall not be located in the future right-of-way of public streets and required building setbacks shall be measured from the future right-of-way widths.
  - 1. The administrative official may allow the setback to be measured from the existing right-of-way rather than from the future right-of-way in cases where the purchase of the future right-of-way area is not in the foreseeable future. Setback from the future right-of-way shall not be waived if widening of the street is included in the City Five-Year Capital Improvements Plan (CIP) or County Five-year Transportation Improvement Program (TIP) or is included in any improvement programs of the Florida Department of Transportation.
  - 2. In cases where existing right-of-way width is less than the requirement for the classification of the street (see section 23-303), reductions in setback shall be limited so that a minimum of fifty (50) percent of the required right-of-way width is reserved.
- g. Utility easements. No structures, including accessory structures, shall be located in recorded utility easements.
- h. Flood hazard areas. Structures in flood hazard areas shall comply with the elevation and other requirements of this chapter.
- i. *Concurrency*. No structure or alteration to a structure shall be permitted unless the administrative official determines in accordance with article VII, div. 1 of these land development regulations that adequate capacity in services will be available at the time of issuance of the certificate of use (as per section 23-213).

(Ord. No. 2007-02, § 5, 3-6-07; Ord. No. 2008-04, §§ 5, 6, 2-19-08; Ord. No. 2008-45, §§ 5, 6, 23, 12-16-08; Ord. No. 2016-01, § 2, 01-19-16)

## § 23-302. Land preparation.

See sections 23-212, 23-215, and 23-217 for permit requirements. Preparation of land for construction or paving and any alteration of land shall be subject to the restrictions of the subsections herein and any conditions required per a site development permit pursuant to section 23-217.

Sec. 23-302.1 Clearing of vegetation. Prior to the clearing of vegetation or the grubbing of land, all trees as defined in section 23-214 which have not been approved for removal shall be barricaded and protected as required in section 23-302.3. Immediately following vegetation removal, existing slopes greater than 3 to 1 [3:1] shall be protected from erosion as required by section 23-302.4. Open burning shall meet all applicable government regulations and, in accordance with section 10-8 of the Lake Wales Code of Ordinances, shall require issuance of a permit by the fire chief.

Sec. 23-302.2 Tree removal.

- a. *Tree removal permit.* See subsection 23-214 for permit requirements. Tree removal or relocation permit applications shall be governed by the following criteria:
  - 1. The condition of the tree or trees with respect to disease, age and expected life span, danger of falling, proximity to existing or proposed structures, and interference with utility services. For each condition, the administrative official may require a finding by a certified arborist, county forestry officials, city building inspectors, and public utility officials to provide supporting documentation for review.
  - 2. The necessity of removing trees in order to develop the site in accordance with an approved preliminary plan.
  - 3. Topography of the land and the effect of tree removal on erosion, soil retention and diversion or increased flow of surface waters. The administrative official may require coordination with the director of public works' drainage plans and recommendations on drainage patterns.
  - 4. The number of trees existing in the neighborhood on improved property. Review shall be guided by the standards established in the neighboring areas and the effect of tree removal upon property values in the area.
- b. Tree replacement. In all cases, relocation or replacement shall be in accordance with Table 23-302A for species size and number of replacements required for each tree removal. In no case shall the approved replacement be less than one for one with the replacement trees being those which have a two-inch trunk diameter at four and one-half  $(4\frac{1}{2})$  feet above the ground and a minimum canopy spread of six (6) feet.

Except for trees removed for the construction of buildings, retention areas, play courts, play fields, and other facilities, tree replacement requirements shall not apply where trees are removed selectively in accordance with a plan for landscaping parks and common open space areas as required per section 23-310.

TABLE 23-302A REPLACEMENT TREE REQUIREMENTS

SPECIES TO BE REMOVED	DIAMETER	ACCEPTABLE REPLACEMENT SPECIES	REPLACEMENT RATIO REPLACE/REMOVED	REPLACEMENT TREE (MIN. DIAMETER)
Live Oak	4"—8"	Live Oak	2/1	2"
Significant Live Oak	8"—16"	Live Oak	3/1	2"
	above 16"	Live Oak	4/1	2"
All other significant trees	8"—16"	same as removed	2/1	2"
		Live Oak	1/1	2"
	above 16"	same as removed	3/1	2"
		Live Oak	2/1	2"
All non-significant trees	4"—8"	same as removed	1/1	2"
Significant Stand of Live Oaks	see definition	Live Oak	landscaped area equal to ½ the area of the stand removed	

SIGNIFICANT SPECIES OF TREEAny tree not specifically exempted from permit requirements by subsection 23-214 of these land development regulations and having a diameter of eight (8) inches or greater.

SIGNIFICANT STAND OF OAK TREESAny stand of oak trees whose trunk diameters may be less than four (4) inches encompassing a compact stand or grove covering fifty (50) or more square feet.

For SINGLE-FAMILY LOTS where it can be determined by the administrative official that planting of replacement trees would hinder the growth of remaining trees or where three (3) or more significant trees are to remain on the property following the removal of the applicant tree, the replacement requirement may be waived or reduced.

- 1. With the approval of the administrative official, the applicant may elect to place the required replacement trees in a public open space selected by the city rather than on his own property in order to supplement or renourish the existing tree population. The administrative official shall specify the size and species of the replacement trees, not to exceed the minimum size requirements as stated in paragraph (b).
- 2. In lieu of planting required replacement trees, the applicant may elect to make payment to the city's tree replacement fund. (See Table 23-242 "Land Use Applications—Required Fees" under 23-214 "Tree removal permit".) Funds in the tree replacement fund shall be reserved for planting plans for public parks and streetscapes, including tree inventories, assessments and planting plans; and for the purchase, planting, and maintenance of trees and shrubs in public parks and streetscapes. Expenditures from the fund shall be in accordance with a plan approved by the city commission.
- c. Failure to obtain tree removal permit. Any tree removed without a tree removal permit as required by section 23-214 shall subject the violator to a fine according to Table 302B, and replacement according to Table 302A. All fines collected shall be deposited in an account established to fund the planting of trees in public open spaces.

# TABLE 23-302B FINES FOR TREE REMOVAL WITHOUT A PERMIT

Live Oak—Significant	\$2,500.00
Live Oak—Non-significant	500.00
All Other Trees—Significant	1,500.00
All Other Trees—Non-significant	250.00

Sec. 23-302.3 Construction barricades. Prior to commencement of site development, including any clearing or grading, protective barricades must be placed and maintained around all trees that are required to have a tree removal permit in accordance with section 23-214 unless removal of the tree has been approved under the requirements of section 23-302.2. The barricades shall remain in place until a certificate of use is issued or removal is approved by the administrative official.

- a. The following activities are specifically prohibited within the barricaded area:
  - 1. Vehicular traffic or parking.
  - 2. Pedestrian traffic.
  - 3. Storage of construction materials.
  - 4. Placement of excavated materials.
  - 5. Any activities that may disturb the root system within the barricaded area.
- b. The barricade shall be a wooden or chain link fence placed at the dripline of the tree unless a smaller area is determined acceptable by the administrative official.

Sec. 23-302.4 Erosion control.

- a. *During construction*. The requirements of the permit under the National Pollution Discharge Elimination System (NPDES) for the project shall be enforced.
- b. *After construction*. At minimum, all disturbed areas shall be mulched, seeded or sodded as required by the city, and shall be maintained as such. The removal or lack of maintenance of vegetation resulting in on-site or off-site erosion or windblown loss of soils shall be deemed a violation of this section.

Sec. 23-302.5 Grading. The requirements of the permit under the National Pollution Discharge Elimination System (NPDES) for the project shall be enforced during and after grading.

Sec. 23-302.6 Excavation and filling. In areas where buildings are proposed, excavation and filling shall be governed by the Florida Building Code. In existing or proposed public rights-of-way, the utility specifications of the department of public works shall be followed.

Sec. 23-302.7 Natural and man-made features of the site.

- a. The layout of proposed structures and improvements shall be made with regard for natural features such as large trees, unusual topographic features, watercourses, sites of historical significance and similar assets.
- b. A survey showing all trees which require a permit for removal under section 23-214 of these land development regulations shall be submitted with the preliminary subdivision plan, planned development project plan or site plan for the purpose of reviewing the layout of proposed structures and improvements in regard to trees of significance. The relationship of such trees to the layout shall be considered in the review of the preliminary plan and changes may be requested or required in the layout as necessary to preserve such trees as practical while allowing reasonable use of the property.

Sec. 23-302.8 Paving. Street paving shall follow section 23-303 and applicable guidelines of the department of public works. For all paving, the drainage requirements of section 23-308 shall be followed.

Sec. 23-302.9 Installation of utilities.

- a. Sewer and water service, meeting the standards of the director of public works, shall be provided to the lot line of each lot within a subdivision.
- b. All sewer and water lines, storm water facilities and other utilities shall be installed only as approved by the director of public works under the site development permit issued pursuant section 23-217. Design and construction of sewer and water lines shall comply with the standards of Chapter 21, Lake Wales Code of Ordinances.
- c. The underground installation of all on-site public utility facilities including lines, wires and related appurtenances is required in all new developments requiring subdivision, planned development project or site plan approval pursuant to this chapter unless specifically waived by the city commission or planning board, as applicable. Such waivers shall be granted only for expansions or alterations to existing development where the extent of proposed improvements does not warrant the cost of converting to underground utilities.

(Ord. No. 2008-45, § 7, 12-16-08

## § 23-303. Streets.

Effective: Wednesday, September 07, 2022

All streets shall be constructed in accordance with the standards of this section, unless specifically waived for a planned development project. All streets shall be public unless approved as private streets in a planned development project pursuant to section 23-224.

Sec. 23-303.1 Street layout. New streets shall extend existing street grids and patterns where feasible. Integrating new streets into the surrounding roadway network is favored over enclosed communities.

- a. The street layout of a subdivision shall provide for the continuation or projection of streets already existing in areas adjacent to the areas being subdivided unless the approving body deems such continuation or extension undesirable for specific reasons of topography or design.
- b. Where, in the opinion of the approving body, it is desirable to provide street access to adjoining properties, proposed streets shall be extended by dedication to the boundaries of such properties. Where the approving body deems it necessary, such dead-end streets shall be provided with a temporary turnaround having a radius of at least fifty (50) feet.
- c. The street system for the proposed subdivision shall provide for extending existing streets at the same or greater width, but in no case shall a street extension be of less width than the minimum width required by these land development regulations for a street in its category.

Sec. 23-303.2 Street classification system.

a. Street classification system. The street classification system is established consistent with the Transportation Element and map of the Comprehensive Planto ensure the expansion of a roadway network adequate to serve the needs of future development. The roadway functional classifications group streets and highways according to the character of service they are intended to provide in relation to the total road network. The Federal Highway Administration defines the basic categories as follows:

Functional System	Services Provided
Arterial	Provides the highest level of service at the greatest speed for the longest uninterrupted distance, with some degree of access control.
Collector	Provides a less highly developed level of service at a lower speed for shorter distances by collecting traffic from local roads and connecting them with arterials.
Local	Consists of all roads not defined as arterials or collectors; primarily provides access to land with little or no through movement.

#### b. Classification of Lake Wales Streets

Streets providing service within the city are classified as arterials, major or minor collectors, and local roads as follows:

1. Arterial highways. Arterials are part of a network of continuous routes serving substantial statewide travel by connecting urbanized areas." The existing arterials within the city include:

State Road 60

U.S. Highway 27

2. *Major collector roads*. A major collector means a street which conducts moderate volumes of traffic between arterials and minor collectors or local streets and also provides access to abutting properties. Major collectors shall connect to arterials or other major collectors at both ends.

Major collectors in and immediately outside of the city that are part of the county road system include:

Buck Moore Road between Burns Avenue and State Road 60 (CR 17-B)

Burns Avenue, eastward from S.R. 17 (CR 17-A)

Central Avenue between U.S. 27 and S.R. 60

Eleventh Street southward from S. R. 60 (CR 17-B)

Masterpiece Rd. from Buck Moore Rd. to city limit

Mountain Lake Cut-off Road

Chalet Suzanne Road eastward from U.S. 27 (CR 17-A)

State Road 17(Alt. 25)

Thompson Nursery Road westward from U.S. 27

3. Minor collector roads.

Any new minor collector shall connect to another minor collector, an arterials, or a major collector at each end. Minor collectors shall not be dead-ends and shall not terminate at a local street.

The city street system includes a gridwork of street classified as minor urban collectors, including:

Campbell Avenue between Marietta Street and Eleventh Street

Central Avenue between U.S. 27 and Lake Shore Blvd.

Dr. Martin Luther King Blvd. between Dr. J.A. Wiltshire Avenue and S.R. 60

Dr. J.A. Wiltshire Avenue between G Street and North Wales Dr.

E Street between Florida Avenue and Dr. J.A. Wiltshire Blvd.

Eleventh Street between Lakeshore Blvd. and S.R. 60

Euclid Avenue between Seventh Street and Eight Street

First Street between Dr. J.A. Wiltshire Blvd. and Winston Avenue

Grove Avenue between 9th Street and 11th Street South

Hunt Brothers Road between US Highway 27 and City limit

Lake Shore Blvd.

Marietta Street from Lake Shore Blvd. to Campbell Avenue

Mountain Lake Cut-off Road from U.S. 27 to S. R. 17

Ninth Street South south of Cohasset Avenue

North Wales Drive between Burns Avenue and Lake Shore Blvd.

Orange Avenue between Wetmore Street and S.R. 17

Palm Avenue

Park Avenue between Lake Shore Blvd. and Dr. Martin Luther King Blvd.

Polk Avenue between S.R. 60 and Lake Shore Blvd.

Sessoms Avenue between Dr. Martin Luther King Blvd. and North Wales Dr.

Stuart Avenue between Dr. Martin Luther King Blvd. and S.R. 17

Third Street between S.R. 17 and Winston Avenue

Tillman Avenue between S.R. 17 and Wetmore Street

Tower Blvd. between Burns Avenue and Lake Shore Blvd.

Wetmore Street between Sessoms Avenue and Briggs Avenue

4 . Local street. Local streets provide connections between individual properties and collectors or arterials. A local street is a route that has the function of providing accessibility to individual parcels of property in residential areas. Local streets carry light volumes of traffic and should be designed to discourage through traffic and encourage low vehicular speeds. Local streets existing in the city are all of those street not listed in this subsection as arterials, major collectors or minor collectors.

### Sec. 23-303.3 Street Access Requirements.

- a. Adequate access. Approval of any new development or expansion of an existing development shall be contingent upon provision of adequate access as provided in this section. "Adequate access" shall be determined by the permitting authority based upon the standards for streets in this section and in accordance with the concurrency requirements of article VII, div. 1.
  - 1. No subdivision or planned development project shall be approved by the City Commission unless there is adequate access to the property via existing public streets or a commitment has been made by the applicant or by the city, county, or state in the applicable capital facilities plan, to render the access adequate to serve the proposed development at the level of service standards required under article VII of this chapter, concurrent with development of the property.
  - 2. Every building hereafter erected or moved shall be on a lot with a minimum width of 20 feet adjacent to or abutting on a paved public street, or with access to a paved public street by means of a private street approved by the City Commission, which has a minimum of 24 feet wide right-of-way or easement. All structures shall be located on lots so as to provide safe and convenient access for servicing, fire protection and related emergencies and required off-street parking.
  - 3. No building permit or site plan approval pursuant to section 23-222 shall be issued for construction or placement of a building on a lot unless that lot has adequate access. Provided the concurrency requirements of article VII are met, access shall be deemed adequate if the lot has the required frontage on a public street constructed to city standards or a private street meeting the standards required by the city at the time of its approval for construction. If the street is unpaved, or does not meet other design requirements of this section necessary for adequate service to the proposed development, the administrative official, or the planning board, as applicable, shall require the applicant to upgrade the street to provide adequate access, unless the improvements are scheduled by the city, county, or state, and will render access adequate at the time the proposed structures are occupied.

- b. *Development access requirements*. New development shall not be approved unless the development has or will have access to streets to serve that development, based on the following criteria:
  - 1. Commercial, industrial, and professional development.
    - A. Developments on two (2) acres or less may be accessed from local streets. Where parcels proposed for development have multiple frontages, access from a side street is encouraged.
    - B. Developments on parcels larger than two (2) acres and commercial, industrial, or professional complexes and subdivisions shall provide a consolidated entrance from an arterial or major collector road and provide a minor collector road within the development to access individual lots, buildings, or groups of buildings. The planning board may require the collector road to meet the standards for a major collector and may require additional entrances for large developments.
    - C. No entrance road shall have driveways or parking lot entrances to individual parcels located within one hundred fifty (150) feet of its intersection with an exterior roadway.
    - 2. Residential development. Streets within new residential developments shall be designed to provide local streets within neighborhoods and collector roads to connect neighborhoods to major collectors and arterial streets, within and outside of the development.
    - A. No new residential subdivision or planned development with more than ten (10) lots or multi-family development with more than twelve (12) units shall be approved with primary access from a local street.
    - B. No new residential lots or multi-family buildings shall have direct access to an arterial or major collector street. Collectors and local streets shall be provided within such developments for access to individual lots and buildings.
    - C. No lots in new residential developments and no new multi-family buildings shall be approved or permitted on a local street unless the distance via local streets from the site to a minor collector street or street of higher classification is one thousand two hundred (1,200) feet or less.
  - D. A collector street within a new residential development shall meet the standards for a major collector if it serves five hundred (500) units or more.
- Sec. 23-303.4 Entrance roads, intersections and blocks.
  - a. Entrance road requirements.
    - 1. Distance of cross streets from project entrance. In any residential or non-residential development, a minimum distance of one hundred fifty (150) feet is required between the intersection of any entrance road to the development with a roadway exterior to the project and the intersection of a cross street or parking lot access. In residential developments with over one hundred (100) dwelling units, the minimum distance shall be increased by fifty (50) feet for every one hundred (100) dwelling units, rounded off to the nearest one hundred (100) dwelling units, with a maximum of four hundred (400) feet.
    - 2. New residential development or neighborhoods with no more than one hundred fifty (150) dwelling units proposed may be allowed to only have one (1) entrance, subject to the approval of the Development Review Committee.
    - 3. Primary entrance roads are those that provide the main access to a residential development or any entrance from an arterial or major collector street. Secondary entrances are those that provide access to a residential development in addition to the primary entrance or entrances. The following standards shall apply to all residential developments with over fifty (50) dwelling units:
      - i. An entrance shall be provided to each collector road on which the development has frontage.
      - ii. At least one (1) primary entrance shall be provided to a residential development, except that those with fewer than ten (10) single-family dwelling units or twelve (12) multi-family dwelling units are not required to meet this requirement unless it is feasible to extend the entrance street to serve additional development in the future.
      - iii. Primary entrance roads shall be designed to meet the standards for a minor collector street, with no driveways to individual lots located on the entrance road. The required length of a primary entrance road shall be proportional to the number of dwelling units within the development:

### TABLE - DWELLING UNITS AND REQUIRED LENGTH OF ACCESS ROAD

Number of dwellings	Length of Primary Entrance Road	
	(Meeting major collector design standards)	

Up to 100	150 feet
100—199	200 feet
200—299	250 feet
300—399	300 feet
400—499	350 feet

- iv. A secondary entrance shall be provided for any development with over fifty (50) dwellings. A secondary entrance shall meet the requirements for a minor collector.
- b. *Block length*. Block lengths shall not exceed one thousand two hundred (1,200) feet or be less than four hundred (400) feet.
- c. *Angle of intersection*. Streets shall intersect as nearly as possible at right angles and no intersection shall be at an angle of less than sixty (60) degrees.
- d. *Curb radii*. Street curb intersections shall be rounded by radii of at least twenty (20) feet. When the smallest angle of street intersection is less than seventy-five (75) degrees, the director of public works may require curb radii of greater length. Wherever necessary to permit the construction of a curb having a desirable radius without reducing the sidewalk at a street corner to less than normal width, the property line at such street corner shall be rounded or otherwise set back sufficiently to permit such curb construction.
- Sec. 23-303.5 Dead-end streets (culs-de-sac). No collector or arterial street shall be a dead-end street. Dead-end streets shall not exceed nine hundred (900) feet in length. All dead-end streets shall have a T or L shaped turnaround area at the terminus unless a turnaround is required for fire apparatus per the following criteria.
  - a. Where a cul-de-sac exceeds one hundred (150) feet in length, an approved turnaround for fire apparatus shall be provided at the closed end. Said turnaround shall have a minimum centerline radius of fifty (50) feet. Radius measurement shall not include curb, greenway or sidewalk. A landscaped center island is required. The maximum radius of a center island on a cul-de-sac with a minimum centerline radius shall be fourteen (14) feet.
  - b. Where a cul-de-sac exceeds three hundred (300) feet in length, an approved turnaround for fire apparatus shall be provided at the closed end. Said turnaround shall have a minimum centerline radius of sixty (60) feet. Radius measurement shall not include curb, greenway or sidewalk. A landscaped center island is required. The maximum radius of a center island on a cul-de-sac with a minimum sixty-foot radius shall be twenty-four (24) feet.

Sec. 23-303.6. Right-of-way and pavement width. The following shall be the required right-of-way and pavement widths for the street classification categories:

TABLE 23-303A RIGHT-OF-WAY AND PAVEMENT WIDTH

STREET	RIGHT-OF-WAY WIDTH	MINIMUM PAVED LANE	MINIMUM	MINIMUM
CLASSIFICATION		WIDTH	SHOULDER	DESIGN
			WIDTH	SPEED
Arterial	120 feet	-	-	-
Major Collector	84 feet	12 feet	6 feet	45 mph
Minor Collector	66 feet	12 feet	4 feet	35 mph
Local Street	50 feet	12 feet	18 inches	20 mph

Sec. 23-303.7 Pavement specifications. Street pavement shall be as required by the director of public works. Pavement shall be designed to carry the expected traffic loads and shall conform with current standard specifications for city streets. All street pavements shall be of a stable type. Loose aggregate will not be considered a completed pavement.

Sec. 23-303.8 Curbs and gutters. Curbs and gutters shall be provided on all streets. Vertical curbs shall be not less than six (6) inches in height and Miami curb shall not be less than three (3) inches in height. All curbs shall conform with the design standards established by the director of public works. Backfill shall be higher than the curb and shall slope toward the curb in order to ensure that surface water drains into the storm drainage system. Exempt from these requirements are streets within the C-1 and C1-A zoning districts.

Sec. 23-303.9 Sidewalks. Sidewalks constructed in accordance with this section shall be provided in all new developments and along all streets on which a development has frontage, unless a specific waiver is granted. City commission approval is necessary for any waivers of sidewalk construction requested with preliminary subdivision plats or planned development project plans. Compliance with this section is also required as a condition of approval of any site plan, including a site plan for a change of use, unless a specific waiver is granted by the planning board or administrative official as provided in this section. Planning board approval is required for waivers of sidewalk construction with major site plans or special exception use permits; the administrative official may grant waivers with approval of minor site plans and changes of use.

A waiver may be granted in cases where the where the applicable permit granting authority deems the sidewalk to be unnecessary because of adequate pedestrian accommodations in the development or neighborhood or deems the cost of the improvement to be unreasonable in light of the magnitude of the change triggering the site plan review. The requirement for construction of sidewalks along arterial and major collector roadways may also be waived where there are no existing sidewalks to extend, provided the developer contributes funds to the city equivalent to the cost of paving the applicable length of five-foot concrete sidewalk, such funds to be used by the city to construct or repair sidewalks elsewhere within the city. Payments in lieu of construction shall be based upon prices in contracts currently available for city construction of sidewalks to city standards.

- a. Sidewalks shall be provided on at least one (1) side of all local streets and minor collectors and on both sides of arterials and major collectors. In the C-1, D-MU and C-2R districts, sidewalks shall be provided on both sides of the street, regardless of the street classification.
- b. Sidewalks shall be concrete and shall be a minimum of four (4) inches thick. Sidewalks shall be a minimum of five (5) feet wide in residential areas and eight (8) feet wide in mixed use and non-residential districts.
- c. Except in the C-1 and D-MU district, there shall be at minimum a three-foot wide strip of landscaped area (as defined in section 23-307) between the sidewalk and curb in which a tree as defined in section 23-307 shall be planted every fifty (50) feet, at minimum. In planned development projects where adequate provision for pedestrian circulation is provided, the requirements of this section may be modified by the approving body.
- d. Sidewalks shall be constructed as part of the street construction in a subdivision or planned development project unless surety has been accepted by the city commission to cover the cost of sidewalks, in which case, the sidewalks shall be completed in segments as adjacent buildings are completed. Certificates of use may be denied on properties where the sidewalk serving the property has not been completed. As part of the approval of a permit for a construction or alteration of a structure or parking area, the administrative official may require the construction or reconstruction of sidewalks in order to fulfill the requirements of this section.

(Ord. No. 2007-33, § 1, 9-4-2007)

Sec. 23-303.10 Curves in streets.

- a. A tangent at least one hundred (100) feet long shall be introduced between reverse curves on arterial and collector streets.
- b. Where there is a deflection angle of more than ten (10) degrees in the alignment of a street, a curve with a radius adequate to ensure safe sight distance shall be made. The minimum radii of curves shall be as shown in Table 23-303B.

## TABLE 23-303B MINIMUM CURVE RADIUS

(where there is a deflection angle greater than 10 degrees in the alignment of a street)

STREET	MINIMUM
CLASSIFICATION	CURVE
	RADIUS
Arterial	500 feet
Major or Minor Collector	500 feet

Local Street 100 feet

- c. Street jogs with center line offsets of less than one hundred twenty-five (125) feet shall not be made.
- d. Every change in grade shall be connected by a vertical curve constructed so as to afford a minimum sight distance of two hundred (200) feet, said sight distance being measured from a driver's eyes, which are assumed to be four and one-half (4½) feet above the pavement surface, to an object four (4) inches high on the pavement. Profiles of all streets showing natural and finished grades, drawn to scale, may be required by the director of public works.
- Sec. 23-303.11 Grades. All streets shall be designed so as to provide for the discharge of surface water from the pavement and from the right-of-way by grading and drainage facilities. The minimum street grade required for adequate drainage shall be as approved by the director of public works.
  - a. The minimum grade of all streets shall be 0.3 percent unless specifically approved by the director of public works.
  - b. Streets shall be designed so as to make them flood-free in order that properties served by such streets will not be isolated by floods. In flood-prone areas, the director of public works may require profiles and elevations of streets in order to determine the adequacy of design. Fill may be permitted by the director of public works provided that it does not adversely affect flood conditions of the surrounding properties. Street construction shall comply with Art. N, Div. 1.Development in Flood Prone Areas as applicable.
  - c. All streets shall be graded to their full widths so that pavements and sidewalks can be constructed on the same level plane. Deviation from this standard due to special topographical conditions will be allowed only with the specific approval of the director of public works.
    - 1. *Preparation of the subgrade*. Before grading is started, the entire right-of-way area shall first be cleared of all tree stumps, roots, brush and other objectionable materials and of all trees not intended for preservation. The subgrade shall be properly shaped, rolled and uniformly compacted to conform with the accepted cross section and grades.
    - 2. *Cuts*. In cuts, all tree stumps, boulders, organic material, and other objectionable materials shall be removed to a depth of at least two (2) feet below the grade surface. Rock, when encountered, shall be scarified to depth of at least twelve (12) inches below the graded surface.
    - 3 . Fills. In fills, all tree stumps, boulders, organic material, soft clay, spongy material and other objectionable materials shall be removed to a depth of at least two (2) feet below the natural ground surface. This objectionable material as well as similar material from cuts shall be removed from the right-of-way area and disposed of in such a manner that it will not become incorporated in fills or hinder proper operation of the drainage system.
- Sec. 23-303.12 Street lighting. Street lights shall be provided along all vehicular and pedestrian ways in all subdivisions and planned development projects. Light poles shall not exceed 14 feet in height and shall be located to provide sufficient lighting along all pedestrian pathways and streets. The style and placement of street lights shall be approved by the city prior to installation. In new developments, the style and placement shall be shown on the site development plans and reviewed in accordance with section 23-217. Street lights shall be located so as not to encroach on sidewalks.

Sec. 23-303.13 Street names.

- a. Proposed streets which are obviously in alignment with other already existing and named streets shall bear the names of such existing streets.
- b. The name of a proposed street which is not in alignment with an existing street shall not duplicate the name of any existing street in Polk County irrespective of the use of the suffix street, avenue, boulevard, drive, place, court, lane, road or similar suffix.
- Sec. 23-303.14 Dedication of streets and utilities in subdivisions. All streets and utilities shall be dedicated to the city at the time of final plat approval of the subdivision unless the streets have been approved as private streets in a planned development project pursuant to section 23-224.

a. *Dedication of right-of-way for new streets*. The right-of-way for new streets to be dedicated shall be as follows:

# **TABLE 23-303C**

# RIGHT-OF-WAY DEDICATION REQUIREMENTS

STREET CLASSIFICATION*	RIGHT-OF-WAY WIDTH
Arterial	120 feet
Major Collector	84 feet
Minor Collector	66 feet
Local Street	50 feet

\*See § 23-303.2 for definitions of these street categories.

- b. *Dedication of right-of-way for existing streets*. Subdivisions platted along existing streets shall dedicate additional right-of-way if necessary to meet the minimum requirements for new streets set forth in Table 303C above.
  - 1. The entire minimum right-of-way width shall be dedicated where the subdivision is on both sides of an existing street. When the subdivision is located on only one (1) side of an existing street, one-half (½) of the required right-of-way width measured from the center line of the existing street shall be dedicated.
  - 2. Dedication of one-half ( $\frac{1}{2}$ ) of the right-of-way for proposed streets along boundaries of land proposed for subdivision shall be prohibited except for arterial streets.

Sec. 23-303.15 State Road 60 / 11<sup>th</sup> Street Roadway Network Map



Appendix 1: Traffic Impact Study Guidelines and Requirements

### Purpose & Intent

The purpose of the traffic impact study is to identify the potential impacts of new development on the City of Lake Wales transportation network and to provide information which will allow a concurrency determination to be made on each impacted segment. The traffic impact study will identify development traffic volumes on each impacted segment and intersection within a defined area, identify those roadway segments and intersections on which the adopted Level of Service cannot be maintained, include link and intersection analysis, and recommend potential solutions and/or mitigation for those segments and intersections on which the adopted Level of Service is not being met and the associated improvements necessary to regain concurrency.

The intent of this document is to define the requirements, procedures and methodology for the preparation and submission of a traffic impact study (TIS) in the City of Lake Wales and to provide an equitable, consistent and systematic means of determining the future impact of proposed developments while maintaining the adopted service levels on all roadways. Nothing contained in this document shall waive any requirement contained elsewhere in the Lake Wales Land Development Code.

### Applicability

The requirements, procedures and methodology for a traffic impact study contained in this section shall apply to all development approvals in incorporated Lake Wales. In all cases, it will be the responsibility of the applicant to demonstrate to the Administrative Official and the Polk TPO that a proposed development will not unduly impact the road system.

### Standard Requirements

As identified in Table 1: Traffic Study Requirements, there are three (3) levels of traffic studies that could be required. The study requirements and depth of analyses are defined for the three (3) study "tiers" in Table 1 and the subsequent sections.

Table 1: Traffic Study Requirements				
	Tier 1 – Traffic Review	Tier 2 – "Minor Traffic Study"	Tier 3 – "Major Traffic Study"	
Maximum AM	≤ 50	51 to 99	> 99	
or PM Peak Hour Two Way Net New Trips	See Section 1 for additional details.			
	Meth	nodology		
Methodology Letter/ Statement	Not Required	Required. See Section 2 for requirements.		
Methodology Meeting	Not Required	Not Required	Required. A methodology letter shall be provided prior to the meeting for City review.	
	9	dy Area		
Study Segments	If the development accesses directly onto a segment identified on the Concurrency Determination Network, his segment shall be evaluated. If the directly accessed segment on the Concurrency Determination Network does not meet the adopted standard, backlogged, constrained orotherwise, the City may require study of additional segments and intersections. If the development does not directly access a segment on the Concurrency Determination Network, no segment evaluation will be required.	Directly accessed segments on the Concurrency Determination Network and all roadway segments where peak hour project generated trips are estimated to consume 5% or more of the peak hour directional service volume, based on service volumes documented in the latest version of the Polk County TPO Roadway Network Database.		
Study Intersections	Driveway Access Points	Driveway access points and all signalized intersections and major unsignalized intersections for which an approach leg is a study segment.		
	Technical/Evalu	ation Requirements		
Data Collection	Intersection turning movement and roadway segment volume traffic data used in analysis shall be			
Background Traffic	Background traffic shall be based on historical growth rates, calculated from historic average annual daily traffic (AADT) data at nearby FDOT count stations, or other historic AADT data, if available. Include any vested trips documented within the buildout year, if directed by City or designee. In some cases, for a Tier 3 Study, additional planned development traffic may need to be incorporated if the combined level exceeds the historic growth factor in the study area roadway segments.			
Committed Improvements	Projects identified for construction in the first three years of an adopted Work Program (WP), Transportation Improvement Program (TIP), or Capital Improvement Program (CIP), so long as the improvement is funded for construction consistent with the proposed buildout year.			
Trip Generation	The latest edition of the ITE Trip Generation Manual shall be used for calculation of project trips. If authorized by the City or designee, trip generation data from other sources may be used in the analysis. The latest edition of the ITE Trip Generation Handbook shall be used to estimate passby trip reductions for non-residential developments. Internal capture estimates for mixed-use developments shall be based the methodology outlined in NCHRP 684.			

h	Γier 1 − Traffic Review	Tier 2 – "Minor Traffic Study"	Tier 3 – "Major Traffic Study"
	Distribution and assignment may be ba batterns.	sed on existing traffic	Distribution and assignment shall be based on traffic modeling using the currently approved and calibrated District One Regional Planning Model (D1RPM) unless an exemption is provided by the City or designee.
Analysis Scenarios F in	Segment and intersection analysis will be required for the following scenarios: Existing Scenario, Future No Build, and Future Build. If mitigation is needed to achieve adopted standards in the Future No Build or Future Build scenarios, additional scenarios, including the mitigation improvements, will be required. For multiphase developments, analysis of future No Build and Build scenarios will be required for each development phase. See Section 4 for additional details.		
Segment u Analysis t	Peak hour, directional Level of Service (LOS) analysis shall be conducted for study segments under AM and PM peak hour conditions. See Section 5 for additional details. In certain cases, if the proposed project does not include residential uses, the requirement for AM peak hour analysis may be waived by the City.		
Intersection Analysis	Peak hour LOS analyses shall be conducted for study intersections under AM and PM peak hour conditions. See Section 6 for additional details. In certain cases, if the proposed project does not include residential uses, the requirement for AM peak hour analysis may be waived by the City.		
Lane/Access n	The need for turn lanes at proposed driveway access points shall be determined using the methods of NCHRP 745 for left-turn lanes and NCHRP 279 for right-turn lanes. This analysis should be conducted for the worst-case peak hour to determine the need for turn lanes.		
		ly Requirements	
Content C	Frip Generation (Daily, AM and PM Peak Hour), Segment Analysis, and Driveway Peak Hour Analysis, and Furn Lane/Access Analysis. If the lirectly accessed segment on the Concurrency Determination Network loes not meet the adopted standard, backlogged, constrained orotherwise, the City may require study and documentation of additional segments and intersections.	Traffic study requirements	s are outlined in Section 8.
Signed/Sealed by a Florida PE	Not Required	Yes	Yes
		eview	
			e >5% on a state roadway and f right-of-way permit needed

### Traffic Study Tiers/Net External Trip Thresholds

The requirement for traffic studies are based on the net external AM or PM peak hour trips for the project, whichever is greatest, as determined by Table 1. For multi-phase developments, the trip thresholds are based on project buildout, not by phase. In cases of redevelopment, net external trips shall be based upon the new or proposed land use as compared to the land use existing at the time of redevelopment. Credit for prior use must be utilized in connection with a redevelopment of the site within one (1) year following the demolition of the existing structure or termination of the existing use, whichever first occurs.

## Methodology Letter

A methodology letter is required for Tier 2 and Tier 3 traffic studies. An example methodology letter is included in the appendix to these guidelines. The applicant must submit the written methodology letter to the City and obtain written concurrence on the proposed methodology. Failure to do so may result in disapproval of the traffic impact study or a request for additional information and the requirement for a revised TIS. The methodology letter shall include the following information:

- Project description.
- Anticipated buildout year for single phase developments and planned development phasing for multi-phase developments.
- Tier of traffic study being proposed.
- Site Location map.
- Site plan of the proposed development that shows the proposed access locations.
- Programmed improvements
- Map of the area of influence/study area.
- Table of proposed trip generation including pass-by trips and internal trip capture including land use description, ITE codes, trip rates or formulas and data used in the calculations from the latest edition of the ITE Trip Generation Manual and ITE Trip Generation Handbook. If authorized by the City or designee, trip generation data from other sources may be used in the analysis. If proposing an alternative source for trip generation data, attach study documentation, if already completed, or document the proposed methodology, consistent with guidance in the ITE Trip Generation Handbook, if an alternative trip generation rate is to be calculated based on observations of other sites.
- Proposed trip distribution in influence/study area.
- List of roadways that fall within the area of influence/study area.

- Identify any critical issues related to the project such as unacceptable roadway conditions, access constraints, public easements, etc.
- Proposed growth rate for calculation of background growth.
- Date of any traffic counts used in the analysis. Note: traffic counts more than one (1) year old cannot be used in the study unless approved by the City.
- Multimodal Assessment: evaluation of transit, bicycle and pedestrian accommodations as outlined in Section 3.

## Multimodal Assessment

The multimodal assessment shall include an evaluation of existing and programmed bicycle, pedestrian, and transit mobility options. This assessment shall also discuss how the site plan encourages walking, bicycling and transit ridership through one or more of the following:

- Safe, adequately lighting and well-maintained pathways
- Bicycle parking facilities
- Identifiable crosswalks
- Transit bus stops & transit stop amenities (i.e., bench, bus shelter, etc.)
- Removal of natural and/or built barriers that discourage walking
- Compliance with American's with Disabilities Act (ADA) requirements
- Buffering between vehicular areas and sidewalks
- Linkage to existing or future walkway and/or bikeway network and transit route

#### **Analysis Scenarios**

Segment and intersection analysis will be required for the following scenarios. For multiphase developments include analysis of future No Build and Build scenarios for development phase.

**Existing Scenario** 

AM (if required) and PM peak hour analysis of existing traffic on the existing transportation network.

Future No Build Scenario

AM (if required) and PM peak hour analysis of existing traffic, plus background traffic (derived from growth rates, vested trips, or combination of both), placed on the existing network, plus all improvements funded for construction within the first three years of the state, county or local jurisdiction's adopted work program, capital improvement plan (CIP) and/or adopted transportation improvement plan (TIP).

Future Build Scenario

AM (if required) and PM peak hour analysis of existing traffic, plus background traffic (derived from growth rates, vested trips, or combination of both), plus the project's traffic placed on the existing network, plus all improvements funded for construction within the first three years of an adopted work program, CIP and/or TIP, and proposed project driveways/access improvements.

Future No Build Scenario with Mitigation (if necessary)

AM (if required) and PM peak hour analysis of the Future No Build Scenario with the inclusion of any other improvements that are required for mitigation. This analysis scenario will be required only if mitigation is required to obtain the adopted Level of Service as the result of the Future No Build Scenario analysis.

Future Build Scenario with Mitigation (if necessary)

AM (if required) and PM peak hour analysis of the Future Build Scenario with the inclusion of any other improvements that are required for mitigation. This analysis scenario will be required only if mitigation is required to obtain the adopted Level of Service as the result of the Future Build Scenario analysis.

Segment Analysis

AM (if required) and PM peak hour, directional Level of Service (LOS) analysis shall be conducted for study area segments based on currently accepted traffic engineering principles. Segment analysis should compare roadway volumes to the service volumes published in the latest edition of the Polk County TPO Roadway Network Database, if available, or the FDOT Generalized Service Volume Tables.

Methods that incorporate and apply appropriate techniques from the latest edition of the Highway Capacity Manual (HCM) are also acceptable. These methods may include the use of the latest available versions of the Highway Capacity Software (HCS), Synchro, or LOSPLAN, as approved by the City.

LOS Standards

The calculated LOS shall be compared to the adopted LOS standards used for concurrency determination and shall be consistent with the Transportation Element of the Lake Wales Comprehensive Plan.

Roadway Volumes

Existing roadway volumes may be established from the latest edition of the Polk County TPO Roadway Network Database (if available), counts from the Florida Department of Transportation (if available), or collected segment volumes (which may be derived from collected peak hour turning movement counts used for the subject TIS).

#### Roadway Service Volumes

Roadway service volumes will be provided in the Polk TPO Concurrency Network Database. In the event the information is not available, FDOT generalized level-of-service standards may be used upon confirmation by the City or designee. Roadway improvements programmed within the first three years of an adopted work program, TIP, or CIP may be utilized as long as the improvement is funded for construction consistent with the proposed buildout year for the development, but no more than three years from the date of the study. Intersection Analysis

AM (if required) and PM peak hour LOS analyses shall be conducted for all study intersections based on currently accepted traffic engineering principles. Methods that incorporate and apply appropriate techniques from the latest edition of the Highway Capacity Manual (HCM) are acceptable. These methods may include the use of the latest available versions of the Highway Capacity Software (HCS) or Synchro. Microsimulation software may also be used but is not required.

#### LOS Standards

The existing LOS shall be compared to the adopted LOS standards used for concurrency determination and shall be consistent with the Transportation Element of the Lake Wales Comprehensive Plan. The LOS standards for an intersection analysis shall be the conservative adopted roadway LOS standard of the intersecting roadways.

#### Signalization

If signalization is proposed as a mitigation measure, a signal warrant analysis (including FDOT signal warrant summary worksheets) and a Stage 1 Intersection Control Evaluation (ICE) shall be provided for the location(s) proposed for signalization.

Turn Lane/Access Analysis

The need for turn lanes at proposed project access shall be determined using the methods of NCHRP 745 for left-turn lanes and NCHRP 279 for right-turn lanes. This analysis should be conducted for the worst-case peak hour to determine the need for turn lanes.

Crash/Safety Analysis (if City wants to include)

Traffic Study Requirements

Tier 2 and 3 traffic studies shall include the following elements.

Table of Contents, List of Figures, List of Tables

- Introduction: project description, site location, site plan, study area/area of influence map, planned and programmed improvements and committed developments.
- Existing Roadway & Intersection Conditions: existing roadway segment geometry, existing intersection geometry, existing traffic volumes and existing segment and intersection LOS results. If a segment or intersection with a history of high crash occurrence exists within a study area, at the discretion of the City an evaluation of potential mitigating measures can be required.
- Future Roadway & Intersection Conditions: future roadway segment geometry and future intersection geometry.
- Future Traffic Conditions: background traffic, trip generation, trip distribution and assignment and future traffic volumes
- Transportation Assessment: segment analysis, intersection analysis, and turn lane/access analysis for future conditions.
- Multimodal Assessment: evaluation of transit, bicycle, and pedestrian accommodations.
- Crash/Safety Analysis (if required)
- Mitigation Strategies: recommended improvements and proportionate share calculations.
- Summary/Conclusions: brief discussion to highlight the reason for the traffic study tier classification, methodology followed, general results of the analysis and action requested (e.g., approval of mitigation strategy).
- Appendix: approved methodology, traffic count data, site plan, capacity analysis summary sheets for existing conditions and future conditions, trip distribution plot from the travel demand model, and all other pertinent data to support the traffic study. For a Tier 2 or 3 study, the electronic operational analysis files (Synchro, HCS, etc.) shall be submitted with the report.

(Ord. No. 2006-24, §§ 4—7, 6-6-06; Ord. No. 2008-45, § 8, 12-16-08; Ord. No. 2015-04 § 6, 7-7-15; Ord. No. 2020-30, § 1, 12-02-20; Ord. No. 2022-03, § 1, 2-01-22; Ord. No. 2022-06, § 1, 3-01-22; Ord. No. 2022-30, § 1, 8-02-22; Ord. No. 2022-37, § 1, 9-07-22)

## § 23-304. General requirements for lots and yards.

See article VIII for definitions of terms used in this section.

- a. Prohibitions.
  - 1. No building shall be erected on any lot unless such lot has the required frontage on a dedicated public road or a road shown on an approved and recorded final development plat. See also adequate access requirements in subsection 23-303.3(a).
  - 2. No lot, even though it may consist of one (1) or more adjacent lots of record, shall be reduced in area so that lot area, yards, width or other dimension and area regulations of these land development regulations are not maintained. This provision shall not apply when a portion of a lot is acquired for a public purpose.
  - 3. No building intended for residential purposes shall be occupied or constructed on land subject to periodic or frequent flooding, nor existing building enlarged, repaired or altered on land subject to periodic or frequent flooding.
  - 4. No part of a yard required for any building may be included as filling the yard requirements for an adjacent building.
  - 5. Accessory structures are permitted in yards as set forth in article VIII.
  - 6. No odor- or dust-producing substance or use shall be permitted within one hundred (100) feet of any property line if the adjoining property is being used for residential purposes.
  - 7. No products shall be publicly displayed or offered for sale from the roadside.
- b. Double frontage and corner lots.
  - 1. On corner lots, no obstruction shall be permitted to impede visibility between a height of two (2) feet and ten (10) feet above the grades of the intersecting streets within a visibility triangle of thirty (30) feet measured from the point of intersection of the travel lanes of two (2) streets, or a street and railroad.
  - 2. Double frontage and corner lots shall meet front yard regulations on all adjacent dedicated public streets. (See section 23-522 for waiver of front yard requirements on subdivision lots with frontage on an exterior and interior street.)

(Ord. No. 2020-30,, § 1, 12-02-20)

### § 23-305. Fire protection.

Sec. 23-305.1 Access for fire fighting.

- a. Every building shall be accessible by fire department apparatus by means of roadways having an all-weather driving surface of not less than twenty (20) feet of unobstructed width, having the ability to withstand live loads of fire apparatus, and having a minimum of thirteen (13) feet six (6) inches of vertical clearance. Dead-end fire department access roads in excess of one hundred fifty (150) feet in length shall be provided with approved provisions for turning around fire department apparatus. These requirements shall be permitted to be modified where, in the opinion of the fire department, fire fighting or rescue operations will not be impaired by such modification.
- b. Access for use of heavy fire fighting equipment shall be provided to the immediate job site at the start of the project and maintained until completion.

Sec. 23-305.2 Fire protection during construction.

- a. A water supply for fire protection, either temporary or permanent, shall be made available as soon as combustible material accumulates.
- b. Where underground water mains and hydrants are to be provided, they shall be installed, tested in the presence of the city fire marshal, and in service prior to construction work.

Sec. 23-305.3 Installation of hydrants.

a. In residential areas, fire hydrants shall be not more than seven hundred (700) feet apart and no home shall be more than five hundred (500) feet from a fire hydrant measured along public rights-of-way, or as may be determined by the fire chief. Fire hydrant spacing shall be decreased to six hundred (600) feet or a radius of not more than three hundred (300) feet apart along public rights-of-way or private drives within residential developments other than single-family detached dwellings. All fire hydrants shall be serviced by not less than six-inch water mains or lines. Specifications for fire hydrants and other portions of the fire protection water installation shall be as set forth by the American Water Works Association and shall be compatible with existing installations.

b. For non-residential construction and development orders, all development shall be required to provide, at developers expense, fire hydrants at a maximum of three hundred (300) feet separation, measured along the roadway, whether public or private.

Sec. 23-305.4 Marking of hydrants.

a. *Public hydrants*. All barrels are to be chrome yellow except in cases where another color has already been adopted. The tops and nozzle caps shall be painted with the capacity-indicating color shown in Table 23-305D. For rapid identification at night, capacity colors shall be of a reflective-type paint. In addition to the painted top and nozzle caps, the rated capacity of high volume (Class AA) hydrants shall be stenciled in black on the hydrant top.

### **TABLE 23-305D**

CAPACITY-INDICATING COLOR SCHEME

#### FOR MARKING OF HYDRANTS

CLASSIFICATION	RATED CAPACITY IN	COLOR OF TOPS AND		
	GALLONS PER MINUTE	NOZZLE CAPS		
	(GPM)			
Class AA	1,500 gpm or greater	Light Blue		
Class A	1,000—1,499 gpm	Green		
Class B	500—999 gpm	Orange		
Class C	less than 500 gpm	Red		
All barrels are to be chrome yellow except in cases where another color has already been adopted.				
Capacity colors on tops and nozzle caps shall be of a reflective-type paint.				

- b. *Flush hydrants*. Location markers for flush hydrants shall carry the same color background as stated in Table 23-305D for class indication, with such other data stenciled thereon as deemed necessary by the fire marshal.
- c. *Private hydrants*. Marking on private hydrants within private enclosures is to be at the owner's discretion. When private hydrants are located on public streets, they shall be painted red to distinguish them from public hydrants.

(Ord. No. 2007-30, § 1, 8-21-2007)

### § 23-306. Off-street parking and vehicular access.

Effective: Wednesday, September 07, 2022

Off-street parking in compliance with this section shall be provided for all nonresidential and residential uses. All vehicles shall be parked in approved parking areas and shall not be parked in unpaved areas except in the rear yards of single-family houses or duplexes or as specifically approved pursuant to a site plan review under section 23-222.5. Parking on grassed areas for special events in public recreation areas is not regulated under this chapter.

Construction or alteration of any off-street parking areas and curb cuts for vehicular access requires compliance with this section and site plan approval under section 23-222 except that driveways for single-family houses and duplexes may be approved under section 23-215, land alteration permit. Waivers of strict compliance with this section may be granted by the planning board pursuant to section 23-222.5.

Any existing use not provided with conforming off-street parking space shall conform with the requirements of this ordinance at the time of any alteration or expansion of the use.

Sec. 23-306.1 Location of off-street parking areas.

- a. Parking areas must be located on the premises of the land use they serve, except that a parking area may be approved by the administrative official on a separate site within four hundred (400) feet of the use it serves. The administrative official may require a deed, lease, or other reasonable proof to document that the off-premises parking area is available for long-term use.
- b. Required parking spaces may be consolidated into a large parking area serving several uses. Such off-premises parking areas shall be maintained, regulated, and enforced as if they were on the premises served.
- c. Parking areas serving nonresidential uses shall not be located or extend into residential zoning districts unless a special permit is granted pursuant to section 23-216. Existing parking areas serving nonconforming uses in residential districts shall not be expanded unless a special permit is granted.

### Sec. 23-306.2 Layout off-street parking areas.

- a. *Access points/curb cuts*. All off-street parking areas must have access from a street, except that access from an alley may be approved by the planning board for small parking areas. Alleys, when present, should be the primary means of access to off-street parking in the D-MU district; see Sec. 23-423.
  - 1. Single-family houses and duplexes.
  - A. Each dwelling unit may have a driveway per street frontage with a curb cut not exceeding twenty-four (24) feet in width and measured at the property line.
  - B. One circular driveway may be permitted per single-family or duplex lot with curb cuts not exceeding twelve (12) feet in width measured at the property line and a minimum of twenty-four (24) feet between curb cuts.
  - C. Curb cuts shall be located at least two-thirds (2/3) of the distance of the lot frontage or one hundred (100) feet, whichever is less, from any intersecting roadways.
  - D. The minimum length of a driveway shall be twenty-five (25) feet measured from the property line.
  - 2. Multi-family and nonresidential buildings except auto and truck repair and auto service stations.
    - A. Parking areas with access drives are required for multi-family and nonresidential buildings; spaces requiring vehicles to back into the street are prohibited.
    - B. Parking areas for multi-family and nonresidential buildings may be permitted one (1) curb cut not exceeding thirty-six (36) feet in width, or two (2) curb cuts each not exceeding twenty-four (24) feet in width per frontage on a street or access road interior to a development.
    - C. All curb cuts shall be located at least one hundred (100) feet or two-thirds (2/3) the distance of the lot frontage, whichever is less, from the intersection of any right-of-way of streets or a street and a railroad.
    - D. The minimum distance between a curb cut and a side or rear property line shall be fifteen (15) feet.
  - 3. Auto and truck repair or auto service stations.
    - A. Two (2) curb cuts, not exceeding thirty-six (36) feet in width are permitted per street frontage.
    - B. Curb cuts shall be located at least fifty (50) feet from any intersection of streets or access roads interior to a development.
    - C. There shall be a minimum distance of thirty (30) feet between any two (2) access points serving one (1) property.
- b. *Paving and marking*. All driveways and parking areas shall be paved with asphalt, concrete, or other stable paving material unless paving is specifically waived by the planning board pursuant to section 23-222.5. The administrative official may waive up to twenty-five (25) percent of the required paved parking. Parking areas shall be striped or otherwise marked to designate individual parking spaces. Wheel stops, curbing, or other barriers shall be provided at the head of parking spaces and curbing shall be provided around landscaped islands to prevent vehicles from encroaching on landscaped areas.
- c. Off-street parking loading and unloading space. Off-street loading and unloading space shall be provided for all retail, restaurant, and industrial uses except those in the C-1 and D-MU districts. The loading space shall be accessible to delivery vehicles without blocking streets, access ways, or required parking spaces.

d. *Refuse collection area*. A facility for refuse containers accessible to refuse collection trucks shall be provided for all multi-family and nonresidential buildings. Such facilities shall be screened by a solid fence, or enclosure, and shall measure a minimum of six (6) feet in height, with landscaping. A concrete pad must be provided for all dumpsters.

#### e. Parking spaces.

- 1. Angled parking spaces shall measure a minimum of ten (10) feet in width and twenty (20) feet in length, except where wheel stops are placed at the edge of a landscaped area at the head of the parking spaces, parking spaces eighteen (18) feet in length may be permitted.
- 2. Parallel parking spaces shall measure a minimum of ten (10) feet in width and twenty-four (24) feet in length.
- 3. Handicapped parking spaces shall measure twenty (20) feet in length and twelve (12) feet in width with a five-foot wide hatched area.
- f. Parking access drives and aisles.
  - 1. Access drives. Drives accessing parking areas shall be a minimum of twenty-four (24) feet wide for two-way traffic and twelve (12) feet wide for one-way traffic.
  - 2. Access aisles. In parking areas with fifty (50) or more parking spaces, aisles between two (2) rows of parking spaces shall be designed for two-way traffic unless specifically approved to be one-way by the planning board. In parking areas with under fifty (50) spaces, access aisle widths shall be dependent upon the angle of the parking spaces as shown in Table 23-306A.

# TABLE 23-306A PARKING LOT AISLE WIDTH

ANGLE OF PARKING SPACES	REQUIRED AISLE WIDTH
90 degrees or less	24 feet, 2-way traffic flow
60 degrees	18 feet, 1-way traffic flow
45 degrees	13 feet, 1-way traffic flow
30 degrees	11 feet, 1-way traffic flow
Parallel	12 feet, 1-way traffic flow

- g. Pedestrian circulation in parking areas. Parking areas shall be designed to provide safe conditions for pedestrians.
  - 1. In parking areas with fifty (50) spaces or more, walkways shall be provided between parking rows and building entrances.
  - 2. Sidewalks with a minimum width of five (5) feet shall be provided where pedestrians must walk between a building and a vehicular travel way to reach the building entrance from the parking area.
  - 3. Parking areas shall be located on the side(s) of buildings where there are entrances to the building and shall not be located in the rear yards of buildings unless specifically approved by the planning board upon a recommendation from the police chief.
  - 4. Accessible routes shall be provided from off-site sidewalks to on-site sidewalks and from parking spaces to building entrances as required by the Florida Building Code.
- h. Off-street parking area shall have a properly maintained landscaped separation strip with irrigation, at least five (5) feet in width along all streets on which the off-street parking area is located. Vehicular wheel stops or barriers shall also be properly located along the edge of the required separation strip. See section 23-307 for landscaping requirements.

(Ord. No. 2008-45, § 9, 12-16-08; Ord. No. 2017-20, § 1, 11-21-17)

Sec. 23-306.3 Number of off-street parking spaces required. The number of required spaces for each type of land use is set forth in Table 23-306B. The number of required spaces for handicapped persons is set forth in Table 23-306C. Required parking shall be determined by the planning board for uses not specified.

Existing off-street parking area for any premises shall not be reduced unless it exceeds the requirement of this ordinance.

# **TABLE 23-306B**

MINIMUM AUTOMOBILE OFF-STREET

# PARKING SPACE REQUIREMENTS

Notes: \*Except for in residential uses, the administrative official may waive up to twenty-five (25) percent of required minimum parking spaces.

TYPES OF	MINIMUM NUMBED OF	
TYPES OF BUILDING & USES	MINIMUM NUMBER OF PARKING SPACES REQUIRED	
RESIDENTIAL (See also LODGINGS)		
One, Two-family dwelling	2 per dwelling unit	
Multi-family dwelling	1.5 per dwelling unit	
Dwelling unit for caretaker/watchman employed on premises	2 per dwelling unit	
AMUSEMENT ESTABLISHMENT, INDOOR		
Game rooms, bowling alleys, theaters, etc.	0.4 per seat based on maximum capacity of place of assembly; or 0.3 per person based on maximum capacity; or 1.0 per 50 sq ft of floor area devoted to assembly or recreation use	
AMUSEMENT ESTABLISHMENT, OUTDOO		
	3 per hole for golf courses,	
	1 per 6 seats or 10 linear feet of bench seating for spectator sports, 1 per player or station for non-spectator sports	
AUTOMOTIVE USES	1 1	
Automotive dealerships	1 space per 250 sf of retail sales area, plus 1 space per 1000sf of outside display area.	
Automotive repair	1 per bay for auto repair, plus 0.5 per 100sf of GFA.	
EDUCATION & RELIGIOUS		
School	Elementary/intermediate: 3 per classroom Secondary: 6 per classroom	
School, training	10 per classroom or 1 per 3 students based upon maximum enrollment	
Cultural Facility	1 per 3 seats or if no fixed seats, 1.0 per 100 sq. ft. of floor or land area devoted to assembly or visitor use	
Day Care	1 per full-time or equivalent staff member plus 1 per 5 permitted children.	
Religious Establishment	0.3 per seat based upon maximum capacity of auditorium or principal place of assembly	
FOOD SERVICE	0.5 per seat based upon maximum capacity of authoritation principal place of assembly	
Catering service	1 per 100 sq. ft of building floor area	
	1.0 per 50 sq. ft. of customer service area, min. 5 spaces	
Drive-through or Take-out (without seats)  Restaurant	1 per 3 seats based on maximum capacity plus 3 for drive-up or take-out service	
HEALTH CARE	1 per 3 seats based on maximum capacity plus 3 for drive-up of take-out service	
Health service	0.4 per 100 sq. ft. of building floor area plus 3.0 per doctor, practitioner, or full-time equivalent	
Hospital	1.4 per bed based on maximum patient capacity	
Medical office (one practitioner)	0.4 per 100 sq. ft. of building floor area plus 3 spaces	
Nursing Care Home	.7 per bed based on maximum patient capacity	
Veterinarian and Animal Hospitals	1 per examination room plus 3 per veterinarian	
LODGINGS	T	
Lodging with restaurant	1.1 per sleeping unit, plus 4 per 50 units, plus 1.0 per resident manager plus 0.2 per restaurant seat based on maximum capacity	
Bed and Breakfast establishment	2 for the principal dwelling, plus 1.0 per guest room, plus 1.0 per person regularly employed on the premises	
Boarding house	1 per sleeping room plus 1 for resident manager	
Dormitory, Fraternity or Sorority House	1.5 per 2.0 students based upon maximum capacity plus 1 per resident manager	
Hotel or motel	1 per unit/room	
INDUSTRIAL USES		
	0.7 per person employed on the largest shift	
PROFESSIONAL AND COMMERCIAL USES	3	
Construction support	1 per person employed on the largest shift plus 1 per 200 sq. ft. of customer service or merchandise sales area	
Funeral home	1.0 per 50 sq ft of floor or land area devoted to slumber rooms, parlors or individual mortuary rooms plus 0.3 per seat based on maximum capacity of funeral service chambers or chapel	
Kennel	1 per person employed on the largest shift plus 1 customer space per 10 animals based on maximum capacity plus 1 per 200 sq. ff. of customer service or merchandise sales area	

Landscaping service	1.5 per person employed	
Mini-storage	2 for resident manager	
Office, non-medical	0.4 per 100 sq. ft. of building floor area	
Personal service	2 per customer station if applicable; if not applicable, 0.4 per 100 sq. ft.	
STORES		
Retail	1 per 200 sq. ft. of sales area for first 10,000 sq. ft. plus 1 per 300 sq. ft. of sales area in excess of 10,000 sq. ft.	
PUBLIC AND GOVERNMENT	·	
Aircraft Establishment	1.5 per person employed at the facility plus 0.5 per 100 sq ft of building floor area devoted to retail sales	
Public Transportation Terminal	1.5 per person employed at the facility plus 0.5 per 100 sq ft of building floor area devoted to retail sales	
The minimum off-street parking space requirements for trucks shall be 1.0 space for every truck operated by the establishment on the premises.		

# TABLE 23-306C HANDICAPPED ACCESSIBLE SPACES

TOTAL PARKING SPACES	REQUIRED ACCESSIBLE SPACES
1 to 100	1 for each 25
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
1001 and over	20 plus 1 for each 100 over 1000

(Ord. No. 2008-04, § 8, 2-19-08; Ord. No. 2017-20, § 1, 11-21-17; Ord. No. 2017-20, § 2, 11-21-17; Ord. No. 2020-30, § 1, 12-02-20; Ord. No. 2020-37, § 1, 9-07-22)

### § 23-307. Landscaping requirements.

Effective: Wednesday, September 07, 2022

Sec. 23-307.1 Vehicular use areas.

- a. Applicability. The provisions of this subsection apply to all areas used for the display or parking of any and all types of vehicles, boats, or heavy construction equipment, whether such vehicles, boats or heavy construction equipment are self-propelled or not, and all land upon which vehicles traverse the property as a function of the primary use, hereinafter referred to as "other vehicular uses" which include but are not limited to activities of a drive-in nature such as, but not limited to, filling stations and grocery stores. All uses covered by this subsection shall conform to the minimum landscaping requirements hereinafter provided, save and except areas which are used for parking or other vehicular uses but which are located under or within buildings.
- b. *Definitions*. Terms used in this subsection shall be defined as follows:
  - 1. *Encroachment:* Any protrusion of a vehicle outside a parking space, storage area, or access aisle into a landscaped area.
  - 2. *Ground cover:* Low-growing plants, including grass, planted in such a manner as to form a continuous cover over the ground.
  - 3. *Hedge:* A dense row of shrubs or low trees planted in such a manner as to offer a visual barrier and having a minimum height of two (2) feet and fifty (50) percent view blockage at time of planting with the capability of attaining a minimum height of four (4) feet and one hundred (100) percent view blockage within two (2) years.

- 4. *Landscape material:* Materials such as, but not limited to, living trees, shrubs, vines, lawn grass and ground cover and nonliving durable material commonly used in landscaping such as, but not limited to, rocks, pebbles, and sand but excluding pavement for vehicular use.
- 5. *Shrub*: A woody perennial plant differing from a perennial herb by its persistent and woody stems and from trees by its low stature and habit of branching from the base, as normally grown in this area.
- 6. *Tree:* A woody perennial plant with an elongated stem or trunk supporting branches and leaves of a species which normally grows to an overall height of at least fifteen (15) feet in this area. Species listed in Sec. 23-214.b shall not be planted to meet landscaping requirements.
- 7. Vine: Any plant which normally requires support to reach its mature form.
- c. *Parking lot requirements*. Barriers to prevent vehicles from encroaching on all landscaped areas in offstreet parking areas shall be provided as required under section 23-306

#### 1. Perimeter.

A. A landscape buffer shall be permanently maintained and located on the perimeter of all off-street parking areas. Such buffers shall meet the following width requirements, at minimum:

abutting an arterial or major collector roadway: 25 feet

abutting a minor collector, local roadway or access drive or travelway: 10 feet

abutting a single-family residential property or zoning district: 10 feet

abutting a non-residential property or zoning district: 5 feet

all others: 5 feet

- B. Both trees and shrubs shall be planted in the landscaped buffer area.
  - i. Depending on the mature size of the trees being planted, trees shall be planted at a minimum of one (1) tree for each fifty (50) linear feet, or fraction thereof, abutting the right-of-way or interior lot line.
  - ii. Trees shall be a minimum of eight (8) feet in height at time of planting.
  - iii. Shrubs shall be planted to form a continuous screen except in a specific area where spacing or other changes would be more desirable.
  - iv. Shrubs shall be a minimum of two (2) feet in height at time of planting.
- C. Portions of landscaped buffer area not planted with trees and shrubs shall be finished with ground cover or other landscape material.
- D. An irrigation system shall be installed for the permanent maintenance of the landscaped buffer.
- E. When an access way intersects a public right-of-way, all landscaping shall provide unobstructed cross-visibility at a level between two (2) feet and ten (10) feet within a cross-visibility triangle as defined below.
  - i. Two (2) sides of each triangle formed by the intersection shall be ten (10) feet in length from the point of intersection and the third side shall be a line connecting the ends of the two (2) other sides.
  - ii. Trees having limbs or foliage which extend into the cross-visibility area shall be allowed provided they are located and trimmed in such a manner as not to create a traffic hazard.
  - iii. Landscaping, except required ground cover, shall not be located closer than three (3) feet from the edge of any access way pavement.

## 2. Interior.

- A. Interior portions of off-street parking areas not specifically designated as parking spaces or maneuvering areas shall not be paved for vehicular use but shall be planted and permanently maintained with trees and shrubs and finished with ground cover or other landscape material.
- B. Landscaped areas with a minimum of ten (10) feet in width and a minimum total area of one hundred (100) square feet shall be provided to prevent excessively long, continuous runs of parking spaces.

- i. Except where a bay of parking spaces is located along a landscaped buffer meeting the requirements of this chapter, no parking bay shall contain more than fifteen (15) continuous parking spaces or extend more than one hundred fifty (150) feet, whichever is more restrictive, without being interrupted by a landscaped area.
- ii. Landscaped area must have one (1) tree of a minimum height of eight (8) feet at time of planting.
- C. Each row of interior parking spaces shall be terminated at each end by a landscaped area which shall be a minimum of seventy-five (75) square feet in size and which shall have no dimension less than five (5) feet.
  - i. Landscaped area shall extend a minimum of seven-eighths (7/8) the distance of the length of the adjacent parking space.
  - ii. Landscaped area shall have one (1) tree of a minimum height of eight (8) feet at time of planting.
- D. Interior landscaping is not required when the paved portion of the parking area is five thousand (5,000) square feet or less.
- d. *Planting of shade and ornamental trees*. All trees shall be set or planted at least three (3) feet back from the curbline, and in cases where the lawn is more than six (6) feet wide, the trees shall be set along the centerline thereof. When trees are set, the surface of the lawn at tree locations shall be brought to the proper slope and elevation.

(Ord. No. 2007-33, § 2, 9-4-07; Ord. No. 2008-45, §§ 9, 10, 12-16-08)

Sec. 307.2 Landscaping standards.

- a. *Tree density*. Credit shall be granted toward tree density requirements for trees preserved on site. Replacement ratios in Table 23-302A shall be used to calculate credit.
  - 1. Applicability. Tree density requirements shall apply to all new construction and to all construction requiring a permit for additions, alterations and repairs in an aggregate cost exceeding twenty-five (25) percent of the assessed valuation of the building at the date a building permit for said additions, alterations or repairs is applied for.
  - 2. Non-residential density requirement. A minimum of three (3) trees shall be required for each one-quarter (1/4) acre or ten thousand eight hundred ninety (10,890) square feet of land or fraction thereof in the non-residential development.
  - 3. Residential density requirements.

Lots less than 10,000 s/f: three, two-inch caliper shade trees, minimum of eight feet at planting. At least one of the shade trees shall be a street tree. Corner lots shall have a minimum of one additional tree to ensure that each frontage has at least one street tree.

Lots 10,000 s/f or greater: four, two-inch caliper shade trees, minimum of eight feet at planting. At least one of the shade trees shall be a street tree. Corner lots shall have a minimum of one additional tree to ensure that each frontage has at least one street tree.

NOTE: Street Trees are required to have root barriers. Root barriers shall be approved by the Administrative Official prior to planting.

Definitions:Root Barrier – Typically used for Street Trees, Root Barriers are structures and/or materials that redirect tree roots down and away from hardscapes, preventing costly root damage while preserving the health and functionality of trees. Street Tree – A tree that is currently located or proposed for planting along streets or highways. Such tree can be located on private property or on publicly held land. Street trees are typically planted in a linear fashion and provide spatial enclosure as well as other technical and aesthetic benefits (Wildwood Mo.)

- 4. Plan. Tree location shall be designated on either a site plan or a landscape plan.
- 5. *Quality*. Trees shall be living and healthy. Dead, unhealthy or damaged trees shall not apply in meeting tree density requirements and shall be replaced until the density requirement is met.
- 6. *Spacing*. No tree shall be considered in meeting density requirements which is planted closer than fifteen (15) feet to the base of another tree.
- 7. *Density maintenance*. If any required tree dies, it shall be replaced to maintain the tree density. The replacement need not be at the same location as the dead tree.

8. Downtown Landscape. In the D-MU District, except for those areas within the Crystal Lake Overlay, in lieu of planting required on-site trees, the applicant may elect to make payment to the city's tree replacement fund. (See Table 23-242 "Land Use Applications—Required Fees"). Funds in the tree replacement fund shall be reserved for planting plans for public parks and streetscapes, including tree inventories, assessments and planting plans; and for the purchase, planting, and maintenance of trees and shrubs in public parks and streetscapes.

#### b. Plant material.

- 1. General quality.
  - A. After the effective date of this ordinance, drought-tolerant plants shall be used wherever landscaping is required.
  - B. Plant material shall at a minimum conform to the Standards for Florida No. 1 or better as established by the Florida Department of Agriculture.
  - C. Grass and sod shall be clean and reasonably free of weeds and noxious pests or diseases.
  - D. The use of invasive, poisonous, or commonly objectionable species is prohibited.

#### 2. Trees.

- A. Trees shall be of a species which in this area will have a mature crown spread of greater than fifteen (15) feet and a trunk of five (5) feet of clear wood. Species excluded from the requirement for a tree removal permit (sec. 23-214) shall not be used in meeting landscaping requirements.
- B. Trees having an average mature crown spread of less than fifteen (15) feet may be substituted by grouping sufficient numbers so as to create the equivalent of a fifteen-foot crown spread.
  - C. All trees shall be a minimum of thirty (30) gallon size and approximately ten (10) feet overall height immediately after planting.
  - D. Trees of species whose roots are known to cause damage to public roadways or public works shall not be planted closer than twelve (12) feet to such public roadways or public works unless mitigating measures (such as root barriers) are in place to minimize any impact to said public facilities.
  - 3. Shrubs and hedges.
    - A. Shrubs shall be a minimum of three (3) gallon size and approximately eighteen (18) inches in height when measured immediately after planting.
    - B. Hedges, where required, shall be planted and maintained so as to form a continuous, unbroken, solid, visual screen within one (1) year after planting.
  - 4. Vines. Vines shall be a minimum of thirty (30) inches in height immediately after planting and may be used in conjunction with fences, screens or walls to meet physical requirements as specified.
  - 5. *Ground covers*. Ground covers used in lieu of grass, in whole or in part, shall be planted in such a manner as to present a finished appearance and reasonably complete coverage within six (6) months after planting.
  - 6. Lawn grass. Grass areas shall be sodded in species grown as permanent lawns in Polk County.
  - c. Landscaping installation.
    - 1. All landscaping shall be installed with sound workmanship and in accordance with good planting procedures.
    - 2. All elements of landscaping exclusive of plant material, except hedges, shall be installed so as to conform with all other applicable ordinances and code requirements.
    - 3. All landscaped areas shall be protected from vehicular encroachment.
    - 4. All landscaped areas shall be provided with a permanent below-ground irrigation system.
    - 5. The administrative official shall inspect all landscaping and shall issue no certificate of use or similar authorization until the landscaping conforms to the requirements of this subsection.
  - d. Landscaping maintenance.

- 1. The owner, tenant and their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping in such condition as to present a healthy, neat and orderly appearance. Sufficient foliage shall be maintained on all plants and trees so that the landscaping meets its intended purpose whether for buffering, shade, or appearance. Hedges in buffers shall be maintained so as to sustain an opaqueness of at least eighty (80) percent at maturity.
- 2. All landscaped areas shall be kept free from refuse and debris.
- 3. Any deficiencies shall be corrected within thirty (30) days of written notification by the city.

(Ord. No. 2007-33, § 2, 9-4-07)

Sec. 23-307.3 Landscaped buffers. Minimum requirements for landscaped buffers are as follows:

- a. *Buffer between non-residential use and residential district*. A five-foot wide separation strip shall be provided on property in non-residential use and a residential district. Within this strip, a permanent visual buffer, such as a wall or evergreen hedge, with a minimum height of six (6) feet shall be provided.
- b. *Buffer along streets exterior to a development*. A landscaped buffer shall be provided in along streets exterior to a development where the rear yards of lots abut the exterior street.
  - 1. Along a local street, the buffer shall be a minimum of ten (10) feet in width, and along collector and arterial roadways, twenty (20) feet in width.
  - 2. The buffer shall be in a separate parcel or tract maintained by a homeowners' association or similar entity, in accordance with an approved landscaping plan.
  - 3. The buffer shall be landscaped to provide a solid screen, such as a wall or hedge, a minimum of six (6) feet in height. One (1) tree shall be provided for every fifty (50) feet of buffer length.
- Sec. 23-307.4 Drainage retention areas. Landscaping shall be required along retention areas abutting all travelways, including streets, accessways, bikeways, sidewalks, and driveways. There shall be a buffer with a minimum width of 25 feet with a grade of no more than 2% along any retention area abutting a roadway, accessway, or driveway. The buffer shall be measured from the edge of pavement and the top of slope of the retention area. The buffer shall be landscaped in accordance with a landscaping plan approved by the administrative official and meeting the following minimum requirements:
  - a. Any fence surrounding a retention area for the purpose of preventing access shall be screened with trees and shrubs with the equivalent density of one tree and 5 shrubs for every 50 feet of fence. Solid fences shall not be permitted along retention areas, and chain link shall not be permitted unless required by the stormwater permitting agency.
  - b. Buffers shall be planted at minimum of 5 shade trees per 300 linear feet.
  - c. Sidewalks, bikeways, and trails, shall be located no closer than 10 feet from the top of slope of the retention area and shall be a minimum of 3 feet from the curb or edge of pavement.

(Ord. No. 2006-24, §§ 8, 9, 6-6-06; Ord. No. 2014-08, § 4, 09-03-14; Ord. No. 2015-04 § 7, 7-7-15; Ord. No. 2018-07, § 2, 09-19-18; Ord. No. 2020-30, § 1, 12-02-20; Ord. No. 2022-06, § 1, 3-01-22; Ord. No. 2022-37, § 1, 9-07-22)

### § 23-308. Drainage.

Site improvements where drainage is necessary shall be constructed in accordance with this section.

- Sec. 23-308.1 Design standards. Retention areas and other drainage facilities shall not be located in or encroach upon landscape buffers that are required under this chapter. This provision does not prohibit the landscaping of retention areas and drainage easements in accordance with a plan approved by the administrative official.
  - a. *Subdivisions*. All proposed projects for construction approval shall be required to submit site and drainage plans to Southwest Florida Water Management District for application, approval or exemption as specified in F.S. chs. 373 and 120, and Chapter 40-D40, General Surface Water Management Permits, addressing both water quantity and quality aspects of stormwater management. All proposed developments shall be governed by F.S. § 163.3202 F.S. and Rule 9J-23.033 F.A.C. concerning concurrency.
    - 1. Subdivisions shall be consistent with the need to minimize flood damage.

- 2. Subdivisions shall have public facilities and utilities such as sewer, gas, electrical and water systems located and constructed to minimize flood hazards.
- 3. Subdivisions shall have drainage provided to reduce exposure to flood hazards.
- b. Commercial and industrial developments. All proposed projects for construction approval containing more than one (1) acre of land shall conform to the same rules as set forth in paragraph (a) above.

Sec. 23-308.2 Drainage easements.

- a. Drainage easements shall be maintained so that their function is not impaired through plant growth, debris, or permanent fences blocking ingress or egress to this area.
- b. See section 23-309 for restrictions regarding planting and grading of easement areas.

Sec. 23-308.3 Off-site discharge. Any off-site discharge shall meet the requirements of the permit under the National Pollution Discharge Elimination System (NPDES) issued for the project.

(Ord. No. 2008-45, § 11, 12-16-08)

### § 23-309. Easements.

- a. Requirement for easements: Easements necessary for utilities, including electrical, storm water, sanitary sewer, potable water, reclaimed water and other facilities, shall be approved by the director of public works and recorded with the clerk of court prior to the issuance of a building permit for construction on any lot.
  - 1. Preliminary subdivision plats, planned development project plans, and site plans shall include utility easements for review.
  - 2. Such easements shall be designed and located in accordance with city utility standards and shall be approved by the director of public works prior to the approval of site plans and recording of the documents creating such easements.
- b. Alteration of easement: No structures, including fences and walls, shall be constructed within a utility easement without the written approval of the director of public works. No alteration of drainage easements such as the addition of berms or other grading, shall be made without the written approval of the director of public works.
- c. Maintenance of easement: Easements shall be maintained in accordance with the requirements of Chapter 21 Utilities of the Lake Wales Code of Ordinances.
- d. Landscaping in easements: Easements may be landscaped subject to the following:
  - 1. No trees or shrubs shall be planted within the easement except in accordance with a landscaping plan approved by the administrative official.
  - 2. No fences or walls shall be erected within the easement without the written approval of the director of public works.
  - 3. All shrubs shall be maintained at six (6) feet or less in height.
  - 4. In an emergency, any obstacle or obstruction in an easement will be removed with no liability to the city.

(Ord. No. 2008-45, § 12, 12-16-08)

#### § 23-310. Recreation area.

Effective: Wednesday, September 19, 2018

All residential developments approved as subdivisions, planned developments, or single-lot multi-family developments shall provide recreation area and facilities in compliance with this section.

- a. Design criteria. Parks shall be planned as integral features of a development, providing scenic vistas along roadways, conveniently located recreation opportunities for residents, and access to and views of natural features such as ponds. Locating parks adjacent to water bodies and other natural features is encouraged.
  - 1. Neighborhood parks and mini-parks required under this section shall be easily and safely accessed by pedestrians via walkways from the neighborhoods served.

- 2. Parks shall be located so as to utilize and highlight natural features of the property, to preserve stands of trees, to add interest to the streetscape, and to maintain and enhance views.
- 3. Parks shall be located and shaped to provide an environment separate from residential lots within the development.
  - i. If the park is equal in size to a single lot in the development, it shall have frontage on at least two (2) sides of the parcel.
  - ii. No single lot located between two (2) residential lots shall be designated as a park.
  - iii. Where neighborhood parks abut residential lots, buffering shall be provided to separate the residential property from the park and to prevent encroachment.
- 4. Parks designed to provide a focal point and gathering place for a neighborhood are encouraged.
- 5. Visibility of parks from residential units is encouraged. Central greens and parks with long street frontages are encouraged. Parks located in interior spaces surrounded by residential lots are discouraged.
- 6. Existing trees shall not be removed for the development or expansion of a park or common open space area except in accordance with a plan approved by the administrative official. The preparation and approval of such plans shall be guided by the standards for tree removal in section 23-302.2.a. and standards for recreation areas in this section. Such plans shall be based upon a tree survey prepared by a professional arborist unless a waiver is granted by the planning board for minor projects. An effort shall be made to identify and preserve trees of desirable species and good condition and to create an appealing park with shady areas. Allowance shall be made for removal of a reasonable number of trees in wooded areas to create usable, park-like conditions and to improve growing conditions for remaining trees. The plan(s) shall be reviewed as part of the site development permit process (section 23-217) unless otherwise specified in the conditions of approval for the development.

#### b. Recreation area requirement.

- 1. Neighborhood parks. In all residential developments, recreation areas in the form of neighborhood parks shall be provided at a ratio of one and one-half acre per 400 dwelling units at minimum. With the approval of the city commission, the neighborhood park requirement for a new development may be fulfilled through an equivalent contribution for improvements to an existing or proposed neighborhood park outside of the development, provided the park is within a quarter mile of the development and will be conveniently accessible for residents within the development and provided the level of service standard for neighborhood parks is met in the area.
  - A. A neighborhood park shall be located no further than 600 feet from any dwelling in the neighborhood it serves.
  - B. Green areas less than 5,000 square feet in area shall not be credited toward the neighborhood park requirement.
  - C. A neighborhood park with a minimum area of one quarter acre is required in any development, or defined neighborhood within a development, of fifty units or more.
  - D. A neighborhood park shall include at minimum the following improvements: benches, trees, open or grassy areas and play or exercise facilities geared to the type of population served.
- 2. *Mini-parks*. In all residential developments, recreation areas in the form of mini-parks shall be provided at a ratio of one-quarter (1/4) acre per four hundred (400) dwelling units at minimum.
  - A. Mini-parks shall be strategically placed throughout a development to maximize accessibility to green space for residents.
  - B. A mini-park shall be no smaller than one thousand (1,000) square feet.
  - C. Mini-parks shall not be combined with neighborhood parks, except that mini-parks may be incorporated into a linear park.
  - D. Mini-parks shall be landscaped and at minimum shall provide seating area and connection to the pedestrian path network within the development.
  - E. Green space at the entrance to a development shall not be credited toward the mini-park requirement unless the permitting authority finds that by virtue of the design, the green space serves the function of a mini-park.

- c. Credit for recreation area.
  - 1. Linear parks, such as bike/pedestrian path corridors, may be credited toward the recreation area requirement after an adjustment to remove the total area of required sidewalks and a 3-foot green area between the sidewalk and street. To be credited toward the recreation requirement, such linear parks must be in a landscaped corridor, a minimum of 25 feet in width. Linear parks shall not constitute more than 50% of the neighborhood park requirement.
  - 2. Recreation area provided in a development in excess of the minimum requirement may be approved to increase the inventory of community parks, and commensurate credit against the recreation impact fee (see article VII, div. 4) may be granted, provided the city commission finds that the recreation facility functions as a community park.
  - 3. Medians within a roadway right-of-way shall not be credited toward the recreation area requirement unless the median functions as a linear park with a minimum width of 25 feet.
  - 4. Retention areas, whether wet or dry, shall not be credited toward the recreation requirement, except as follows: 150% of the upland area of parks fronting on ponds or wet retention areas shall be credited in developments or neighborhoods of 50 units or more, provided the land area of the park is 10,000 square feet in area or more, and provided the park's frontage along the shoreline is a minimum of 50 feet per 10,000 square feet of such park land, and provided that the park has a minimum of 50 feet of street frontage.
- d. Recreation facilities.
  - 1. Recreation buildings or enclosed or paved play courts shall constitute a maximum of fifty (50) percent of the total required recreation area.
  - 2. A minimum of two (2) shade trees per recreation area or a minimum of five (5) shade trees per acre, whichever is greater, shall be provided in recreation areas.
  - 3. Community buildings shall be designed to double as hurricane shelters.

(Ord. No. 2006-24, §§ 10, 11, 6-6-06; Ord. No. 2008-45, § 7, 12-16-08; Ord. No. 2018-07, § 3, 09-19-18)

#### **Division 2. Conditional Use Regulations**

#### § 23-341. Adult entertainment uses.

Ordinance 93-09 regulating adult entertainment establishments was adopted on August 3, 1993 by the Lake Wales City Commission and included by reference in Chapter 14, Licenses and Business Regulations, Lake Wales Code of Ordinances. A copy of Ordinance 93-09 is available for public access in the office of the city clerk. The provisions contained in this section pertain to these land development regulations.

Sec. 23-341.1 Definition.

Adult entertainment establishment. An adult theater, an adult bookstore, an adult dancing establishment or any enterprise that involves the activities defined in Ordinance 93-09, Section 6, as adult entertainment activities and that are operated for commercial or pecuniary gain. ("Operated for pecuniary gain" shall not depend upon actual profit or loss and shall be presumed where the establishment has an occupational license.) An establishment with an adult entertainment license, or seeking to obtain such a license in accordance with Ordinance 93-09, is presumed to be an adult entertainment establishment.

### Sec. 23-341.2 Prohibited locations.

- a. Notwithstanding any other provision of the city zoning code, no person shall cause or permit the operation of, or enlargement of, an adult entertainment establishment which, while in operation or after enlargement, would or will be located within one thousand (1,000) feet of the following:
  - 1. A preexisting adult entertainment establishment;
  - 2. A preexisting religious institution;
  - 3. A preexisting educational institution;
  - 4. A preexisting residentially zoned area;
  - 5. A preexisting park;

- 6. A preexisting commercial establishment that in any manner sells or dispenses alcohol for on-premises consumption.
- b. The term "enlargement" as used in this subsection, includes, but is not limited to, increasing the floor size of the establishment by more than ten (10) percent of its original size.
- c. The distance requirements of paragraph "a" are independent of and do not supersede the distance requirements for any alcoholic beverage establishment contained in or hereinafter adopted by the city in any other provisions of the Lake Wales Code of Ordinances.

Sec. 23-341.3 Measurement of distance. The distance from a proposed or existing adult entertainment establishment to a preexisting adult entertainment establishment, a preexisting religious institution, a preexisting educational institution, an area zoned for residential use, a preexisting park, or a preexisting commercial establishment that sells or dispenses alcohol for on-premises consumption shall be measured by drawing a straight line between the closest property lines of the proposed or existing adult entertainment establishment and the preexisting adult entertainment establishment, preexisting religious institution, preexisting educational institution, area zoned for residential use, preexisting park, or preexisting commercial establishment that sells or dispenses alcohol for on-premises consumption.

### § 23-342. Alcoholic beverage sales and service.

Effective: Wednesday, September 07, 2022

Zoning approval of applications for state alcoholic beverage licenses shall be granted only in accordance with the provisions of this chapter and chapter 5, Alcoholic Beverages, and with the following conditions:

- a. *Retail sales*: The retail sale of alcoholic beverages for consumption off-premises is permitted at a legally established "store," as defined in this chapter. Retail sales of alcoholic beverages for consumption off-premises is permitted as an accessory use, subject to the provisions of section 23-541, Accessory uses—Nonresidential properties.
- b. *Restaurants:* The sale or service of alcoholic beverages for consumption on premises is permitted at a legally established restaurant, including outdoor service areas, provided the establishment meets the definitions of "restaurant" in this chapter and in chapter 5, Alcoholic Beverages.
- c. *Bars, including wine and beer bars:* The sale or service of alcoholic beverages for consumption on premises is permitted as described below:
  - 1. A legally established "bar" that meets the definitions in this chapter and in chapter 5, Alcoholic Beverages may be permitted in the Downtown Historic Overlay. Up to 3 establishments may be permitted at one time, as tracked by the City by business tax receipt; additional establishments may be permitted by Special Exception.
  - 2. The sale or service of wine and beer for consumption on premises at a legally established "wine and beer bar" that meets the definitions in this chapter and in chapter 5, Alcoholic Beverages, shall be permitted in the Downtown Historic Overlay. A wine and beer bar may be permitted in the D-MU outside of the Downtown Historic Overlay by Special Exception.
  - 3. Outdoor service areas are permitted for bars / wine and beer bars. The business floor area of the bar / wine and beer bar shall be not less than one thousand (1,000) square feet in size and not more than five thousand five hundred (5,500) square feet in size.
- d. *Clubs*: The sale or service of alcoholic beverages for consumption on premises is permitted at a legally established club, provided the establishment meets the definition of "club" in this chapter and the definition of "fraternal or civic organization" in chapter 5, Alcoholic Beverages.

e. Outdoor seating areas on public sidewalks: The sale or service of alcoholic beverages by a legally established food or beverage business in an outdoor seating area on a public sidewalk is permitted upon approval of the Administrative Official in the Downtown Historic Overlay; and in the C-1 and D-MU (downtown and downtown mixed-use) zoning districts only upon approval by the city commission. Approval shall be contingent upon compliance with the conditions for an outdoor seating area in this chapter (section 23-353, Outdoor seating area). The city commission may place special conditions on the approval and reserves the right to limit the number of establishments providing such service on public sidewalks. In conjunction with the application, the owner or operator of the business shall provide to the city indemnification in a form acceptable to the city and must also secure a policy providing commercial general liability insurance in an amount not less than one million dollars (\$1,000,000.00) naming the City of Lake Wales as an additional insured. The business shall be responsible for providing notice to its customers that alcoholic beverages may be consumed or possessed only within the public open space approved by the city commission for consumption of such beverages. Approval shall be contingent upon the establishment's obtaining and holding a valid state alcoholic beverage license for service in the outdoor area.

(Ord. No. 2009-14, § 1, 10-20-09; Ord. No. 2011-04, § 1, 3-1-11; Ord. No. 2022-37, § 1, 9-7-22)

### § 23-343. Auctions, sales, and events, temporary.

Temporary events, auctions and sales, not including yard sales, are permitted on nonresidential properties subject to the provisions of this section. For yard sales on residential properties, see section 23-356. Sidewalk sales on public streets are governed by chapter 18 and are not subject to the provisions of this section. Any tent, booth, or temporary structure shall require the approval of the building official and fire marshal.

- a. Exempt sales and events. No approval is required for the following:
  - 1. One-day auctions of real property are permitted on site, provided they are conducted between the hours of 9:00 a.m. and 8:00 p.m.
  - 2. Regardless of the zoning district, auctions and sales at churches and schools are exempt from approval under this section, provided that the event is sponsored by the institution on whose property the event takes place, the event(s) is incidental to the principal use of the property, and the event is conducted in a manner compatible with the neighborhood.
  - 3. Events in city parks and open spaces are exempt from approval under this section. Approval under chapter 18 of this Code may be required.
- b. Administrative approval—Short-term sales and events. The administrative official or designee shall consider applications for temporary outdoor sales or events on developed properties in accordance with the criteria of this section. Such sales/events are limited to four (4) instances of three (3) days' duration each per business unit. For the purposes of this section, a building or commercial plaza with twenty thousand (20,000) square feet of total building floor area or less will be considered one (1) business unit, regardless of how many businesses are located in the structure. In buildings or commercial plazas with over twenty thousand (20,000) square feet of total building floor area, each business owning or renting a discreet portion of the building's floor area will be considered a business unit.
  - 1. An application and fee per table 23-242 must be submitted to the administrative official by the property owner or person with written authorization from the owner. The application shall include a written description of the proposal and a site plan meeting the requirements of section 23-222, as applicable. The site plan shall clearly show the location and dimensions of the display/event area, any changes in parking or traffic circulation, any encroachment on landscaped areas, and any proposed temporary signage, fencing, or other structures or large objects to be installed or displayed. A written description of the event shall be included. Any temporary structures such as tents, fences, booths, play structures or signage must be reviewed by the building official and fire marshal prior to placement or installation and may require a building permit.
  - 2. Within ten (10) days of receipt of a complete application, the administrative official shall review the application and approve, approve with conditions, or deny it with reference to the following criteria:
    - A. Visibility for site access and circulation is not impaired.
    - B . Standards of the Americans with Disabilities Act, including maintaining a minimum clear passageway of forty-four (44) inches along all sidewalks, are not compromised.

- C. Required parking spaces and drive aisles shall not be used for event or display area. No entrances or exits from the parking area shall be blocked off for the event.
- D. Except for open, grassy areas, no landscaped buffers or required landscaped areas may be used for the event unless the administrative official finds that in the particular instance the landscaping is not likely to be damaged.
- E. The locations, dimensions, materials, and other characteristics of temporary signage or displays shall be specified in any approval. One (1) temporary sign per event shall be allowed, provided it is anchored with posts or secured on a structure, such as a building or fence and does not exceed the square footage allowed for a ground sign for the site per section 23-545. The sign may display a commercial or a non-commercial message.
- F. Short-term events and sales are prohibited on vacant property.
- c. Planning board approval—Temporary outdoor sales and events. The planning board shall consider applications for temporary outdoor sales, events, and displays on developed properties in accordance with the criteria of this section. Approvals for events/sales on developed property may be granted for a maximum of one (1) year, but may be renewed by the planning board upon review. No approvals shall be granted under this section for events on vacant property.
  - 1. An application and fee per table 23-242 must be submitted to the administrative official by the property owner or person with written authorization from the owner. The application shall include a written description of the proposal and a site plan meeting the requirements of section 23-222, as applicable. The site plan shall clearly show the location and dimensions of the display/event area, any changes in parking or traffic circulation, any encroachment on landscaped areas, and any proposed temporary signage, fencing, or other structures or large objects to be installed or displayed. A written description of the event shall be included. Any temporary structures such as tents, fences, booths, play structures or signage must be reviewed by the building official and fire marshal prior to placement or installation and may require a building permit.
  - 2. The planning board shall consider a complete application at the next available meeting. No public notice or hearing is required. The planning board shall approve, approve with conditions, or deny the application with reference to the following criteria:
    - A. Visibility for site access and circulation is not impaired.
    - B . Standards of the Americans with Disabilities Act, including maintaining a minimum clear passageway of forty-four (44) inches along all sidewalks, are not compromised.
    - C. The use of parking spaces in excess of those required by the zoning regulations shall be approved only if site access, site circulation, and vehicular/pedestrian safety are not compromised.
    - D. The use of required parking spaces or drive aisles shall be approved for display or events on a short-term basis only, subject to planning board discretion, provided the number of spaces remaining available for patrons is adequate, and provided that site access, site circulation, and vehicular/pedestrian safety are not compromised.
    - E. Except for open, grassy areas, no landscaped buffers or required landscaped areas may be used for the event unless the planning board finds that in the particular instance the landscaping is not likely to be damaged.
    - F. Use of temporary signage or displays other than goods for sale shall not exceed four (4) two-week periods within a year. The locations, dimensions, materials, and other characteristics of temporary signage or displays shall be specified in any approval. A banner or other similar feature shall be allowed as a display only if it is anchored with posts or other method or is secured on a structure, such as a building or fence and if it does not exceed the square footage allowed for a ground sign for the site on table 23-545. The sign may display a commercial or a non-commercial message.
- d. Special exception use permit—Outdoor sales and events. Outdoor sales and events require a special exception use permit (see section 23-216 for approval process) unless exempt or otherwise allowed under this section. A special exception use permit is also required if any of the following conditions apply:
  - 1. The floor area of the building or plaza on the site where the event is to take place exceeds twenty thousand (20,000) square feet, and the event or sale involves outdoor area beyond the sidewalk immediately adjacent to the applicant business;

- 2. The request is for an outdoor sale or event lasting longer than one (1) year on a developed property;
- 3. The request is for a sale or event on a vacant lot. No event, sale or display shall be approved on a vacant lot unless the lot is in a nonresidential district and is part of a substantially developed business park or commercial subdivision. Such events shall be approved for no longer than thirty (30) days' duration;
- 4. The request is for a periodic sale or event occurring more than four (4) times per year;
- 5. The request is for multiple locations for outdoor sales or events.

(Ord. No. 2008-45, § 13, 12-16-08; Ord. No. 2012-04, § 2, 3-6-12; Ord. No. 2013-05, § 2, 6-18-13)

#### § 23-344. Automotive uses.

Automotive uses are those uses listed under "automotive uses" in Article VIII or any establishment involved in the sale, storage, or repair of motor vehicles. All automotive uses shall conform to all applicable provisions of this chapter, and, in addition, the following requirements shall apply:

- a. Lifts and all other apparati used in the repair or servicing of vehicles shall be located within buildings or areas screened from view of adjoining properties, public streets, and parks, except for gasoline and air pumps.
- b. Motor vehicles incapable of being moved under their own power at any time will be stored, serviced or repaired within buildings designated for such purposes or within areas designated on a site plan approved pursuant to section 23-222. Such areas shall be screened from view from adjoining properties, public streets, and parks. Work on vehicles outside of buildings or screened areas shall be limited to minor and incidental repairs of short duration.
- c. All automotive uses engaged in the sale of vehicles, whether as a principal or accessory use shall have a sales office located within a building on the premises.
- d. All areas used for the parking, storage, or repair of vehicles shall be surfaced in a stable manner.
- e. Water from the washing of vehicles shall be discharged only in accordance with a valid state permit for the establishment or approval by the city's utilities director, as applicable. Exempt from this requirement are special events for the washing or cleaning of vehicles held by school or religious groups, non-profit clubs, or civic organizations, provided that the administrative official is notified in advance of such an event and provided the events are limited to two (2) days' duration and are held not more than four (4) times in a calendar year by any one organization or on any site.

(Ord. No. 2007-02, § 7, 3-6-07)

### § 23-345. Bed and breakfast establishments.

A bed and breakfast establishment may be operated in a single-family residence, subject to approval as a special exception use by the planning board pursuant to section 23-216 and in accordance with the requirements of this section.

- a. The facility shall be owner-occupied and managed with the resident manager having at least fifty (50) percent ownership interest in the property.
- b. A maximum number of four (4) guest rooms shall be permitted.
- c. A bed and breakfast establishment is limited to one wall sign not exceeding six (6) square feet in size or one ground sign not exceeding six (6) square feet in size and five (5) feet in height. Sign design shall be consistent with the architecture of the building. Such signs shall not be internally lit, but may be illuminated by a spotlight.
- d. A floor plan showing dimensions of all guest rooms shall be submitted with the application for a special exception use permit for review and recommendation from the building official and fire marshall prior to consideration of any special exception use permit for a bed and breakfast by the planning board. Inspection of the premises by the city will be required.

(Ord. No. 2007-02, § 8, 3-6-07)

#### § 23-346. Boarding houses.

Boarding houses may be permitted only in those zoning districts where they are designated as a special exception use (see Table 23-421).

- a. Living quarters for the resident manager shall be provided; such quarters may include a kitchen.
- b. Centralized facilities to provide meals for the occupants may be provided; however, meals shall be provided only for boarders and not for the general public.
- c. A floor plan showing dimensions of all rooms within the boarding house shall be submitted with the application for a special exception use permit for review and recommendation from the building official and fire marshal prior to consideration of any special exception use permit for a boarding house by the planning board. Inspection of the premises by the city will be required.
- d. Signage shall comply with the requirements for multi-family buildings as set forth in section 23-526

### § 23-347. Day care.

Day care establishments are defined in Article VIII and by Florida statutes and codes. A "day care home" usually provides care for four (4) or fewer individuals and isa permitted accessory use to a single-family house pursuant to section 23-521. A "day care center" usually provides care to more than four (4) individuals and is permitted as indicated on Table 23-421.

- a. Site plan review is required for the establishment of any day care home or day care center for the purpose of ensuring adequate parking and safe traffic circulation. Prior to the final approval of a site plan for such a facility, a copy of the state license for the facility/provider must be provided to the administrative official.
- b. A day care home is permitted to have one wall sign not exceeding six (6) square feet in size or one ground sign not exceeding six (6) square feet in size and five (5) feet in height. Day care centers shall comply with the sign regulations set forth in Table 23-545
- c. Outdoor play areas shall be screened from adjoining properties and from streets as set forth in section 23-307
- d. Adequate and safe drop-off/pick-up areas for vehicles shall be provided.
- e. A floor plan showing dimensions of all rooms to be used for the day care operation shall be submitted with the application for review and recommendation from the building official and fire marshall prior to the approval of any site plan for a day care facility. Inspection of the premises by the city will be required.

(Ord. No. 2007-02, § 9, 3-6-07)

### § 23-348. Home Based Businesses

Effective: Tuesday, August 02, 2022

- a. The purposes of this section are to:
  - 1. Permit the residents of the City of Lake Wales a choice in the use of a limited area of their home as a place of livelihood and the production or supplementing of personal and family income;
  - 2. Permit no-nuisance commercial businesses within residences while maintaining a residential area or neighborhood without excessive noise, light, or other nuisances that undermine the purpose and character of the residential district;
  - 3. Protect residential properties from any adverse impacts associated with home-based businesses;
  - 4. Ensure that the rights of neighbors and other residents are not compromised by intrusive, hazardous, or environmentally degrading business activities;
  - 5. Protect residential property values;
  - 6. Permit "Cottage Food Operations" consistent with the provisions of the "Home Sweet Home Act" (Chapter 500, F.S.);
  - 7. Ensure consistency with Section 559.955, F.S. (Home-based businesses); and
  - 8. Establish performance criteria and standards for home-based businesses that will provide fair and equitable administration and enforcement of this section.
- b. Home-based businesses shall include the following types or categories of activities:

- 1. Home occupation a business, personal services, digital services, professional services, on-line teaching or training to individuals or groups, computer services such as repair or assembly, an occupation or trade conducted by the occupant of a dwelling as a secondary use. Usually conducted in a home office space, studio or defined workspace.
- 2. Telecommuting/Telework a "work at home" arrangement between an employer and employee for performing work at a location other than the primary work location, such as at the home of an employee, and sending and receiving material by phone, email or other electronic means.
- 3. Cottage Food Operation a natural person or entity that produces or packages cottage food products at the residence of the natural person or at the residence of a natural person who has an ownership interest in the entity, and sells such products in accordance with Section 500.08, F.S. (Chapter 500, F.S.)
- 4. Home-based cottage industry a small-scale, light manufacturing business carried on at home by family members using their own equipment. Typically referred to as handmade, handcrafted or artisan items made using hand tools, mechanical tools and electronic tools for the manufacture of finished products or parts that are valued for their uniqueness, handmade qualities, artistic value or traditional characteristics.
- c. A home-based business shall be allowed in any residence provided such home-based business is clearly incidental and secondary to the use of the dwelling as a residence and provided there are no external appearance of a business or commercial activity. Any person operating a home-based business is required to obtain a local business tax receipt pursuant to Chapter 19 of the Lake Wales Code of Ordinances.

#### 1. Employment:

- i. The home-based business shall be conducted by a member of the immediate family residing on the premises and up to a maximum of two (2) non-resident employees or independent contractors on-site at any time. [§559.955(3)(a), F.S.]
- ii. A cottage food operation may employ a person who does not reside on the premises provided the residence is occupied by a person who has an ownership interest in the home-based business. [§500.03(j), F.S.]
- iii. The home-based business may have additional remote employees that do not work on premise at the residential dwelling.

#### 2. Location and area:

- i. Regardless of the location of the home-based business, the principal dwelling unit on the property shall be the bona fide residence of the home-based business practitioner. The home-based business shall be clearly incidental and secondary to the property's use for residential purposes.
- ii. The floor area devoted to a home-based business shall not exceed twenty-five (25) percent of the gross floor area of conditioned air space of the dwelling.
- iii. A home-based business may be conducted from a completely enclosed accessory structure with the approval of a special exception use permit pursuant to the requirements of Section 23-216 of this Code.
- 3. Outward Appearance: As viewed from any travelway, the use of the residential property shall be consistent with the uses of any surrounding residential uses. Outdoor storage, displays or equipment associated with a home-based business other than those that are customarily associated with a residential use are prohibited. External modifications made to a residential dwelling to accommodate a home-based business must conform to the residential character and architectural aesthetics of the neighborhood.
- 4. Customers and clients: Visits to the premises by customers and clients of the home-based business shall occur only by scheduled appointment and no more than two (2) customers or clients may visit the premises at one time.
- 5. Signage: One non-illuminated business identification sign, mounted flush to the dwelling unit and not more then two (2) square feet in area shall be allowed.
- 6. Nuisances: A home-based business shall not create noise, vibration, glare, fumes, odors, dust, heat, or smoke.
- 7. Electronic Interference: No equipment, electrical devices or processes shall be used which may cause electromagnetic disturbances, electrical interference or create visual or audible interference in any radio, television, or satellite receiver or telephone, which violates FCC standards, or which causes fluctuation in off-site voltages.

- 8. Hazardous Substances: No highly toxic, explosive, flammable, combustible, corrosive, radioactive, volatile organic chemical compounds or similar hazardous materials shall be used, stored, or manufactured on the premises in amounts exceeding those which are typically found in normal residential use. No chemicals or chemical equipment shall be used or stored, except those that are used for domestic or normal household purposes.
- 9. Vehicle Traffic: Traffic generated by the proposed use must not negatively impact the safety, ambiance and characteristics of the residential area or neighborhood. Any increase to existing traffic created by the home-based business shall not exceed ten (10) additional trips per day. Based on the assumption that a single-family residence generated ten (10) vehicle trips per day, and residence with a home-based business will not exceed a total of twenty (20) vehicle trips per day.
- 10. Truck traffic: Delivery and shipping of merchandise, goods, or equipment, to the site of the home-based business shall be made by a vehicle typically employed in residential deliveries and shipping, such as, passenger vehicles, mail carriers, or step vans (i.e. UPS, Federal Express, etc.). No deliveries or shipping to the site of the home-based business by semi-tractor/trailer truck or vehicles having more than two (2) axles shall be permitted. Deliveries of any kind shall not exceed one (1) per day.

#### 11. Parking:

- i. Home-based businesses shall provide adequate parking spaces for any and all anticipated increase in vehicles at the dwelling including residents, employees, visitors, clients and customers of the home-based business. Such parking shall be provided in a manner and style that does not diminish the residential quality of the surrounding area and does not create adverse parking impacts on the adjacent street or properties.
- ii. All vehicles shall be parked within the driveway or in a designated parking space(s) that is located on the lot of the home-based business other than a required front yard and not within the road right-of-way unless on-street parking is legally authorized.
- iii. Sufficient lane widths on the adjacent roadway shall be maintained free of parked vehicles for the safe flow of through traffic.
- iv. Vehicles shall not be parked over a sidewalk or on any unimproved surfaces at the residence.

#### 12. Sales of services or products:

- i. Retail sales on-site shall be made by appointment only and are limited to services which are provided on-site; goods which are manufactured, assembled, or grown on site; or products which are directly related to the goods or services rendered by the home-based business.
- ii. There shall be no sales of services or products on the premises which are not provided or produced on the premises, except those sales which are incidental to the business.
- iii. The home-based business and the address of the premises shall not be advertised in such a manner that would encourage customers or salespersons to come to the property without an appointment.
- iv. A cottage food operation may sell, offer for sale, and accept payment for cottage food products over the Internet or by mail order. Such products may be delivered in person directly to the customer, or a specific event venue, or by United States Postal Service or commercial mail delivery service. A cottage food operation may not sell, offer for sale, or deliver cottage food products at wholesale. [§500.80(2), F.S.]
- v. All other retail or wholesale sales shall be made via telephone, Internet, or mail order. Products shall be delivered in person directly to the customer, a specific event venue, by United States Postal Service or a commercial delivery service.
- 13. Prohibited Business Activities: The following shall not be permitted as a home-based business:

- i. Music instruction for groups of more than two (2) clients or students at one time;
- ii. Group consultation or giving group instruction of any type for more than two (2) people at one time;
- iii. The use of any machinery, tools, or equipment that in scale, size or numbers beyond what is typically found in a home;
- iv. Beauty shop/salon or barbershop
- v. Private club;
- vi. Antique or gift shop;
- vii. Commercial kennel;
- viii. Nursery school or pre-school;
- ix. Public dining facility or tearoom;
- x. Automotive work of any type, including that of recreational vehicles; and Repair of equipment that takes place outdoors.

(Ord. No. 2006-47, § 3, 12-5-06; Ord. No. 2008-45, § 14, 12-16-08; Ord. No. 2022-36, § 1, 8-02-22)

### § 23-350. Laundromats.

Laundromats shall be entirely inside a building unless a special exception permit pursuant to section 23-216 is approved for a laundromat or a portion of a laundromat to be open to the parking area.

## § 23-351. Newsracks/modular newsracks.

Any newsrack on private land is subject to the provisions of this section. Newsracks on public property shall comply with the provisions of chapter 18, sections 18-61 through 18-63.

- a. Placement of a newsrack on private property requires site plan approval in accordance with section 23-222 to ensure the safety of pedestrian and vehicular traffic.
- b. No single newsrack shall exceed fifty-four (54) inches in height, thirty (30) inches in width or twenty-four (24) inches in depth.
- c. Newsracks may be clustered together and chained or otherwise attached to each other; however, no more than four (4) newsracks may be attached or chained together in a cluster. At least eighteen (18) inches must separate clusters.
- d. No newsracks shall be placed, installed, used or maintained within three (3) feet of any marked crosswalk, within fifteen (15) feet of the curb return of an unmarked crosswalk, within three (3) feet of any fire hydrant, within three (3) feet of any driveway, within three (3) feet of any display window of a building abutting a sidewalk, or at any location whereby the passageway of pedestrians is reduced to less than three (3) feet.
- e. Every newsrack shall be constructed, installed and maintained in a safe and secure condition.
- f. Each newsrack shall have fixed to it, in a readily visible place, the telephone number of a working telephone service to call to report a malfunction or the secure a refund in the event of a malfunction of the newsrack.

## § 23-352. Nursing care homes.

A nursing care home is an institution, building, residence, or private home providing nursing or personal care on a long-term basis for four (4) or more elderly or disabled persons, but not primarily for the acutely ill. Nursing care homes shall comply with the provisions of this section in addition to all other applicable provisions of these land development regulations and any conditions imposed as part of a special exception permit.

- a. To be eligible to apply for a special exception permit, a property proposed for a nursing home must have a minimum of seven thousand five hundred (7,500) square feet in area, except that property proposed for a residential treatment facility must be a minimum of ten thousand (10,000) square feet in area.
- b. The following shall also apply:

- 1. Interior living space required: Two hundred (200) square feet of living space per resident, not including any area reserved for resident staff, plus a minimum of eighty (80) square feet of sleeping area in each single occupancy sleeping room and a minimum of sixty (60) square feet of sleeping area in each multiple occupancy sleeping room.
- 2. A full bathroom with toilet, sink and tub or shower shall be provided for each five (5) residents.
- 3. No signs are permitted in residential zones unless otherwise allowed as part of the special exception permit. In non-residential districts, section 23-545 shall apply.
- 4. A landscaped buffer of at least ten (10) feet in width shall be provided along all property lines and streets adjoining the property. The buffer shall be landscaped with landscaping materials and a tree every fifty (50) feet, as defined in section 23-307
- 5. A residential treatment facility abutting a residential area, whether or not the area is residentially zoned, must provide, adjacent to the residential use, a thirty-five-foot buffer that includes the ten-foot landscaped buffer required above.

# § 23-353. Outdoor seating area.

Effective: Wednesday, September 07, 2022

The addition of an outdoor seating area (see definition) to an establishment is considered an expansion of the use and must comply with the applicable district regulations and a site plan for the expansion must be approved pursuant to section 23-222. The following regulations shall apply:

- a. The number of outdoor seats and tables shall be limited to that number which can be reasonably accommodated in the proposed outdoor seating area. Clear pedestrian access a minimum of thirty-six (36) inches in width shall be maintained at all times, and no seating or tables shall interfere with ingress/egress of buildings or create an unsafe situation for pedestrians.
- b. Outdoor seating on public sidewalks—Additional requirements:
  - 1. Approval for outdoor seating on public sidewalks may be granted by the Administrative Official in the Downtown Historic Overlay only. Approval by the city commission upon recommendation of the planning board is required for outdoor seating on public sidewalks in all other areas. (See also regulations on service of alcoholic beverages in outdoor seating areas on public sidewalks in section 23-342 and in chapter 5.)
  - 2. Adjacent sidewalk areas, even if not located directly in front of the associated storefront, may be considered on an individual basis, when the affected storefront owner does not object.
  - 3. The sidewalk cafe owner/operator shall remove from the sidewalk and place out of public view any seating or tables when the business is closed, or when an authorized agent of the city makes such a request.
  - 4. Outdoor seating shall be properly maintained for safety and cleanliness by the owner/operator on a daily basis. Litter, dirt, grease, grime and food shall not be permitted to accumulate at any time.
  - 5. An indemnity agreement, available from the administrative official, shall be signed and provided by the outdoor seating owner/operator, along with proof of public liability insurance as approved by the city attorney.

(Ord. No. 2011-04, § 2, 3-1-11; Ord. No. 2022-37, § 1, 9-7-22)

### § 23-354. Tower and telecommunication facilities.

Effective: Tuesday, January 19, 2016

Sec. 23-354.1 Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section:

Accessory use means a building, structure or use on the same lot and of a nature customarily incidental and subordinate to the principal building or use.

Administratively approved uses means specific uses listed in section 23-354.5 of this article which require an administrative review by the city.

Alternative tower structure means a man-made tree, clock-tower, church steeple, light pole or similar alternative-design mounting structure that camouflages, conceals, or minimizes the presence of an antenna or tower.

*Antenna* means any exterior apparatus designed for telephonic, radio, or television communications through the sending and/or receiving of electromagnetic waves.

Application means all written documentation, verbal statements and representations in whatever form made by the applicant to the city concerning a request by the owner of the property within the city (or his agent) to develop, construct, build, modify or erect a tower and telecommunications facilities upon such property.

Co-location means the use of a single structure or mount to support the antennas of more than one (1) communications service provider.

Existing towers and antennas means any tower and/or antenna, either inside or outside the city limits, existing on the effective date of this ordinance.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

*Height* means, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or structure.

Land use classification means a land use classification as defined in the adopted City of Lake Wales Comprehensive Plan.

*Monopole tower* means a tower consisting of a single pole or spire self-supported by a permanent foundation and constructed without guy wires and ground anchors.

*Nonconforming towers and antennas* means any existing tower, antenna or antenna structure that does not comply with this ordinance at the time of adoption.

Occupied means utilized as a dwelling unit or as a place to conduct commercial, industrial, professional, institutional or governmental activities on a regular and consistent basis.

Permitted uses means specific permitted uses as listed in section 23-354.4 of this article.

Principal use means the building(s) or structure(s) containing the principal use of the lot.

Public thoroughfare means any vehicular or pedestrian way that (1) is an existing state, county or municipal roadway; or (2) is shown upon a plat approved pursuant to law; or (3) is approved by other official action; or (4) is shown on a plat duly filed and recorded in the office of the county recording officer; and includes the land between the street lines, whether improved or unimproved.

Telecommunications facilities means any cables, wires, lines, wave guides, antennas or any other equipment or facilities associated with the transmission or reception of telecommunications. However, the term telecommunications facilities shall not include any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial or any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning or land use classification.

*Tower* means only a monopole tower and includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and the like.

Sec. 23-354.2 Applicability.

- a. The provisions of the City of Lake Wales Tower and Telecommunications Facilities Regulations shall apply throughout the corporate limits of the City of Lake Wales except as specifically provided in paragraphs (b) and (c) of this section.
- b. The provisions of these regulations shall not apply to any tower or the installation of any tower that is under seventy (70) feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive-only antennas.
- c. The provisions of these regulations shall not apply to communication towers or antennas, approved by the city, which are owned or operated by a governmental agency or political subdivision and primarily used for public health and safety.

Sec. 23-354.3 Prohibitions. The following are prohibited within the city limits of Lake Wales, unless otherwise specified by this ordinance:

- a. Self-supporting lattice and guy towers.
- b. All uses not specified in this ordinance as permitted, administratively approved, or special exception uses.

- c. Towers in the Burns Avenue/Bok Tower viewshed protection area.
- d. Telecommunication facilities in the CON future land use classifications.

(Ord. No. 2007-02, § 10, 3-6-07)

Sec. 23-354.4 Permitted uses.

- a. Towers and telecommunications facilities are deemed to be permitted uses as follows:
  - 1. IND, LCI, PUB and BPC land use classifications.
    - A. The construction of a monopole tower up to one hundred sixty-five (165) feet in height, including the placement of additional buildings or other supporting equipment used in connection with said tower or antenna, is permitted. A monopole tower one hundred sixty-five (165) feet in height shall be engineered and constructed (certified by a registered professional engineer) to accommodate a minimum of two (2) additional service providers. In order to be permitted for the maximum one hundred sixty-five-foot height, the applicant must submit at the time of application, evidence demonstrating that two (2) additional service providers will utilize the monopole tower which is the subject of the application.
    - B. The construction of a monopole tower up to one hundred forty-five (145) feet in height, including the placement of additional buildings or other supporting equipment used in connection with said tower or antenna, is permitted. A monopole tower one hundred forty-five (145) feet in height shall be engineered and constructed (certified by a registered professional engineer) to accommodate a minimum of one (1) additional service provider. In order to be permitted for the maximum one hundred forty-five-foot height, the applicant must submit at the time of application, evidence demonstrating that one (1) additional service provider will utilize the monopole tower which is the subject of the application.
    - C. A single service provider may be permitted for construction of a monopole tower up to one hundred twenty-five (125) feet in height, including the placement of additional buildings or other supporting equipment used in connection with said tower or antenna. A monopole tower up to one hundred twenty-five (125) feet in height shall be engineered and constructed (certified by a registered professional engineer) to accommodate a single service provider.
  - 2. Non-residential land use classifications.
    - A. The installation of an antenna on any existing tower is permitted so long as the addition of said antenna adds no more than twenty (20) feet to the height of the existing tower and provided that such installation shall not include the placement of additional buildings or other supporting equipment used in connection with said antenna
    - B. The installation of an antenna on an existing structure other than a tower (such as a building, light pole, water tower, or other free-standing non-residential structure) that is fifty (50) feet in height or greater is permitted so long as said antenna adds no more than twenty (20) feet to the height of the existing structure.
- b. The telecommunications facilities listed in this section are deemed to be permitted uses and shall not require an administrative review. All applicants seeking to install or construct new facilities must obtain all necessary local, state, and federal permits and must satisfy the requirements of this ordinance.

(Ord. No. 2007-02, § 10, 3-6-07)

Sec. 23-354.5 Administratively approved uses.

- a. The following may be permitted upon administrative review and approval in RAC, CAC, NAC, GC, RO, DD, HDR, MDR, and RR land use classifications:
  - 1. The installation of an antenna on an existing structure other than a tower (such as a building, light pole, water tower, or other free standing nonresidential structure) that is less than fifty (50) feet in height may be administratively approved so long as said antenna adds no more than twenty (20) feet to the height of the existing structure
  - 2. The installation of an antenna on an existing tower of any height and the placement of additional buildings or other supporting equipment used in connection with said antenna may be administratively approved so long as said antenna adds no more than twenty (20) feet to the height of the existing tower.
  - 3. The installation of any alternative tower structure or camouflaged antenna that blends in with the natural environment may be administratively approved provided the following requirements are met:
    - A. An alternative tower or camouflaged antenna shall not create additional visual obtrusiveness.
    - B. An alternative tower or camouflaged antenna shall not make the "host" structure taller than other similar objects in the natural environment.
    - C. Man-made tree towers shall be designed to resemble a species native to Central Florida and shall be placed in a non-conspicuous location.
    - D. Section 23-354.7 of this article shall apply to alternative tower structures.
- b. The city shall consider the following factors in determining whether to issue an administrative approval:

- 1. Height of the proposed tower.
- 2. Proximity of the tower to residential structures and residential district boundaries.
- 3. Nature of uses on adjacent and nearby properties.
- 4. Surrounding topography.
- 5. Surrounding tree coverage and foliage.
- 6. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- 7. Proposed ingress and egress.
- 8. Availability of suitable existing towers and other structures in accordance with section 23-356.7 of this article.
- c. All applicants seeking to install or construct new facilities must obtain all necessary local, state, and federal permits and must satisfy the requirements of this ordinance.

## Sec. 23-354.6 Special exception uses.

- a. Special exception review and approval shall occur in accordance with section 23-216 of these land development regulations. The following may be permitted upon special exception review and approval in the Low Density Residential land use classification:
  - 1. The installation of an antenna on an existing structure other than a tower (such as a building, light pole, water tower, or other free-standing non-residential structure) that is less than fifty (50) feet in height may be permitted upon special exception review and approval so long as said antenna adds no more than twenty (20) feet to the height of the existing structure.
  - 2. The installation of an antenna on an existing tower of any height and the placement of additional buildings or other supporting equipment used in connection with said antenna may be permitted upon special exception use and approval so long as said antenna adds no more than twenty (20) feet to the height of the existing tower;
- b. The city shall consider the following factors in determining whether to issue a special exception use approval:
  - 1. Height of the proposed tower.
  - 2. Proximity of the tower to residential structures and residential district boundaries.
  - 3. Nature of uses on adjacent and nearby properties.
  - 4. Surrounding topography.
  - 5. Surrounding tree coverage and foliage.
  - 6. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
  - 7. Proposed ingress and egress.
  - 8. Availability of suitable existing towers and other structures in accordance with section 23-354.7 of this article.
- c. All applicants seeking to install or construct new facilities must obtain all necessary local, state, and federal permits and must satisfy the requirements of this ordinance.

#### Sec. 23-354.7 Administration, documentation, and co-location.

- a. *Permits and fees.* It shall be unlawful for any property owner, contractor or communications service provider to erect, construct, alter or relocate within the city any communications facility without first obtaining a permit and making payment of the required fees.
- b. Required documentation (all uses). Each applicant shall apply for a building permit and must provide the following information:
  - 1. Site plan. A scaled site plan and a scaled elevation view with supporting drawings, calculations, and other documentation signed and sealed by appropriate licensed professionals, showing the location and dimensions of all improvements including information concerning topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses, and other information deemed necessary by the city to assess compliance with this ordinance.
  - 2. Co-location statement. A statement of intent that co-locators will be permitted in cases where facilities are required or proposed to accommodate more than one (1) provider. The positions of anticipated co-locator antennas on the mount and the space provided for co-locator equipment shelters shall be shown on all site plans and elevations. A statement demonstrating compliance with the provisions of subsection 23-354.4(a)(1) in cases where facilities are required or proposed to accommodate more than one (1) provider.
  - 3. Polk County Airport Zoning Regulations statement. A statement certifying that, as proposed, the facility complies with the Polk County Airport Zoning Regulations.

- 4. Existing structures report (new towers only). A report inventorying the available structures, including water towers and utility poles, within the applicant's search area which may serve as alternatives to the proposed tower. The report shall evaluate why the proposed facility cannot be accommodated on such existing structures.
- c. Co-location. No new tower or antenna shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the administrative official that no existing tower or structure can accommodate the applicant's proposed tower or antenna. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed tower or antenna may document any of the following:
  - 1. No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements.
  - 2. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
  - 3. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
  - 4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

### Sec. 23-354.8 General requirements.

- a. *Height restrictions*. Towers are exempt from the maximum building height restrictions of the zoning districts in which they are located. Towers shall be permitted to a height of one hundred twenty-five (125) feet except as otherwise provided in this section.
- b. Aesthetics. The following regulations shall apply:
  - 1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color, so as to reduce visual obtrusiveness. Towers not requiring FAA painting or marking shall have a galvanized finish or be painted a non-contrasting blue grey or black finish. The color should be selected so as to make the equipment as visually unobtrusive as possible.
  - 2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and built environment.
  - 3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- c. *Lighting*. Towers shall not be artificially lighted unless required by the FAA or other applicable regulatory authority. If lighting is required, the city will review the available lighting alternatives and approve the design that will cause the least disturbance to the surrounding views.
- d. Federal requirements. All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate communications towers and antennas.
- e. Building codes and safety standards. To ensure the structural integrity of communications towers, the owner of a tower shall ensure that it is maintained in compliance with all standards contained in the applicable local building codes.
- f. Signage. No commercial sign or advertising shall be permitted on a tower or supporting facilities unless otherwise required by law. This prohibition shall not apply to "no trespassing" signs.
- g. Existing and nonconforming towers and antennas. All towers existing on the effective date of this ordinance shall be allowed to continue in use as they exist at that time. Routine maintenance shall be permitted on such existing towers, except as provided herein. New construction other than routine maintenance on an existing tower shall comply with the requirements of this ordinance. Nonconforming towers and antennas must be removed, changed, or altered to conform to the provisions of this ordinance within ten (10) years after the effective date of this ordinance.
- h. Airport zoning requirements. All tower structures shall comply with the regulations as set forth in Polk County's Airport Zoning Regulations.
- Sec. 23-354.9 Setbacks and separation requirements. The following setbacks and separation requirements shall apply to all new towers and their supporting facilities:
  - a. Monopole towers shall be separated from all other towers by a minimum of one thousand five hundred (1,500) feet.

- b. All towers shall be separated from all residentially used or zoned property by a minimum of two hundred (200) feet or a distance equal to two hundred (200) percent of the base height of the proposed tower, whichever is greater. The setback may be reduced to a distance equal to one hundred (100) percent of the base height of the tower provided that a waiver is secured from each affected property owner and the reduced setback is administratively approved by the administrative official.
- c. All towers shall maintain a 1.5:1 setback-to-base height ratio from any public thoroughfare.
- d. All towers shall maintain a 1.5:1 setback-to-base height ratio from any occupied structure.

Sec. 23-354.10 Site improvements.

- a. Towers shall be enclosed by security fencing not less than six (6) feet in height, and shall be equipped with an appropriate anti-climbing device.
- b. Landscaping shall be installed on the outside of any fence and shall be of a sufficient height and density, upon planting, to screen the fence.
- c. Property upon which a tower is located must provide access to at least one (1) paved on-site vehicular parking space.

Sec. 23-354.11 Abandoned towers and antennas. In the event that the use of any communications tower or communications antenna has been discontinued for a period of one hundred eighty (180) consecutive days, the tower or antenna shall be deemed to have been abandoned. Upon such abandonment, the owner/operator of the tower or antenna shall have an additional one hundred eighty (180) days within which to reactivate the use, transfer the ownership/operation to another actual user, or dismantle the tower. The owner of the real property shall be ultimately responsible for all costs of dismantling and removal, and in the event the tower is not removed within one hundred eighty (180) days of abandonment, the city may initiate legal proceedings to do so and assess the costs against the real property.

Sec. 23-354.12 Appeals. Decisions made in the administration of this ordinance may be appealed in accordance with procedures established in section 23-244 of these land development regulations.

(Ord. No. 2016-01, § 6, 01-19-16)

## § 23-355. Communications Facilities in the Public Right-of-Way

Effective: Tuesday, April 17, 2018

Sec. 23-355.1 Definitions.

The following words and phrases shall have the meanings respectively ascribed to them:

- (1) Antenna shall mean communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.
- (2) Applicant shall mean a person who submits an application and is a wireless provider.
- (3) *Collocate or collocation* shall mean to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.
- (4) Communication Services means the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance, as per Florida Statutes § 202.11, as amended. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:
  - (a) Information services.
  - (b) Installation or maintenance of wiring or equipment on a customer's premises.
  - (c) The sale or rental of tangible personal property.
  - (d) The sale of advertising, including, but not limited to, directory advertising.
  - (e) Bad check charges
  - (f) Late payment charges

- (g) Billing and collection services
- (h) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line computer services.
- (5) Communication Services Provider shall mean a person who provides Communication Services and is chartered by the State of Florida, pursuant to Florida Statutes § 362.01, as amended. A certificate to provide Competitive Local Exchange Telecommunications (CLEC) service to provide Alternative Access Vender (AAV) services granted by the Public Service Commission does not grant the right to provide Wireless Services.
- (6) Communications Facility a facility that may be used to provide Communications Services, including Wireless Facilities, Small Wireless Facilities, Micro Wireless Facilities, and Utility Poles that contain communications elements. Multiple cables, conduits, strands, or fibers located within the same conduit shall be considered one Communications Facility for purpose of this Section.
- (7) City Rights-of-Way means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, pier, easement, public easement, or similar property in the City, in which the City holds a property interest or over which the City exercises legal control, and for which the City may lawfully grant a right of use to any person for placement of any equipment or facility or similar use. The term "City Rights-of-Way", shall not include any other property owned or controlled by the City, including any building, fixture, structure, or other improvement, regardless of whether it is situated in the City Rights-of-Way.
- (8) *Emergency* means a condition which poses clear and immediate danger to the life, safety, or health of one or more persons, or poses clear and immediate danger of significant damage to property.
- (9) *Emergency Action* means any action in the public right-of-way, including repair, replacement, or maintenance of any existing equipment, which is necessary to alleviate an emergency.
- (10) Equipment or Facility means any line, conduit or duct, utility pole, transmission or distribution equipment (e.g., an amplifier, power equipment, optical or electronic equipment, a transmission station, switch or routing equipment), cabinet or pedestal, handhole, manhole, vault, drain, location marker, appurtenance, or other equipment or facility associated with communication services located in the City Rights-of-Way.
- (11) *Micro Wireless Facility* shall mean a Small Wireless Facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any no longer that 11 inches.
- (12) Routine Maintenance or Repair shall mean:
  - (a) Ordinary upkeep, fixing, mending, replacement, or removal of any existing Wireless Facility, Wireless Support Structure, or Utility Pole; or
  - (b) Installation of a service connection to the premises of a customer.

However, routine maintenance or repair shall not include any work which involves:

- (a) Any excavation in the City Rights-of-Way or making any breaks or cut in the surface of the public right-of-way;
- (b) Any installation of a new Utility Pole or extension of an existing Utility Pole;
- (c) Any installation of a Communications Facility, Wireless Facility, or Wireless Support Structure on any paved surface or other ground-level location in the City Rights-of-Way;
- (d) Any modification, impairment, or disturbance of the normal flow of vehicular or pedestrian traffic or use of the City Rights-of-Way by any other person for 30 minutes or more; or
- (e) Any activity which may result in any damage to the City Rights-of-Way or any other City property.
- (13) Small Wireless Facility shall mean a Wireless Facility that meets the following qualifications:
  - (a) Each Antenna associated with the facility is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of Antennas that have exposed elements, each Antenna and all of its exposed elements could fit within an enclosure of no more than six (6) cubic feet in volume; and
  - (b) All other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

(14) *Utility Pole* shall mean a pole or similar structure that is used in whole or in part to provide Communications Services or for electric distribution, lighting, traffic control, signage, or similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure fifteen (15) feet in height or less.

Sec. 23-355.2 General Permitting Requirements.

- (1) *Applicability*. The provisions of the Section shall apply to City Rights-of-Way. The placement of Communications Facilities within City Rights-of Way shall in all cases be subject to the discretionary City Rights-of-Way permit process in accordance with Lake Wales Land Development Regulations.
- (2) *Permits Required.* Except for those exempt activities specifically listed below, it shall be unlawful for any person to make any excavation in the City Rights-of-Way, make any break or cut in any surface of the City Rights-of-Way, place any equipment or facility in the City Rights-of-Way, modify or remove any equipment or facility, or perform any other work in the City Rights-of-Way, without first obtaining a written permit from the City.
- (3) Exemptions. The following activities are exempt from the requirements of the Section:
  - (a) Emergency Actions, but the City reserves authority to require an after-the-fact permit;
  - (b) Routine Maintenance and Repair of Communications Facilities, Wireless Facilities, Small Wireless Facilities, Micro Wireless Facilities, Wireless Support Structures, or Utility Poles authorized to be located within the City Rights-of-Way.
  - (c) Installation, construction, or modification of Communications Facilities, Wireless Facilities, Small Wireless Facilities, Micro Wireless Facilities, Wireless Support Structures, or Utility Poles by governmental entities or approved as part of a government-initiated project within the City Rights-of-Way.
  - (d) Placement or operation of Communications Facilities in the rights-of-way by a Communications Services Provider authorized by state law to operate in the rights-of-way. Under Section 362.01, Florida Statutes, any telegraph or telephone company charted by this or another state, or any individual operating or desiring to operate a telegraph or telephone line, or lines, in this state, may erect posts, wires and other fixtures for telegraph or telephone purposes on or beside any public road or highway; provided, however, that the same shall not be set as to obstruct or interfere with the common uses of said roads or highways.
- (4) *Emergency Action*. Any person who performs work in the City Rights-of-Way in connection with an Emergency Action without a permit shall immediately notify the City of the Emergency Action. The person shall cease all work immediately upon completion of Emergency Action. The person shall also cease all work immediately upon receipt of a City stop work order determining the situation does not involve an emergency or that the Emergency Action is no longer warranted.
- (5) Revocation. The City may revoke any permit granted pursuant to the Section, without refunding any fees, if it finds that an Applicant has not complied with applicable law, including provision of a permit, the Code, or any franchise, license, or other authorization, or that revocation is necessary to protect the public health, safety, or welfare.

Sec. 23-355.3 Registration Requirements.

- (1) Registration Required. Any Communications Services Provider, Wireless Provider, or Wireless Infrastructure Provider that places or seeks to place facilities in the City right-of-way shall register.
- (2) Registration Information. Any Communications Services Provider, Wireless Provider, of Wireless Infrastructure Provider shall provide the following information to the Administrative Official in a format acceptable to the City:
  - (a) name of registrant;
  - (b) name, address, telephone number, and electronic mail address of a contact person for the registrant;
  - (c) the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission, the Federal Communications Commission, or the Department of State; and
  - (d) proof of insurance or self-insuring status adequate to defend and cover claims.

Sec. 23-355.4 Permitting Requirements for Small Wireless Facilities.

- (1) Alternate Location Review. Upon receipt of a permit application to install a Small Wireless Facility, the Administrative Official shall have thirty (30) days to review the application to determine whether the proposed Small Wireless Facility shall be placed on an alternative Utility Pole or may place a new Utility Pole. In making such a determination, the Administrative Official shall consider the following objective design standards and reasonable spacing requirements for ground-based equipment:
  - (a) All Small Wireless Facilities shall use camouflage techniques which incorporate architectural treatment to conceal or screen their presence from public view through design to unobtrusively blend in aesthetically with the surrounding environment.
  - (b) New and replacement Wireless Support Structures and Utility Poles that support Small Wireless Facilities shall match the style, design, and color of existing Utility Poles in the surrounding area. Further, all Wireless Support Structures and Utility Poles shall meet current safety standards in all applicable Codes.
  - (c) Ground-based equipment boxes for Small Wireless Facilities must be located in areas with existing foliage or another aesthetic feature to obscure the view of the equipment box. Additional plantings may be required to meet this condition. Any new landscaping in the City right-of-way must be approved by the Administrative Official, who may require a Landscape Maintenance Agreement to be executed prior to approval.
  - (d) With the exception of electric meters and disconnect switches, equipment such as back-haul components shall not be mounted on the exterior of the pole.
  - (e) No exposed wiring or conduit is permitted.
  - (f) The grounding rod may not extend above the top of sidewalk and must be place in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit.
  - (g) All pull boxes must be vehicle load bearing, comply with FDOT Standard specification 635 and be listed on the FDOT Approved Products List. A concrete apron must be installed around all pull boxes not located in the sidewalk. No new pull boxes may be located in pedestrian ramps.
- (2) Alternate Location Negotiation. The Administrative Official shall negotiate any alternate location with the Applicant. If an agreement is not reached within thirty days after the date the Administrative Official requests an alternate location, the Applicant must notify the Administrative Official of such non-agreement and the Administrative Official must grant or deny the original application within 90 days after the date the application was filed. A request for an alternate location, and acceptance of an alternate location, or a rejection of an alternate location must be in writing and provided by electronic mail. Additionally, the design standards may be waived by the Administrative Official upon a showing by the Applicant that the design standards are not reasonably compatible for the particular location of a Small Wireless Facility or that the design standards impose an excessive expense. The waiver shall be granted or denied within thirty (30) days after the date of request.
- (3) Height Limitations for Small Wireless Facilities. The height of Small Wireless Facilities shall not exceed ten (10) feet above the Utility Pole, or Wireless Support Structure on which the Small Wireless Facility is to Collocated.
- (4) *Height of Utility Poles*. The height of a new Utility Pole is limited to the tallest existing Utility Pole as of January 1, 2018, located in the same right-of-way, other than a Utility Pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Small Wireless Facility. If there is no Utility Pole within 500 feet, the height of the new Utility Pole shall be limited to 50 feet.
- (5) Time for Completing Completeness Review of Applications. For applications in which the Administrative Official does not request use of an alternate locations, the Administrative Official must make a determination as to whether an application is complete within 14 days. If an application is deemed incomplete, the Administrative Official must specifically identify the missing information. An application is deemed complete if the Administrative Official fails to provide notification to the Applicant within 14 days.
- (6) Applications Processed on a Nondiscriminatory Basis. The Administrative Official shall process applications on a nondiscriminatory basis. Thus, applications shall be processed on a first-come, first-served basis.
- (7) *Time for Completing Approval or Denial*. The Administrative Official shall grant or deny an application within sixty (60) days after receipt of the application. If the Administrative Official fails to take action on a complete application within 60 days, the application shall be deemed approved. If the Administrative Official elects not to negotiate an alternate location, the Applicant and Administrative Official may mutually agree to extend the review period. The Administrative Official shall grant or deny the application at the end of the extended period.

- (8) Effective Life of Approved Permit Application. A permit issued pursuant to an approved application shall remain effective for one year unless extended by the Administrative Official for an additional year. The Administrative Official may only grant a single extension.
- (9) Notification of Approval or Denial. The Administrative Official shall notify an Applicant of any approval or denial by electronic mail on the same day a decision is made. If the Administrative Official denies an application, the denial must state in writing the basis for the denial, including specific code provisions on which the denial was based. In the event of a denial, the Applicant may cure the deficiencies identified by the Administrative Official and resubmit the application within 30 days after notice of the denial. The Administrative Official shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.
- (10) *Permitting Criteria*. The Administrative Official may deny a proposed Collocation of a Small Wireless Facility in the City Right-of-Way if the proposed Collocation:
  - (a) materially interferes with the safe operation of traffic control equipment;
  - (b) materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
  - (c) materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
  - (d) materially fails to comply with the most current edition of the Florida Department of Transportation Utility Accommodation Manual; and
  - (e) materially fails to comply with any Applicable Codes.
- (11) *Collocation on City Utility Poles*. Collocation of Small Wireless Facilities on City Utility Poles shall meet the following requirements:
  - (a) The City may not enter into an exclusive arrangement with any person for the right to attach equipment to City Utility Poles.
  - (b) The rates and fees for Collocation on City Utility Poles must be nondiscriminatory, regardless of services provided by the Collocating person.
  - (c) The rate to Collocate a Small Wireless Facility on a City Utility Pole shall be at least \$150 per pole annually.
  - (d) Agreements between the City and Wireless Providers that are in effect on January 1, 2018, and that relate to the Collocation of Small Wireless Facilities in the City right-of-way, including the collocation of Small Wireless Facilities on City Utility Poles, remain in effect, subject to application of termination provisions.
- (12) Attestation of Wireless Services. A Wireless Infrastructure Provider must include within its application to place a Utility Pole in the City right-of-way an attestation that the Small Wireless Facility will be used by a Wireless Services Provider for the provision of Communication Services within 9 months of the date of the application is approved. In the event a Wireless Services Provider fails to provide Communications Services with the 9 months, the City may begin proceedings for revocation.
- (13) *Historic Preservation*. The City may require an Applicant to obtain a Certificate of Appropriateness from the Historic Preservation Board under Section 23-653 of the Code where an application may impact an Historic Resource, as that term is defined under this Chapter.
- (14) *Privately-Owned Utility Poles*. Nothing in this section authorizes a person to Collocate or attach Wireless Facilities, including any Antenna, Micro Wireless Facility, or Small Wireless Facility, on a privately owned Utility Pole, a Utility Pole owned by an electric cooperative or a municipal electric utility, a privately-owned Wireless Support Structure, or other private property without the consent of the property owner.
- (15) Limitation on Permitting of Small Wireless Facilities. Any permit approval by the City for the installation, placement, maintenance, or operation of a Small Wireless Facility under this section does not authorize the provision of any voice, data, or video Communications Services or the installation, placement, maintenance, or operation of any Communications Facilities other than Small Wireless Facilities in the City rights-of-way.
- Sec. 23-355.5 Permitting Requirements for New Communications Facilities, Wireless Facilities, and Wireless Support Structures.

- (1) *Permits Required*. Unless otherwise governed by the exemptions in Sec. 23-355.2(3) or the permitting requirements for Small Wireless Facilities outlined in Sec.23.355.4, new Communications Facilities, Wireless Facilities, and Wireless Support Structures in City rights-of-way shall meet the following permitting requirements, as determined by the Administrative Official using the best professional judgement, which may include consultation with the City Engineer, or other appropriate City staff:
  - (a) All new Communications Facilities, Wireless Facilities, and Wireless Support Structures shall be located to avoid any physical or visual obstruction to pedestrians or vehicular traffic, or to otherwise create safety hazards to pedestrians, bicyclists, or motorists.
  - (b) The separation distance between new and existing Communication Facilities, Wireless Facilities, and Wireless Support Structures shall be a minimum of 120 feet.
  - (c) New Communication Facilities, Wireless Facilities, and Wireless Support Structures shall avoid being placed in a City right-of-way in Residential or Conservation zoning districts, as defined in this Chapter, to the greatest extent possible. An Applicant shall demonstrate through an engineering analysis why it is unable to locate new Communication Facilities, Wireless Facilities, and Wireless Support Structures outside a Residential or Conservation zoning district.
  - (d) New Communications Facilities, Wireless Facilities, and Wireless Support Structures shall be located on Collector roadways and Arterial roadways to the greatest extent possible.
  - (e) New Communication Facilities, Wireless Facilities, and Wireless Support Structures shall maintain a clear zone from the back-of-curb to the inward edge of a Communication Facility, Wireless Facility, or Wireless Support Structure. Unless otherwise determined by the Administrative Official, a minimum six (6) foot wide pedestrian clear zone between back-of-curb and the outward edge of a Communications Facility, Wireless Facility, or Wireless Support Structure.
  - (f) New Communications Facilities, Wireless Facilities, and Wireless Support Structures shall be located at least ten (10) feet from a driveway and at least thirty (30) feet from the center of existing trees with matured diameter of eight (8) inches or greater.
  - (g) The size and height of new Communications Facilities, Wireless Facilities, and Wireless Support Structures in the City right-of-way shall be no greater than the maximum size and height of any other Utility Pole, Communications Facility, Wireless Facility or Wireless Support Structure located in the City rights-of-way within 250 feet of the proposed structure.
  - (h) New Communication Facilities, Wireless Facilities, and Wireless Support Structures shall be placed along side-lot lines and in front of residences, buildings, or places of business.
  - (i) Any new proposal to construct a new Communication Facility, Wireless Facility, or Wireless Support Structure must first demonstrate why services cannot be Collocated on and existing Communication Facility, Wireless Facility, Wireless Support Structure, or Utility Pole in the City right-of-way.
- (2) *Design Requirements*. New Communications Facilities, Wireless Facilities, and Wireless Support Structures shall meet the following design requirements:
  - (a) All Communications Facilities shall use camouflage techniques which incorporate architectural treatment to conceal or screen their presence from public view through design to unobtrusively blend in with the surrounding environment.
  - (b) New and replacement poles that support Communication Facilities shall match the style, design, and color of existing poles in the surrounding area. Further, all poles shall meet current safety standards such as using breakaway connections and the like.
  - (c) Ground-based equipment boxes must be located in areas with existing foliage or another aesthetic feature to obscure the view of the equipment box. Additional plantings may be required to meet this condition. Any new landscaping in the City right-of-way must be approved by the Administrative Official, who may require a Landscape Maintenance Agreement to be executes prior to approval.
  - (d) With the exception of electric meters and disconnect switches, equipment such as back-haul components shall not be mounted on the exterior of the pole.
  - (e) No exposed wiring or conduit is permitted.
  - (f) The grounding rod may not extend above the top of sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit.

- (g) All pull boxes must be vehicle load bearing, comply with FDOT Standard specification 635 and be listed on the FDOT Approved Products List. A concrete apron must be installed around all pull boxes not located in the sidewalk. No new pull boxes may be located in pedestrian ramps.
- (3) Written Application Requirements. No permit shall be issued unless an Applicant submits a written application to the City in accordance with this Chapter. An application for a permit shall be filed in the form and manner specified by the City and contain such information as may be required by the City, including, at a minimum, the information contained in this section. The City may require the Applicant to provide such additional information as the City deems necessary to complete its review of a requested permit. At a minimum, the Applicant shall submit the following information:
  - (a) The name and address of the Applicant who is requesting the permit and written evidence that such Applicant has legal authority to place, maintain, or remove the Equipment or Facilities covered by the requested permit in the City right-of-way and will own and control all such Equipment and Facilities after completion of construction;
  - (b) A description of the functions, dimensions, and proposed locations for all Equipment and Facilities covered by the requested permit;
  - (c) The specific location, depth, dimensions, and length of each proposed new or replacement duct, conduit, or other underground facility and the specific location, depth, dimensions, and height of any utility pole covered by the requested permit;
  - (d) A description of the manner in which the work covered by the requested permit is to be undertaken (i.e., proposed construction methods and techniques) and a proposed date for commencement of work and an estimate of the time required to complete all such work;
  - (e) A City approved traffic control plan for vehicular and pedestrian traffic in the area to be affected by the proposed work;
  - (f) Proof of insurance;
  - (g) Identification and description of any utility or other distribution or transmission system to which any Equipment or Facility covered by the requested permit is to be connected or attached.
  - (h) Drawings (in such detail and form as may be specified by the City) which show: (i) City rights-of-way in the area of the proposed construction; (ii) locations of all existing Equipment and Facilities in the area of proposed construction; (iii) all Equipment and Facilities to be installed or removed; (iv) the routes of all transmission and distribution lines to be installed or removed; and (v) the sites of all other Equipment and Facilities to be installed or removed in the City rights-of-way; and
  - (i) Construction and/or engineering drawings signed and sealed by a structural engineer (in sufficient detail and form as may be specified by the City to demonstrate structural stability of the Communications Facilities) which show the locations of all new Equipment and Facilities in the City which the applicant plans to place in the City rights-of-way in the next 12 months or such other time period as may be specified by the City.
  - (j) Photographic or video documentation of the condition of the City rights-of-way in the area to be affected by the proposed work pre construction.
- (4) Fees. To the extent allowed by state law, the City is authorized to set reasonable fees and charges for the implementation of this Section. Such fees shall be set by resolution. Fees charged will substantially cover the expenditures of administering this Section. No permit shall be granted until such time as all applicable fees are paid to the City.

#### Sec. 23-355.6 Administrative Variances

- (1) Authority to Grant Administrative Variances. The Planning and Development Services Director, or their designee, has the authority to grant an administrative variance up to ten (10) percent of the separation requirements contained herein for replacement of existing or new Communications Facilities, Wireless Facilities or Wireless Support Structures. In making such a determination, the Director shall consider the following:
  - (a) The permitting standards outlined in this Section.
  - (b) Any hardship associated with the land, including size, shape, and dimensions of lots, and the presence of protected native habitats as specified by the Comprehensive Plan that affect the configuration of roads on the property.
  - (c) The risk of creating unfavorable precedent.

- (d) The technology in use for Communications Facilities.
- (e) The current available technology for Communications Facilities.
- (f) Any costs associated with upgrading Communications Facilities.
- (g) The risk of confusion that may cause or create delay in response time.
- (h) All applicable city, state, and federal regulations.
- (2) Fees. To the extent allowed by state law, the City is authorized to set reasonable fees and to process an administrative variance application. Such fees shall be set by resolution. Fees charged will substantially cover the expenditures of administering this Section. No administrative variance shall be granted until such time as all applicable fees are paid.

#### Sec. 23-355.7 Uniform Permit Conditions

- (1) Discretion to Include Conditions. The City may include conditions on permits to ensure adherence to the City Code of Ordinances and adequate protection of the public's health, safety and welfare. These conditions may include, but are not limited to, interim or temporary restoration, patching, or resurfacing of the City right-of-way during the construction period.
- (2) Uniform Permit Conditions: All permits issued pursuant to this Section shall contain the following conditions:
  - (a) The Applicant shall remove any rubbish, excess earth, rock, or other debris arising from or associated with any work performed in the City rights-of-way and any other property affected by such work on a frequent or regular basis (or as specifically directed by the City), to the satisfaction of the City, and the expense of the Applicant.
  - (b) Unless otherwise specified by the City, the Applicant shall illuminate through use of red lanterns, red lights, or red torches any building material, machinery, motor vehicle, equipment, facility, or other object placed in the City rights-of-way in connection with any work performed in the City rights-of-way, between sunset and sunrise. The permittee shall place illumination at a distance of not more than five (5) feet from each other along the width of any affected portion of the City rights-of-way (or as may otherwise be specified by the City) and not more than 15 feet from each other along the length of the affected portion of the City rights-of-way (or as may otherwise be specified by the City).
  - (c) Any work performed by the Applicant in the City rights-of-way, including restoration, shall be complete by the completion date specified in the permit or as otherwise specified or provided by the City. Upon completion of the work (or at such time as may be specified by the City if construction is not completed by the completion date or construction is terminated for any reason, including revocation of the permit), the Applicant shall restore the City rights-of-way to a condition which is at least as good as its condition prior to commencement of work. The Applicant shall perform restoration to the City rights-of-way in accordance with any specifications or standards regarding materials or any other matter specified by the City. The City may establish generally applicable restoration standards, which apply unless the City specifies other standards in a particular situation or may establish restoration standards on a case-by-case basis.
  - (d) If an Applicant fails to restore the City rights-of-way, including any paved surface, curbs, or fixtures, to a condition at least as good as its condition prior to commencement of construction or to complete such restoration work by the completion date specified in the permit or as otherwise specified or provided by the City, the City may perform any work or undertake any other activity which it deems necessary to complete such work and/or restore the City rights-of-way. The Applicant shall reimburse the City for any such costs in an amount equal to the sum of the actual cost of any work or other activity undertaken by the City plus 25 percent of such cost as compensation to the City for general overhead and administrative expense associated with such work and shall pay such costs as directed by the City and not later than 20 calendar days after receipt of a bill.

- (e) An Applicant shall guarantee and maintain any City rights-of-way which the City determines has been affected or altered by any excavation in the City rights-of-way or any break or cut in any surface of the City rights-of-way made by such Applicant for the 24 months following the date of completion of restoration of the affected or altered City rights-of-way either by the Applicant or by the City. Such Applicant shall take such action as the City deems necessary to correct any deficiencies in such restoration work within such 24-month period, shall commence such action not later than five calendar days after receipt of notice from the City or such other date as may be specified by the City, and complete such action promptly but not later than the date or any other deadline established by the city. The City may elect to perform any such work itself or undertake any other activity, which it deems necessary to correct any such deficiency during such 24-month period. Such Applicant or person shall be liable to the City for any costs incurred in connection with any such corrective action in an amount equal to the sum of the actual cost of any work or other activity undertaken by the City and shall make pay such costs as directed by the City and not later than 20 calendar days after receipt of a bill.
- (f) An Applicant must provide photographic or video documentation of the condition of the City rights-of-way in the area affected by the proposed work post construction.
- (g) An Applicant must provide as-built drawings (in such detail and form as may be specified by the City) which show the locations of all the Applicant's existing equipment and facilities in the City.
- (h) No Applicant may permanently activate or place in service any Equipment or Facility in the City rights-of-way until such time as the City has approved such activation from the City. The Applicant provide notice of completion of construction of such Equipment or Facility.

Sec. 23-355.8 Inspections

The City may conduct any inspection it deems necessary to administer and enforce this Section or any other City Codes, ordinances, or regulations, or to enforce the conditions of any permit granted, or to enforce related regulations or policies. The City may order a work stoppage or revoke a permit, as it deems necessary in the case of failure to comply with the provisions of the Section or the conditions of any permit, or to otherwise protect the public health, safety, and welfare.

Sec. 23-355.9 Abandonment

- (1) Discontinuance of Use. In the event that an Applicant discontinues the use of any communications Facility, Wireless Facility, Small Wireless Facility, Micro Wireless Facility, or Utility Pole for a period of one hundred eighty (180) consecutive days, the City shall deem it to be abandoned. The Administrative Official shall determine the date of abandonment. In reaching such a determination, the Administrative Official may request documentation and/or affidavits from the Applicant regarding the active use of the facility/pole. If the Applicant fails to provide the requested documentation, a rebuttable presumption shall exist that the Applicant has abandoned the Communications Facility. The Applicant shall have ninety (90) days from the date of notice of the Administrative Official's determination of abandonment to do one of the following:
  - (a) reactivate the use;
  - (b) transfer ownership to another Applicant who makes actual use; or
  - (c) dismantle and remove the use.
- (2) Expiration of Permit or Administrative Variance upon Removal. After the expiration of the ninety (90) day period, or upon completion of dismantling and removal, any permit or administrative variance shall expire.

Sec. 23-355.10 Moving, altering, or relocating equipment and facilities.

- (1) Demand by City. Upon demand by the City, and Applicant at their own costs shall move, alter, relocate, or remove equipment or facilities and restore affected City rights-of-way as may be required by the City and shall complete any such work promptly or by such date as may be specified by the City.
- (2) Emergency Actions. In the event of an emergency, the City may in its sole discretion, move, alter, relocate, or remove any equipment or facility and restore the affected City rights-of-way. The Applicant shall be responsible for repairing or replacing any affected equipment or facility at its own cost and shall reimburse the City for any costs incurred by the City in moving, altering, relocating, or removing any equipment or facility and in restoring the affected City rights-of-way in a amount equal to the sum of the actual cost of moving, altering, relocating, or removing any equipment or facility and restoring the affected City rights-of-way associated with such work and shall make any payment due as directed by the City and not later than 20 calendar days after receipt of a bill.
- (3) Failure to Timely Comply with Demand. If an Applicant fails to fully comply with a demand by the City pursuant to the section promptly or by the date specified by the City, the City shall have the right to:

- (a) declare that all rights and title to and interest in the affected equipment or facilities are the property of the City; and/or
- (b) move, alter, relocate, or remove any such equipment or facilities and restore the affected City rights-of-way as it deems necessary. The Applicant shall reimburse the City for any costs incurred in moving, altering, relocating, or removing any equipment or facilities and restoring the affected City rights-of-way in an amount equal to the sum of the actual cost of moving, altering, relocating, or removing any equipment or facilities and restoring affected City rights-of-way associated with such work and shall make payment due as directed by the City and not later than 20 calendar days after receipt of a bill.

Sec. 23-355.11 Communication Facility Previously in Existence.

Communication Facilities in City rights-of-way legally permitted or installed on or before the effective date this Ordinance was enacted shall be considered a permitted and lawful use. In the event that such Communication Facilities are destroyed or voluntarily removed, any new Communication Facility shall meet the requirements of this Section.

Sec. 23-355.12 Indemnification

Any Applicant who makes any excavation in the City rights-of-way, makes any break or cut in any surface of the City rights-of-way, deposits any earth or other material in the City rights-of-way, places any equipment or facility in the City rights-of-way, modifies any Equipment or Facility, or performs any other work in the City rights-of-way shall defend, indemnify, and hold harmless the City from and against any liability or claim for damages or any other relief, including reasonable costs and expense arising from or in connection with any act or failure to act by such Applicant in the City rights-of-way. Issuance of a permit or inspection of work shall not affect the City's right to indemnification. This section does not constitute a waiver of any defense or immunity as to any third party, which would otherwise be available to the City.

(Ord. No. 2018-01, § 2, 04-17-2018)

### § 23-356. Yard sales.

Yard sales, as defined in section 23-802, are permitted at a residence provided that no more than two (2) such sales are held in a calendar year on any property and provided that each yard sale does not exceed three (3) days in duration. Yard sales shall require a permit issued by the department of planning and development and such permit shall be displayed prominently in the immediate vicinity of the sale in such a manner as to be visible from the street adjacent to the property. An administrative fee established by resolution of the city commission shall be paid before the permit is issued. On-site signage for a permitted yard sale may be displayed on temporary signs allowed on residential properties under section 23-526.

(Ord. No. 2013-05, § 3, 6-18-13)

## § 23-357. Medical Marijuana Dispensaries and Treatment Centers

Effective: Tuesday, April 18, 2017

Medical marijuana dispensaries may be permitted in the PF – Professional and C-3 Highway Commercial zoning districts as designated in Table 23-421. Zoning approval of applications for the establishment of a dispensary shall be granted only in accordance with the provisions of this chapter with the following conditions:

- (a) Business floor area shall not exceed five thousand five hundred (5,500) square feet in size.
- (b) Business shall be located within three thousand (3,000) feet of a hospital or urgent care facility.
- (c) Medical marijuana may be sold at a dispensary holding a valid license from the Florida Department of Health and local business tax receipt issued by the city between the hours of 7:00 am and 9:00 pm. (This is current State requirement.)
- (d) No medical marijuana shall be sold within the corporate city limits at any place of business, location or establishment holding a valid license from the Florida Department of Health within five hundred (500) feet of any real property that comprises an established private or public elementary, middle or secondary school or substance abuse rehabilitation facility.
  - (e) The distance of five hundred (500) feet shall be measured as follows:
- (1) Pertaining to established schools. Five hundred (500) feet from the nearest point of the building or the place of business, location or establishment to the nearest point of the real property containing the school facilities.

- (2) Measurement. The distance of five hundred (500) feet shall be measured in a straight line.
- (f) Security measures on premises shall meet or exceed State requirements and shall include a camera located on all exterior entrances or exits

(Ord. No. 2017-05, § 1, 04-18-2017)

## § 23-358. Mobile Food Vending/Mobile Food Dispensing Vehicles

Effective: Tuesday, June 02, 2020

The regulation of the Mobile Food Vending industry is necessary to protect the health, safety and welfare of the public. Mobile Food Vending means the practice of (1) selling or offering for sale of food and beverages from a Mobile Food Dispensing Vehicle, (2) managing or owning one or more Mobile Food Dispensing Vehicles, and/or (3) preparing food and beverages within a Mobile Food Dispensing Vehicle.

- a. Mobile Food Vending prohibited without permit
- 1. No person or business shall engage in Mobile Food Vending within the municipal limits of the City unless the person or business possesses a valid Mobile Food Vending Permit issued pursuant to the Section;
- 2. Any person or business in violation shall be subject to a civil penalty in an amount not-to-exceed \$500.00. Each day the violation exists shall be considered a separate violation. The penalty provided herein is cumulative to other remedies or enforcement processes the City may have, including those available under Chapter 162, Florida Statutes and this Code
- 3. Notwithstanding the foregoing, no person or business shall be in violation of the Section for Catering activity, Temporary Sales of Food, or Vending Machine activity in accordance with Chapter 509, Florida Statutes & Rule 61C-1.002(5)(a), Florida Administrative Code, so long as such person or business is not required to procure a license from the Florida Department of Business and Professional Regulation for service of food to the public as a Mobile Food Dispensing Vehicle.

### b. Permitting requirements for Mobile Food Vending

- 1. *Permit, generally*. A Mobile Food Vending Permit granted under this Section authorizes a Mobile Food Vendor to conduct Mobile Food Vending activities on any improved parcel of land in the City's C-1, C-2R, C-3, C-4, I-1, BP or LCI zoning districts that is properly registered and approved as provided for in this Section.
- 2. Application for Permit. Application for a permit required by this section shall be made to the City's Development Services Director, upon forms provided by the City. Such application shall be sworn or affirmed to and filed with the City's Development Services Department and shall contain or have attached the following:
  - A. The name, home and business address and business telephone number of the applicant.
  - B. A description of the type of food or beverage to be sold.
  - C. If available at the time of application, a license or set of licenses issued by the Florida Department of Business and Professional Regulation for the operation of one or more Mobile Food Dispensing Vehicles proposed to be operated in the City, and a copy of the most recent inspection report of such Vehicle(s).
  - D. A description of the proposed storage location of the Mobile Food Vending business's Mobile Food Dispensing Vehicle(s) (if within the City).
  - E. A description of the proposed initial Mobile Food Vending site(s), if known at time of application.
  - F. Proof of business insurance, issued by an insurance company licensed to do business in Florida, protecting the applicant from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with Mobile Food Vending. Such insurance shall name the City as an additional insured and shall be in at least the amount of \$300,000.00 each occurrence for injury and \$100,000.00 per person.
- 3. *Issuance/Denial of Permit*. Not later than 10 business days after the filing of a completed application for a Mobile Food Vendor Permit, the applicant shall be notified by the City's Development Services Department of the decision on the issuance or denial of the permit. If the issuance of the permit is approved, the permit shall be issued. If the permit is denied, the applicant shall be provided with a statement of the reasons therefor, which reasons shall be in writing on the application. The applicant shall be entitled to an informal hearing with the City Manager, or designee, if so requested by the applicant within 10 business days of the date of the written denial. A permit issued pursuant to this section is valid for a period up to 1 year from October 1 to September 30.

The following may constitute grounds for denial of a permit to operate or renewal of an application:

A. The proposed mobile vending activity does not comply with all applicable laws including, but not limited to, the applicable building, zoning, housing, fire, safety and health regulations;

- B. The applicant has knowingly made a material misstatement in the application of a permit.
- C. The applicant does not possess clearance to operate from the Florida Department of Business and Professional Regulation.

In the event the applicant does not receive notice within 10 business days of filing a completed application for a Mobile Food Vendor Permit, the application will be deemed denied.

4 . Persons Authorized to Vend Pursuant to Permit. Notwithstanding subsection (a) herein above, an employee of a licensed Mobile Food Vendor may perform Mobile Food Vending activities at any of his or her employer's registered sites and in any of his or her employer's registered vehicles without first obtaining a personal Mobile Food Vending Permit. The authorization granted to an employee herein is an affirmative defense to a charge of unlawful activity and in order to establish such defense in any enforcement action, including actions before a court, an employee must:

A. present admissible proof of employment by a permitee in possession of a valid permit during the time unlawful activity is alleged (such as a paystub, IRS Form W-2 or notarized proof of employment letter); and

B. present evidence of compliance with all applicable conditions of his or her employer's permit during the time unlawful activity is alleged.

An independent contractor under agreement with a permitee, whether oral or in writing, to operate on or more Mobile Food Dispensing Vehicles is not an employee for purposes of this affirmative defense.

c. Registration of Mobile Food Vending Sites

As a condition of permitting under this section, a Mobile Food Vendor shall register the physical site the Mobile Food Vendor intends to use for conducting Mobile Food Vending operations or for storage of Mobile Food Dispensing Vehicles with the Development Services Director either at the time of application for a new permit or not less than 30 calendar days prior to the planned start of operations on the site for a current permitee. Registration shall be made on a registration form provided by the City and a site plan of the physical site and an authorization form signed by the legal owner(s) of the physical site shall accompany such registration form when filed.

- 1. Site Plan. The required site plan shall depict to scale the principal use of the physical site and its compliance with the development regulations contained in Chapter 23 of this code, and other applicable ordinances, to include, but not be limited to, access points, curb cuts, landscaping buffers, setbacks and parking spaces. The site plan shall also depict the size and placement of the Mobile Food Dispensing Vehicle on the physical site and proposed parking areas for the Mobile Food Vendor's patrons. For a parcel of land solely to be used for storage or exterior cleaning of Mobile Food Dispensing Vehicles, and not general Mobile Food Vending activity, the plan may omit proposed parking areas for the Mobile Food Vendor's patrons.
- 2. Authorization Form. Authorization from the legal owner(s) of the proposed site shall be made on a form provided by the City. In the event that the legal owner of the proposed site is a corporation, the authorization form shall be signed by an officer of the corporation or its designated agent. The authorization form shall, in addition to acknowledging that the Mobile Food Vendor has permission to conduct Mobile Food Vending activities on the proposed site from its legal owner(s).
- 3. Schedule of Mobile Food Vending Activity. At the time of site registration, a Mobile Food Vendor shall establish and file a proposed schedule of Mobile Food Vending activity to be conducted on the proposed site. A schedule of operation of the primary business on the site shall also be provided. Mobile Food Vending consistent with this Chapter may only occur on a site during the time that the primary business on the site is open for operation. If site registration is approved, the schedule of activity shall be appended thereto and shall be the approved times that the Mobile Food Vendor may conduct Mobile Food Vending activity on the premises.
- 4. Approval of Registration Required. To be valid, a registration must be approved by the City's Development Services Director, or designee, prior to initiating site operations. Upon receipt of the registration form, proper site plan, and authorization form, the City's Development Services Director, or designee, shall review the filed documents to determine:
  - A. that the physical site is compliant with the current development regulations contained in Chapter 23 of this code, and other applicable ordinances;
  - B. that the proposed placement of the Mobile Food Dispensing Vehicle does not impact the public's safe ingress and egress to and from the physical site by blocking visibility triangles at access points and driveways;
  - C. that the proposed placement of the Mobile Food Dispensing Vehicle, including all necessary outdoor space for patron service and patron parking does not impact the general on-site traffic flow of the principal use;
  - D. that only registered Mobile Food Dispensing Vehicles will be utilized on the proposed site; and

E. that the legal owner(s) of the proposed site have given permission for the Mobile Food Vendor to establish operations on such proposed site.

Not later than 10 business days after receipt of a registration form, proper site plan and authorization form for a particular proposed site, the permitee shall be notified by the Development Services Department of the decision on the approval of the registration. If the registration is approved, the Mobile Food Vendor may begin operating. If the registration is denied, the applicant shall be provided with a statement of the reasons therefore, which reasons shall be entered in writing on the registration form.

- 5 . Authority of Development Services Director to Authorize Administrative Variances. The City's Development Services Director, or designee, may, in the process of reviewing a site registration for approval, administratively grant a waiver to the technical parking requirements of Chapter 23 of the Code required for the site's principal use during the proposed vending hours listed in the schedule of Mobile Food Vending activity if not greater than 20% of the number of required parking spaces is reduced by site space occupied by the Mobile Food Vendor and Mobile Food Dispensing Vehicles.
- 6. Maximum Number of Registered Sites. A permitee may only register five (5) sites for Mobile Food Vending activity at any one time. In the event that a permitee submits registration paperwork for a site in excess of five, and does not direct the Development Services Department to cancel an existing and active registration, the Development Services Director may either:

A. summarily reject the proposed registration; or

B. approve the new registration and revoke an existing registration as the Development Services Director may discretionarily choose.

d. Local Registration of Mobile Food Dispensing Vehicles

As a condition of permitting under this section a Mobile Food Vendor shall annually register each Mobile Food Dispensing Vehicle intended to be used in the City for Mobile Food Vending activities with the City's Development Services Director, or designee. To be eligible for registration in the City, a Mobile Food Dispensing Vehicle (hereafter "MFDV" in this subsection) must meet the following standards:

- (1) The MFDV must be licensed by the Florida Department of Business and Professional Regulation.
- (2) The MFDV must be entirely self-reliant for necessary gas, water, wastewater and electric provisions. No MFDV may connect to permanent utilities.
- (3) The MFDV shall be constructed for the specific use of preparing and selling food and beverage obtained from a licensed commissary. An open bed truck, van, or converted automobile is not an MFDV and may not be registered as such in the City.
- (4) The MFDV shall be constructed so that any equipment installed in any part of the vehicle may be secured in order to prevent movement during transit and to prevent detachment in the event of a collision or overturn.
- (5) The MFDV must be covered under a currently effective agreement with a Florida-licensed food commissary (hereafter referred to as "commissary") for restocking, interior cleaning and proper water and wastewater disposal and must maintain commissary logs inside the MFDV showing the date and time of each restocking and interior cleaning required by state law, rules and regulations.

Registration shall be made on a form provided by the City and shall include a written description of the MFDV, 4 or more photographs (showing different exterior views) of the MFDV and any exterior-operated equipment, the Florida Department of Highway Safety and Motor Vehicles license tag number and registration number if applicable, a current health certificate issued by the appropriate state or county authority as may be required under Florida law, all current licenses required for operation by Florida state and county agencies, and copies of the most recent inspections performed by Florida state and county agencies as applicable. Registration of the vehicle shall be complete upon filing. At registration, the City's Development Services Director, or designee, shall issue proof on registration to be placed on the MFDV for the applicable registration year.

Registration of an MFDV may only be undertaken by a person or business in possession of a valid Mobile Food Vendor Permit. A MFDV may only be registered by its legal owner.

e. Certain Conduct Prohibited.

No Mobile Food Vendor shall:

- (1) Vend for more than a single 72-hour period per week at any one location.
- (2) Vend in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant or create or become a public nuisance, increase traffic congestion or delay or constitute a hazard to traffic, life or property or an obstruction to adequate access to fire, police or sanitation vehicles.
- (3) Vend on a vacant lot.
- (4) Vend without an available litter receptacle for patron use.
- (5) Leave any location without first picking up, removing and disposing of all trash, materials or refuse remaining from Mobile Food Vending activities.

- (6) Allow any fluids to be discharged from a Mobile Food Dispensing Vehicle.
- (7) Sell anything other than that which he is licensed to vend.
- (8) Vend without required insurance coverage.
- (9) Vend without appropriate licensure from all state agencies with jurisdiction or vend without appropriate payment of state and local business taxes.
- (10) Set up tables and chairs to be utilized by patrons as part of the vending operation.
- (11) Dump wastes or wastewater on site, into the City's stormwater system, or at any other place in the City other than the licensed commissary depicted in the application.
- (12) Use temporary signs of any kind.
- (13) Conduct Mobile Food Vending activities without first registering and obtaining site approval.
- (14) Conduct Mobile Food Vending activities without displaying a valid Mobile Food Dispensing Vehicle registration card.
- (15) Vend between the hours of 9:00 p.m. and 6:00 a.m. An exemption for the 9:00 pm closing may be granted Administratively on a case by case basis.
- (16) Fail to comply with any requirements imposed in this section, including quarterly filing of commissary logs and inspection reports.

#### f. Renewal

All permits issued under this section are valid for the entire licensing period unless revoked prior to expiration. An application to renew a license may be made not later than 60 calendar days before the expiration of the current license. All current documentation required for initial permit issuance shall be submitted with each renewal.

g. Revocation of Permit or Registration.

Any permit or registration issued under this section may be revoked by sending a "Notice of Revocation" to the permitee stating both the facts and legal conclusions constituting cause to revoke. Within 10 business days' of the "Notice of Revocation," the permitee may request a hearing before the City Manager, or designee, by submitting a written request and response to the Notice to the City Clerk. At the hearing before the City Manager, or designee, the issue shall be whether cause to revoke is present based on either permitee misconduct or the permitee's failure to comply with registration requirements. The City Manager, or designee, shall allow the permitee to present any defenses the permitee may have and shall, after all of the evidence has been presented, issue a determination in writing. Any party aggrieved by the decision of the City Manager or designee may appeal the decision to a court of competent jurisdiction be petition for writ of certiorari.

### h. Schedule of Fees

Each permitee shall pay the corresponding fee for each service performed by City staff pursuant to this section:

- (1) Permit, Initial issuance/renewal: \$50.00
- (2) Site registration: \$50.00 and \$10.00 for each additional site.
- (3) Mobile Food Dispensing Vehicle registration: \$25.00

(Ord. No. 2020-06, § 1, 6-02-20;)

### § 23-359. Solar power generation facility

Effective: Friday, September 10, 2021

- (A) Permitted Uses: Solar power generation facility, ancillary electrical substation use, and solar power generating facilities related uses such as battery storage and operation and maintenance structures.
- (B) Additional requirements:
  - (1) Generally. All solar equipment and devices shall comply with Florida law. The regulations imposed herein are not intended to prohibit or have the effect of prohibiting the installation of energy devices based on renewable resources pursuant to F.S. § 163.04.
  - (2) Design standards. The following provisions are intended to facilitate the commercial generation and distribution of solar power within the City. The Table of Uses, Table 23- 421, outlines the zoning district(s) where solar power generation facility is(are) allowed. The below design standards shall be required for Solar Power Generation Facilities and shall supersede other provisions and requirements of the LDRs.

- (a) Types of Solar Panels. The solar panels shall be ground mounted and may be fixed mount or solar tracker.
- (b) Minimum lot size. The minimum lot size shall be ten (10) acres.
- (c) Placement. The development shall comply with the requirements of Article VI: Resource Protection Standards of the LDRs.
- (d) Setbacks. All solar panels and related equipment shall be setback a minimum of 50 feet from all property lines and shall comply with all applicable right-of-way setbacks. On-site power lines and interconnections to electrical grids shall be placed underground where feasible. Transmission lines and supporting poles necessary to move electricity offsite are excluded from this requirement.
- (e) Height. The solar panels shall have a maximum height of 15 feet. All other structure heights shall be in accordance with federal regulations and designed to meet North American Electric Reliability Corporation (NERC) standards.
- (f) Fencing. Physical access to a solar power generation facility shall be restricted by fencing or walls. The security fence shall be a minimum height of six feet high and a maximum of eight feet high. All fencing and wall details shall be shown on the site plan.
- (g) Impervious Surfaces and Landscaping: Solar panels associated with solar power generation facilities are considered pervious if configured to promote sheet flow of stormwater from panels and natural stormwater infiltration into the ground beneath the panels. The solar panels are not subject to lot coverage restrictions or canopy tree landscaping requirements. A landscape plan will be required at the time of the submittal of the Special Exception Use Permit application.
- (h) Glare reduction. Where ground mounted solar panels face abutting residentially developed or zoned parcels or public roadways, the panels shall be made of glare reducing materials.
- (i) Access. Solar power generation facilities shall have access to collector or arterial roads.
- (j) Emergency access and response. Reasonable accessibility for emergency service vehicles shall be provided and noted on the site plan.
- (k) Internal access roads. Internal access roads are not required to meet the street design standards of the LDRs but must be sufficiently stabilized to serve emergency vehicles as established in the emergency response plan.
- (l) Maintenance. Solar panels and associated equipment shall be maintained in proper working order and shall not be allowed to enter a state of disrepair.
- (m) Abandonment. A solar power generation facility shall be considered abandoned after a one-year period without energy production. The property owner shall be responsible for removing all energy production and transmission equipment and appurtenances within 120 days of abandonment.

(Ord. No. 21-20, § 1, 9-10-21)

### Division 3. Non-Conforming Uses, Lots, And Structures

# § 23-371. Intent.

It is the intent of this chapter to:

- a. Allow those structures and uses which were lawful before this ordinance was passed or amended, for which would be prohibited, regulated, or restricted under the terms of this chapter or future amendments, to remain or continue unless their removal or discontinuation is required under specific provisions of this chapter, but not to allow increases in nonconformities where detrimental to the neighborhood or area;
- b. Allow expansion of nonconforming one- and two-family structures provided the expansion is in compliance with applicable dimensional requirements and allow increases in nonconformity in one- and two-family structures only where such increases are not detrimental to the neighborhood;
- c. allow expansion or change in nonconforming structures and uses only after careful consideration of the impact of the expansion on the neighborhood;

- d. allow a nonconforming use to be changed to another nonconforming use if the new use is less detrimental to the neighborhood than the existing use;
- e require that when nonconforming uses and structures are allowed to expand or change to another nonconforming use, the properties are brought into compliance with the requirements of this chapter to the extent that is reasonable and feasible;
- f . prohibit the re-establishment of any nonconforming non-residential use where that use has been discontinued for a year or more;
- g. allow the use of legally nonconforming lots, provided they have not been combined with adjacent lots.

Sec. 23-371.2 General. Nonconforming uses and structures established illegally shall be discontinued or removed, as applicable.

### § 23-372. Nonconforming regulations.

The provisions of this section apply to legally nonconforming uses, lots, and structures.

Improvements to a site to increase compliance with this chapter may be required as a condition of approval under this section.

Sec. 23-372.1 Nonconforming lots. Any lot that does not comply with the dimensional requirements of the zoning district in which it is located but which met the dimensional requirements in effect at the time it was created and which was legally platted or otherwise legally in existance prior to the enactment of requirement(s) with which it does not comply shall be considered a legal lot for the purposes of building structures, provided the lot has not been combined with an adjacent lot. A lot shall be considered combined if any of the following apply:

- a. the lot or a portion of the lot was used to meet the dimensional requirements, such as setbacks, for structure on an adjacent lot;
- b. it is in common ownership with an adjacent lot, except that this provision shall not prohibit the rebuilding of a one- or two-family dwelling on a nonconforming lot and shall not prohibit the construction of a single-family house on a pre-existing, legally non-conforming lot whose only non-conformity is lot width at the building line.
- Sec. 23-372.2 Nonconforming uses of land. Where, at the effective date of adoption or amendment of this ordinance, a lawful use of land exists that is made no longer permissible under the terms of this ordinance as enacted or amended, such use may be continued so long as it remains otherwise lawful, subject to the provisions of this section.
  - a. Special exception uses. Uses which require a special exception permit in the district in which they are located, but which were legally established prior to the requirement for the special exception use permit shall be considered nonconforming and subject to the provisions of this ordinance; issuance of a special permit for the use shall render the use conforming.
  - b. Expansion of nonconforming uses. Except for one- and two-family uses, no nonconforming use shall be expanded or extended beyond the scope of its operation, nor enlarged, increased, extended to occupy a greater area of land or structure than was occupied at the effective date of the provision of this ordinance with which the use does not comply, unless a special exception use permit is granted pursuant to section 23-216. In considering applications for such permits, the board shall consider all aspects of the proposed change, including changes in the site, structure, and uses. The addition of an accessory use or structure shall be considered an expansion subject to the requirement for a permit as described herein. However, an increase in the amount of business conducted on the site shall not in itself constitute an expansion of the use.
  - c . Change to another nonconforming use. No nonconforming use shall be changed to another nonconforming use unless a special exception use permit is granted pursuant to section 23-216. In considering applications for such permits, the board shall consider all aspects of the proposed change, including changes in the site, structure, and uses, and shall not grant such a permit unless a finding is made that the new use is no more detrimental to the neighborhood than the existing nonconforming use.

- d. *Discontinuation of a nonconforming use*. If any nonconforming use of land ceases for any reason for a period of one year, no nonconforming use may be re-established on those premises, unless a time extension is granted by the planning board prior to the end of the one-year period. Improvements to the site to increase compliance with this chapter may be required as a condition of approval of an extension of time. Exempt from this requirement are single-family and two-family uses; multi-family uses are also exempt, provided the planning board finds that there is sufficient parking for the use.
- Sec. 23-372.3 Nonconforming structures. Where a structure lawfully exists at the effective date of the adoption or amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
  - a . A nonconforming one-family or two-family structure may be expanded or changed provided the nonconformity is not increased. A special permit may be granted pursuant to section 23-216 to allow an increase in the nonconformity of a one- or two-family structure only upon a finding that the proposed change is not detrimental to the neighborhood.
  - b. No nonconforming structure other than a one-family or two-family structure may be enlarged or altered in a way which increases its nonconformity.
  - c. Except for one- and two-family dwellings, a non-conforming structure that is destroyed or damaged by any means to any extent of more than fifty (50) percent of its fair market value, shall not be reconstructed except in conformity with the provisions of this chapter. A non-conforming one- or two-family dwelling damaged by any means to any extent of more than fifty (50) percent of its fair market value may be reconstructed, provided the building setback requirements are met or the administrative official finds that the proposed building setbacks are in keeping with those in the immediate neighborhood and are not less than five (5) feet on the side and ten (10) feet on the rear.
  - d. Should such a structure be declared unsafe, it may be restored to a safe condition providing that such restoration does not constitute more than fifty (50) percent of the structure's appraised fair market value. The fair market value of a sign shall be deemed as its replacement value. A nonconforming fence shall be removed if more than fifty (50) percent of its length is declared unsafe or unsound.

(Ord. No. 2007-02, § 11, 3-6-07)

- Sec. 23-372.4 Approved construction. Proposed buildings for which building permits have been issued prior to their designation as nonconforming by the adoption or amendment of this chapter may be completed and used as originally intended, provided they are completed and in use one (1) year after the date on which the permit was issued.
- Sec. 23-372.5 Rehabilitation construction in CRA Area 3. An owner of a building or other structure located in the area of the city known as Community Redevelopment Agency Area 3 shall be permitted to rehabilitate the structure subject to the following:
  - a. The normal requirements for setback, dimension, parking and landscaping are not required as a condition of receiving the rehabilitation building permit.
  - b. The rehabilitation shall not expand or increase in size the structure or building.
  - c. The terms of this section shall be terminated and become void on the date the city's land use regulations are adopted as a result of the comprehensive plan.

(Ord. No. 2006-05, § 1, 2-21-2006; Ord. No. 2006-24, § 12, 6-6-2006

### **Article IV. District Regulations**

#### **Division 1. Zoning Districts**

### § 23-401. District classifications.

Effective: Wednesday, September 07, 2022

The following zoning districts are defined for designating all properties in the City of Lake Wales consistent with the future land use map of the comprehensive plan. See section 23-421 for uses allowed in the zoning districts and section 23-422 for dimensional requirements and restrictions.

Provisions of this chapter for uses, densities, and land use intensity limits may be more restrictive than general guidelines set forth for future land use classifications of the comprehensive plan.

Public uses and facilities are permitted in all districts subject to approval by the city commission and courtesy site plan review and recommendation from the planning board.

### a. Residential districts.

- *R-1A Residential district*. This district is designed to encourage and protect low density single-family development. The R-1A zoning designation is intended for use in areas classified on the future land use map of the comprehensive plan as LDR Low Density Residential.
- *R-1B Residential district.* This district is designed to encourage and protect low density single-family development and to permit the continued development of already platted low density single-family residential areas. The R-1B zoning designation is intended for assignment to lands classified as MDR Medium Density Residential and may be assigned to those classified as LDR Low Density Residential on the future land use map of the comprehensive plan.
- *R-1C Residential district.* This district is designed primarily to permit the continued development of already platted medium density single-family residential areas and is not intended to be utilized extensively for future development. The R-1C zoning designation is intended for assignment to lands classified as MDR Medium Density Residential and may be assigned to lands classified as HDR High Density Residential on the future land use map of the comprehensive plan.
- *R-1D Residential district*. This district is designed primarily to permit the continued development of already platted high density single-family residential areas and is not intended to be utilized for future development. The R-1D zoning designation is intended for assignment to lands classified as MDR Medium Density Residential and may be assigned to lands classified as HDR High Density Residential on the future land use map of the comprehensive plan.
- *R-2 Residential district*. This district is designed for designation of developed neighborhoods with significant numbers of duplex houses and to permit medium-density residential development consisting of both single-family and two-family dwellings on infill lots in such neighborhoods. It is not intended for use on large tracts of vacant land. The R-2 zoning designation is intended for infill development on lands classified as HDR High Density Residential on the future land use map of the comprehensive plan.
- *R-3 Residential district.* This district is designed for designation of developed multi-family neighborhoods and to permit higher density residential development, consisting of single-family, two-family and multiple-family dwellings, on infill lots in multi-family neighborhoods. It is not intended for use on large tracts of vacant land. The R-3 zoning designation is intended for infill development on lands classified as HDR High Density Residential on the future land use map of the comprehensive plan.
- b. *Professional, commercial and industrial districts.* An (A) or (B) designation following a district designation refers to the front building setback requirement per Table 23-422B.
  - *PF Professional district.* This district is designed to permit a mix of offices, medical and light commercial businesses and medium density residential uses on major roadways and to provide areas for support businesses to major facilities such as hospitals.
  - *C-1 Downtown commercial district.* This district is designed to encourage and facilitate a mix of residential uses and commercial activities in compact, pedestrian oriented, central business districts with a variety of traditional downtown uses such as small retail stores, offices, restaurants, hotels, and apartments.
  - *C-1A Downtown core district*. This sub-district of the C-1 district is designed to create a mixed-use center for day-time and evening cultural and commercial activities where people live, work, or visit and where they can enjoy historic architecture, shopping, dining, music, special events, strolling, and relaxing in public spaces.
  - *C-2 Commercial*. This district is designed to encourage medium-scale commercial uses, primarily in groupings or on inter-connected sites rather than on isolated properties.
  - *C-2R Commercial/residential district*. This district is designed to encourage a mix of residential and light commercial uses in groupings and on individual lots on the periphery of the central business districts.

- *C-3 Highway commercial district*. This district is designed to permit the development of commercial areas in groupings on major highways and to allow medium and large-scale commercial establishments and a full range of commercial and professional uses.
- *C-4 Neighborhood commercial district*. This district is designed to permit the development of local commercial areas to serve surrounding residential areas with small-scale convenience goods and personal services.
- *C-5 Village center district.* This district is designed to allow the development of new commercial centers, planned within large residential developments to provide a wide range of small to medium sized commercial uses and personal services in a setting geared to both pedestrian and vehicular traffic.
- LCI Limited commercial-industrial district. This district is designed to permit a mix of commercial and industrial uses.
- *BP Business Park.* This district is intended for discrete areas established and designed for a mixture of professional, light industrial, wholesale, and professional uses, including hotels and motels and car dealerships, and excluding retail, drive-up restaurants, service and other commercial uses catering directly to consumers except those accessory to a principal use.
- *I-1 Industrial park district*. This district is designed to encourage and promote the development of industrial uses, primarily on vacant lands and in industrial park settings.
- *I-2 Industrial infill district*. This district is intended to facilitate infill and redevelopment in developed industrial areas and to encourage the development of manufacturing and industrial uses on vacant property in largely developed areas.
- PDMU Planned Development Mixed-use district. This district is intended to implement Policy 2.18 of the Comprehensive Plan, in order to facilitate large-scale, mixed-use master planned development on large tracts of land. Properties zoned PDMU shall seek approval of a Master Development Plan, in accordance with Division 5, Section 23-450 of these Land Use and Development Regulations.
- D-MU Downtown Mixed-use district. This district is designed to encourage and facilitate a mix of residential uses and commer cial activities in a compact, traditional downtown setting including retail shopfronts, offices, restaurants, hotels, apartments, live/work units and rowhouses in street-oriented buildings that line walkable, pedestrian-oriented streets.
- c. Conservation and recreation districts.
  - CN Conservation district. This district is intended to protect lands that have been set aside for preservation of natural resources and whose use is restricted to uses consistent with that purpose.
  - *R Recreation*. This district is intended to designate areas that have been set aside for recreation and other public uses.
- d. Overlay districts.

*Flood hazard district.* This district denotes areas identified as areas of special flood hazard by the Federal Emergency Management Agency.

Potable Water Wellhead Protection Areas. This district establishes protection zones around city wells.

Downtown Historic Business District. This district recognizes the central business district as an area important to the heritage of the community.

Core Improvement Area. This district is designated for the purpose of encouraging revitalization, redevelopment and rehabilitation.

(Ord. No. 2006-24, § 13, 6-6-06; Ord. No. 2008-12, § 1, 5-20-08; Ord. No. 2008-29, § 1, 9-2-08; Ord. No. 2010-11, § 1, 6-15-10; Ord. No. 2020-27, § 1, 10-20-20; Ord. No. 2022-37, § 1, 9-07-22)

### § 23-402. Maps.

a. Zoning Map. The Zoning Map of the City of Lake Wales assigns zoning district designations to all property within the city and is hereby made a part of this chapter. The map may be amended periodically as provided in F.S. ch. 166. Amendments shall be made in accordance with section 23-404. The map is maintained by the administrative official and is used to determine the uses allowed on specific properties and regulations

- b. *Future Land Use Map*. The map adopted as part of the comprehensive plan to show the designation of land areas in accordance with the policies of the future land use element and other elements of the comprehensive plan.
- c. Flood Insurance Rate Map. The maps established by the Federal Emergency Management Agency showing areas of special flood hazard.
- d. Wellhead Protection Area Map. The map showing the Zone of Exclusion and Zone of Protection established pursuant to this chapter.
- e. Downtown Historic Business District Map. The map showing the boundary of the "Downtown Historic Business District."

(Ord. No. 2008-12, § 2, 5-20-08; Ord. No. 2008-29, § 2, 9-2-08)

# § 23-403. Interpretation of zoning district boundaries.

The following rules shall be used to interpret the exact location of the zoning district boundaries shown on the zoning district map.

- a. Where a zoning district boundary follows a dedicated public street or railroad, the centerline of the dedicated public street or railroad right-of-way is the boundary of the zoning district.
- b. Where a zoning district boundary approximately follows a lot or property line, that line is the boundary of the zoning district.
- c. Where a zoning district boundary follows a stream or the shore of a body of water, that stream or shoreline is the boundary of the zoning district.
- d. Where a zoning district boundary does not clearly follow any of the features mentioned above, its exact location on the ground shall be determined by measurement according to map scale.
- e. In any case where the exact location of a zoning district boundary is not clear, the administrative official shall refuse to issue a building permit or certificate of use. The applicant may appeal to the appeals board for an interpretation or administrative decision.

# § 23-404. Criteria for zoning district designations.

All land within the city shall be assigned a zoning district designation from the list of standard zoning districts provided in section 23-401. The following criteria shall be used to make changes in assignments whether initiated by the city or by a property owner pursuant to section 23-218.

- a. *Consistency with the comprehensive plan*. All zoning district assignments shall be consistent with the comprehensive plan, including the future land use map and future land use element goals, objectives and policies. The zoning designation shall be consistent with the land use category of the future land use map.
- b. Land use compatibility. The assigning of zoning districts shall promote compatibility of adjacent land uses.
- c. Adequate public facilities. The assigning of a zoning district designation shall be consistent with the public facilities available to set the types of uses allowed in the proposed zoning district. The level of service standards set forth in the comprehensive plan shall be considered in assigning zoning districts and there shall be reasonable assurance that the demand for services allowed in the proposed zoning district can be met.
- d. *Public interest*. Zoning district designations shall not be in conflict with the public interest and shall promote the public health, safety and welfare.
- e. Consistency with land development regulations. Zoning district designations shall be consistent with the purpose and intent of these land development regulations.

# § 23-405. Correspondence of zoning districts to comprehensive plan land uses.

Effective: Wednesday, September 07, 2022

Within the comprehensive plan there are "future land use classifications" establishing general guidelines for the use and development of land, including the types of uses, intensity of development, and densities to be allowed. The assignment of zoning districts to land shall promote consistency between the future land use and zoning maps as required under section 23-404 and shall be the basis for regulation of land use and development.

The following table shall be used as a general guide for zoning district assignments for various future land use classifications. However, the zoning district assigned to a property may be more restrictive than the comprehensive plan future land use classification, provided that the zoning designation allows at least one (1) land use category meeting the stated intention of the future land use classification.

Any future land use classification may be assigned CN (conservation) or R (recreation) zoning.

TABLE 23-405 CORRESPONDENCE OF ZONING DISTRICTS TO COMPREHENSIVE PLAN LAND USES

Comprehensive Plan	Corresponding Zoning Districts
Future Land Use Classification	Note: Any area may be assigned CN (conservation) or R (recreation) zoning
Low Density Residential (LDR)	R-1A and R-1B (single-family)
Medium Density Residential (MDR)	R-1B, R-1C (single-family)
iviedidiff Defisity Residential (WDR)	R-2 (two-family, existing and infill areas only)
High Donaits Devidential (HDD)	R-1D (single-family)
High Density Residential (HDR)	R-1D (single-larrily) R-2 (two-family, existing and infill areas only)
	<u> </u>
D 11 (10ff (DO)	R-3 (multi-family, existing and infill areas only)
Residential Office (RO)	PF (professional)
5 to 11 to 2 to 2 to 2 to 2	R-3 (multi-family, existing and infill areas only)
Regional Activity Center (RAC)	C-2 (commercial)
	C-2R (commercial/residential)
	C-3 (highway commercial)
	C-4 (neighborhood commercial)
	C-5 (village center)
	R-3 (residential multi-family, existing and infill areas only)
Community Activity Center (CAC)	C-3 (highway commercial)
General Commercial (GC)	C-2 (commercial)
	C-3 (highway commercial)
	C-4 (neighborhood commercial)
neral Commercial (GC)	C-5 (village center)
eighborhood Activity Center (NAC)	PF (professional)
Neighborhood Activity Center (NAC)	C-4 (neighborhood commercial)
	C-5 (village center)
	PF (professional)
	R-1, R-2, R-3 (residential)
	D-MU (downtown mixed-use)
Downtown District (DD)	C-1 (commercial)
	C-2R (commercial/residential)
Limited Commercial-Industrial (LCI)	LCI (limited commercial-industrial)
	I-1 (industrial park)
Industrial (I)	I-1 (industrial park)
	I-2 (industrial infill)
	BP (business park)
	PF (professional)
Business Park (BP)*	BP (business park)
• •	PF (professional)
	C-2 (commercial)
	C-5 (village center)
Public (PUB)	As appropriate
Conservation (CONS)	CN (conservation)

(Ord. No. 2006-24, § 14, 6-6-2006; Ord. No. 2015-04, § 8, 7-7-15; Ord. No. 2022-37, § 1, 9-7-22)

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\* C-2 and C-5 zoning designations may be applied to up to 25% of an area designated as BP-Business Park on the Future Land Use Map of the Comprehensive Plan.

# **Division 2. Standard Zoning District Regulations**

#### NOTATION

\* C-2 and C-5 zoning designations may be applied to up to 25% of an area designated as BP-Business Park on the Future Land Use Map of the Comprehensive Plan.

# § 23-421. Permitted and special exception uses allowed in zoning districts.

Effective: Tuesday, June 20, 2023

The types of uses allowed in the various standard zoning districts shall be as set forth in Table 23-421. Uses not listed on the table or not shown as permitted (P), special exception (S), or planned development project (PDP) are prohibited. No variances shall be granted to allow uses not otherwise allowed in a zoning district, except that housing types other than single-family may be allowed in a planned development project (PDP) approved pursuant to section 23-224.

a. *Permitted uses*. Permitted uses require approval by the administrative official in accordance with section 23-212, verification of zoning compliance.

- b. Conditional uses. Uses marked with an asterisk (\*) are conditional uses that require approval by the administrative official subject to the conditions for the specific use set forth in article III, division 2, conditional use regulations.
- c. Special exception uses. Special exception uses may be approved by the planning board in accordance with the procedures in section 23-216, special exception use permit.

TABLE 23-421
PERMITTED USES AND SPECIAL EXCEPTION USES IN STANDARD ZONING DISTRICTS

	R-1A	R- 1B	R-1C	R-1D	R-2	R-3	PF	PDMU		C-1/ C-1A		C-2R	C-3	C-4	<sup>4</sup> C-5 <sup>1</sup>	LCI	BP	-1 -	2 C	N R
RESIDENTIAL		טו							IVIC	C- IA										
Dwelling: Single-family	Р	Р	Р	Р	Р	P	Р	MDP				P		Т	P	Т			$\top$	$\top$
		_	-		_	ľ	ľ	WIDP						-	-	-		$\vdash \vdash$	+	+
Dwelling: Single-family attached					P	P	P	MDP	S			P			P					
Dwelling: Two-family					Р	Р	Р	MDP	S			Р			Р				T	
Dwelling: Multi-family (up to						Р	Р	MDP	P	Р	P	Р	P		Р			$\Box$	T	$\top$
12 units on one parcel)																				
Dwelling: Multi-family (more						PDP	PDP	MDP	PDP	PDP	PDP	PDP	PDP		PDP			П		T
than 12 units/parcel)																				
Dwelling unit for caretaker							S	MDP	P	S	s	S	S	S	s	s	S	s s	s	T
employed on premises																				
Dwelling, accessory to	S	S	S	S	s	s	s	MDP	P	Р	S	S	S	S	S					
single-family house*																			$\perp$	$\perp$
Live / Work Unit			-				S	MDP	P	P	P	S		_		₩			$\perp$	+
Mixed-use - residential and nonresidential	PDP	PDP	PDP	PDP	PDP	PDP	s	MDP	P	Р	P	s	PDP2		PDP					
														_		_			$\perp$	$\perp$
Manufactured and Modular Homes (individual lots)																				
Manufactured Home and	PDP	PDP	PDP	PDP	PDP	PDP								$\vdash$		+		H	+	+
Modular Home Parks																				
Modular Home Subdivisions	PDP	PDP	PDP	PDP	PDP	PDP													土	工
Manufactured Home																				
Subdivisions																			$\perp$	$\perp$
AMUSEMENT ESTABLISHM	ENIS																			
Amusement establishment								MDP	S	S	S	S	Р	S	S			S	;	
—Indoor																				
Amusement establishment								MDP	S		s		S	$\vdash$	S	T		s	;	+
—Outdoor																				
Indoor shooting ranges								MDP					P			Р	P	P P	,	+
Movie theater— Indoor								MDP	P	Р	Р	Р	P	$\vdash$	P	$\vdash$		P	,	+
AUTOMOTIVE USES*																			$\perp$	
				1		1	1	N (IDD	G	lo.	<u></u>	<u> </u>	<b>-</b>	Т	<u></u>	_			$\overline{}$	_
Auto and truck rental								MDP	S	S	Р		Р		S	Р		P		$\perp$
Auto and truck repair								MDP	S	S	s	S	S		s	s		s s	;	
Auto, truck, or motor cycle								MDP	S	S	s	s	Р		S	Р	Р	F	,	T
dealer																				
Auto parking establishments							s		S	Р	Р	s	Р	$\vdash$	S	Р	Р	PP	,	+
(principal use)																				
Auto service station								MDP	S	S	S	S	P	$\vdash$	S	$\vdash$		S	+	+
Car wash								MDP			S	S	P	S	S	S		S	+	+
														Ĺ						$\perp$
Recreational vehicle, mobile								MDP			S	S	Р		S	Р	S	PF	'	
home, or boat dealers																				
EDUCATIONAL AND CULTU	JRAL																			
Club7							S	MDP	P	Р	Р	S	Р	S	S	Р			T	
Cultural facilities	S	S	s	S	S	s	s	MDP	P	Р	P	Р	P	Р	P	Р	Р	P	,	Р

Day care center3*	P	P	P	P	P	P	Р	MDP	P	Р	Р	Р	Р	Р	Р					
Religious establishment	Р	Р	Р	Р	Р	Р	Р	MDP	P	Р	Р	Р	Р		Р				Р	
Schools, athletic or music							S	MDP	S	S	Р	S	Р		S	s	Р		s	
Schools, post secondary	S	s	s	s	S	S	S	MDP	P	S	s	S	S		s		s		s	
Schools, primary-secondary	Р	Р	Р	Р	Р	Р	Р	MDP	S	Р	Р	Р	Р		Р					
Schools, training (other than athletic or music)							S	MDP	P	Р	Р	Р	Р		Р	S	Р		Р	
FARMING/OTHER AGRICUL	TUR	ΔL																		
Farming, crop4 or nursery without retail sales	Р	Р	Р	Р	Р	Р	Р	MDP	S	Р	Р	Р	Р	Р	Р	Р	Р	Р	PF	P
Nursery, plant with retail sales								MDP			Р	S	P		S	S	S	Р	Р	$\dagger$
FOOD AND BEVERAGE BU	I ISINE	SSE	S (See	secti	on 23	-342 a	nd ch	apter 5 fo	or regu	lations	on a	cohol	ic bevera	ages	s.)					
Bar, wine and beer7							Τ	MDP	P/S	P -				Π				Π	П	$\top$
									(see note 7)	C1-A only										
Bar									P/S										П	$\top$
									(see note 7)											
Catering facility								MDP		S	Р	s	Р		s	Р	s	Р	Р	$\top$
Food processing								MDP						$\vdash$		Р	s	Р	Р	$\top$
Mobile Food Vending/Mobile Food Dispensing Vehicles *								MDP	P	Р		Р	Р	Р		Р	Р	Р		$\top$
Restaurants, eat-in5, 7							S	MDP	P	Р	Р	S	P	Р	Р	P	Р		Р	$\top$
Restaurants, drive-up								MDP			S		Р		S				$\forall$	
Restaurant, outdoor cafe7							S	MDP	P	Р	Р	S	Р	P	Р				$\forall$	+
Restaurant, take-out5								MDP	P	Р	Р	S	Р	P	Р	S	S	s	Р	+
HEALTH CARE																				
Health service							Р	MDP	S	S	Р	S	Р	Π	Р	Р	P	Π	Р	$\top$
Hospitals							Р	MDP			S		P	$\vdash$		P	S		$\forall$	+
Medical Marijuana Dispensaries and Treatment Centers *							P	MDP					P							+
Medical office (one practitioner)							Р	MDP	P	P	P	P	P	Р	P	Р	P			+
Nursing care homes*	S	s	S	s	s	S	Р	MDP	S	S	S	S	Р		S				s	$\top$
Veterinarian or small animal hospital							s	MDP	S		Р	s	Р		Р	Р	P		P	
																			Ц	$\perp$
Animal hospital								MDP			S		Р			Р	P		s	
LODGINGS																		_	<u> </u>	
Bed and breakfast (accessory to single-family)*	S	S	S	S	S	S	S	MDP	P	S		S			S					
Boarding house					S	S	S	MDP	S	S		S			S					
Dormitory						S	S	MDP	S	s	s	S	S		S					$\top$
Hotel								MDP	P	Р	P/S	S	Р		P/S	S	Р	T	s	$\top$
Motel								MDP			s	S			S	s		T	s	$\top$
INDUSTRIAL USES			1					1					1			1				
Assembly and fabrication								MDP					S			Р	Р	Р	Р	$\neg$
Laundry and dry cleaning plants								MDP								Р	S	Р	Р	$\dagger$
Manufacturing—Light								MDP					S			Р	Р	Р	Р	

Manufacturing—Heavy										T		Т		Τ		Τ		Р	s	$\top$
Warehouse/Distribution								MDP					S			Р	Р	Р		+
PROFESSIONAL AND COM	MERC	IAL	USES	**				1												
Artisan Production, small scale								MDP	S	S	S		P	S	S	P	P			
Artisan Production, large scale								MDP					P			P	P			
Bank							Р	MDP	P	Р	Р	Р	Р	Р	Р	$\vdash$	Р	$\Box$		+
Bank with drive-up window							S	MDP		s	Р	Р	Р	P	Р	$\vdash$	Р	$\vdash$		+
Construction support—Light								MDP	S	Р	Р	Р	Р		Р	Р	Р	Р		+
Construction support— Heavy											S		S			S	s	S	S	
Funeral home							Р	MDP	P	Р	Р	Р	Р		Р	S		П	P	T
Kennel								MDP					S	$\top$		S		S	s	$\top$
Laboratory, research							S	MDP	S		Р	S	Р			Р	Р	Р	Р	$\top$
Landscaping service								MDP			S		S			Р	S	Р	Р	
Laundromat*						S		MDP	P	S	Р	S	Р	S	S				Р	
Mini-storage						S	S	MDP	S		Р	S	Р	S	S	Р	Р	Р	Р	
Office, professional (except medical)							Р	MDP	P	Р	Р	Р	P	Р	Р	Р	Р	Р	Р	
Personal service						S	S	MDP	P	Р	Р	Р	Р	Р	Р	S		П	$\top$	$\top$
STORES (See section 23-34	2 and	chap	oter 5 f	or reg	gulatio	ns on	alcoh	olic beve	erages	s.)										
Convenience store (incl. groceries, drugs, or liquor)								MDP	P	Р	S	S	Р	Р	Р	P				
Convenience store with gasoline service								MDP	S	S	S	S	Р	S	S	P			S	
Outdoor display or sales (as principal or accessory use)6								MDP	S	S	S	S	S	S	S	S	S	S	s	
Store, retail — up to 1,500 sq. ft./store								MDP	P	Р	Р	Р	Р	Р	Р	S			P	
Store, retail - up to 12,500 sq. ft./store								MDP	P	Р	Р	Р	P	Р	Р				P	
Store, retail - from 12,500 to 100,000 sq. ft./store								MDP	S	S	Р	S	Р		Р					
Store, retail - from 100,000 to 300,000 sq. ft./store								MDP	S	S			P		S					
PUBLIC AND GOVERNMEN	<u>                                       </u>																			
Aircraft establishment										<u> </u>		<u> </u>		Τ		Τ	Т	Р	Ρ	Т
Airports, heliports and related aviation facilities														+			S	S	S	
Public facilities and offices**	P	P	Р	P	P	P	Р	MDP	P	P	P	P	P	P	P	P	P	Р	PP	P
Public transportation terminals								MDP	S	S	S	S	P	S	S		s	P	P	+
Solar Power Generation Facility*	S													+						+

\* See special conditions for this use in article III, division 2 Conditional Use Regulations.

For conditions for a dwelling unit accessory to a single-family dwelling, see Table 23-521, Accessory Uses - Residential Properties.

<sup>\*\*</sup> Public facilities and offices are permitted uses in all districts with the approval by the city commission and a courtesy review and recommendation from the planning board.

<sup>1</sup> A development in a C-5 zoning district requires approval as a Planned Development Project. (See section 23-224.)

<sup>2</sup> Mixed-use and multi-family development may be approved through the PDP process only if consistent with the policies of the Comprehensive Plan for the Future Land Use classification of the property. Standards in section 23-445 apply to all mixed-use planned developments and those in section 23-443 apply to all residential planned developments.

<sup>3</sup> A "day care home," a day care facility with 4 or fewer clients (See definition in article VIII) is a permitted use accessory to a single-family house pursuant to section 23-521.

- 4 A farm stand is permitted as accessory to an agricultural use.
- 5 A restaurant may be permitted as accessory to a nonresidential use pursuant to section 23-541.
- 6 For exceptions, see section 23-343 "Auctions, sales, and events, temporary" and section 23-355 "Yard sales."
- 7 See also section 23-353, Conditional use regulations for "outdoor seating areas" and section 23-342 for Conditional use regulations on alcoholic beverages.
- 8 C-2 zoning districts in the RAC land use category only.
- 9 Planned Development Mixed Use development may be approved through the MDP process only if consistent with Policy 2.18 of the Comprehensive Plan and Section 23-450.
- 10 Single-family attached in the C-1/C1A zoning districts not permitted on the ground floor.

#### NOTES:

- •Conversion of a dwelling unit to a non-residential use requires a special exception use permit, regardless of whether the new use is a permitted (P) or special exception use (S).
- •Outdoor storage in BP, I-1, and I-2 is allowed with site plan approval.
- •Outdoor display and sales at an otherwise permitted business or enterprise are subject to conditions in Sec. 23-343.
- •Planned Development Projects may be approved in any district per the procedure set forth in section 23-224 and per the regulations set forth in section 23-443.
- •The addition of an accessory use to a property where the principal use is a special exception use requires is considered an expansion of the special exception use requiring a new special exception use permit prior to construction or commencement of the use. (See also section 23-501, accessory uses and structures).
- •Outdoor seating for any establishment must meet conditional use regulations in section 23-353.
- Non-residential uses are permitted as a subordinate part of a residential Planned Development Project and are limited to those uses permitted in the C-4 Neighborhood Commercial zoning district.

(Ord. No. 2005-47, § 1, 10-18-05; Ord. No. 2007-02, § 12, 3-6-07; Ord. No. 2007-33, § 3, 9-4-07; Ord. No. 2008-04, § 9, 2-19-08; Ord. No. 2008-45, §§ 15, 16, 12-16-08; Ord. No. 2009-174, § 2, 10-20-09; Ord. No. 2010-11, § 3, 6-15-10; Ord. No. 2011-04, § 3, 3-1-11; Ord. No. 2012-02, § 1, 2-21-12; Ord. No. 2015-04, § 9, 7-7-15; Ord. No. 2017-05, § 2, 4-18-17; Ord. No. 2017-19, § 1, 10-17-17; Ord. No. 2018-07, § 4, 09-19-18; Ord. No. 2019-12, § 1, 09-24-19; Ord. No. 2020-06, § 2, 06-02-20; Ord. No. 2020-27, § 1, 10-20-20; Ord. No. 2020-30, § 1, 12-02-20; Ord. No. 2021-09, § 1, 6-02-21; Ord. No. 2021-20, § 1, 9-20-21; Ord. No. 2021-25, § 1, 11-02-21; Ord. No. 2022-06, § 1, 3-01-22; Ord. No. 2022-30, § 1, 8-02-22; Ord. No. 2022-37, § 1, 9-07-22; Ord. No. 2022-45, § 1, 10-04-22; Ord. No. 2023-11, § 2, 5-02-23; Ord. No. 2023-18, § 2, 6-20-23)

# § 23-422. Dimensional requirements for use of land.

Effective: Tuesday, October 04, 2022

The dimensional requirements for the use of land in the various zoning districts shall be as set forth in Tables 23-422A and 23-422B. Dimensional requirements for accessory structures are set forth in Article V. No lot shall be reduced in size or altered in dimensions so as to create a non-conformity in terms of lot area, building setbacks, or other dimensional requirements of this chapter.

- Waiver of front yard requirements. On lots in subdivisions where the front yard requirements have been waived pursuant to subsection 23-522(b), accessory structures will be allowed in the functional rear yard per the requirements of that section.
- Waivers in Planned Development Projects (PDPs). Deviation from the dimensional requirements of this section may be granted through the Planned Development Project (PDP) process pursuant to section 23-224. Residential density shall be in compliance with the classification of the property as established on the Future Land Use Map and the Future Land Use Element of the Comprehensive Plan.

•Administrative Waivers. Administrative Waivers shall be submitted for review and recommendation to the Administrative Official. Waivers shall then be approved or denied by the City Manager. The Waivers may authorize up to a twenty (20) percent reduction in zoning standards for setbacks, height, parking, buffering, living area, floor area/impervious surface ratio, and other related zoning standards. An applicant may appeal the decision of the City Manager to the City Commission.

#### **TABLE 23-422A**

#### DIMENSIONAL AND AREA STANDARDS—RESIDENTIAL DISTRICTS

Notes: Minimum floor area for a dwelling unit in the R-3, PF, C1, and C2R zoning districts may be waived by the Administrative Official.

Zoning	Dwelling Type	Minimum Lot Size (sq. feet) <sup>9</sup>	Minimum Street Frontage (feet) <sup>1</sup>	Minimum Lot Width at building line (feet)	Minimum Floor Area (sq feet) <sup>2</sup>	1	Setbacks* Buildings		Maximum Lot Coverage <sup>8</sup> (percent)	Maximum Building Height	n
						Front <sup>3</sup>	Side <sup>4</sup>	Rear <sup>5</sup>		feet	stories
R-1A	Single- family	12,000	50	85	1,500	30	10	20	40	35	21/2
R-1B	Single- family	9,000	50	75	1,500	30	10	20	40	35	2½
R-1C	Single- family	8,000	50	65	1,200	25	10	15	40	35	21/2
R-1D	Single- family	6,000	50	60	1,000	25	7.5	15	40	35	21/2
R-2	Single- family	8,000	50	75	1,000	25	10	20	40	35	21/2
R-2	Two- family	12,000	50	85	950	25	10	20	40	35	21/2
R-3	Single- family	7,500	50	75	1,000	25	10	15	40	35	21/2
R-3	Two- family	8,500	50	75	950	25	10	15	40	457	37
R-3	Multi- family (3 or more units)	12,0006	50	100	650	30	10	20	50	457	37

<sup>\*</sup> The building setback shall be measured from the roof's vertical support member located nearest to the property line from which the setback is required. The roof overhang or other projection shall not extend beyond the vertical support member more than twenty-four (24) inches into the required setback.

<sup>&</sup>lt;sup>1</sup> On any lot approved with reduced frontage, the lot width between the front lot line (street frontage) and the building line shall not be less than 25 feet at any point. In new single-family subdivisions, up to 10% of the lots may be approved with reduced street frontage, provided that no frontage is less than 30 feet in width. One single-family house may be constructed on a panhandle lot with reduced street frontage, provided that, excluding any portion of the lot less than 50-feet in width, the lot meets the minimum required lot area and other dimensional requirements for a single-family house in the zoning district, and provided the lot has a minimum of 25 feet of frontage.

<sup>&</sup>lt;sup>2</sup> Minimum floor area of a dwelling unit is the living floor area excluding carports, garages, breezeways, and unenclosed porches or terraces. For single-family houses on infill lots, the administrative official may allow a reduction in the floor area to eighty (80) percent of the area required in the district upon demonstration that the reduced size is consistent with that of existing houses in the neighborhood.

<sup>&</sup>lt;sup>3</sup> The minimum front setback shall be as designated or one-half (½) the width of the required right-of-way for the street on which the lot fronts, whichever is larger. For infill lots, the administrative official may grant a waiver allowing a reduction of the front yard setback requirement, provided the reduction is compatible with the building setbacks in the immediate vicinity.

<sup>&</sup>lt;sup>4</sup> All single-family construction on existing lots less than 51 ft in width and more than 25 ft in width shall have a minimum side setback of 5 ft.

#### **Notes:**

Dimensional requirements for the R-3 district apply for residential structures in non-residential districts.

See article V for dimensional requirements for accessory structures.

See also "provisions for flood hazard reduction" in article VI, div. 1.

Within CRA areas I, II, and III Lots of Record shall be allowed to have one single-family residence, based on the R-1D zoning district standards. Approval of this use shall be granted by an Administrative Waiver, approved by the City Manager.

(Ord. No. 2007-02, §§ 13, 14, 3-6-07; Ord. No. 2007-33, § 4, 9-4-07; Ord. No. 2008-04, §§ 10—12, 2-19-08; Ord. No. 2008-45, § 23, 12-16-08)

TABLE 23-422B
DIMENSIONAL AND AREA STANDARDS—NONRESIDENTIAL DISTRICTS\*

Zoning District	PF	D- MU	C-1	C-2	C-2R	C-3	C-4	C-5	LCI	BP	I-1	I-2	CN	R
Minimum Principa	ıl Buildin	g Setbacks	s (feet)†											'
Front <sup>1</sup>	30	0.8	02	35	35	35	35	35	35	35	35	35	35	35
Side - not adjacent to residential district	10	0 8	0	10	10	20	10	PDP <sup>3</sup>	20	20	20	10	10	10
Side or rear - adjacent to residential district <sup>4</sup>	355	10 8	355	355	355	35	35	PDP <sup>3</sup>	355	35	35	355	35	35
Rear - not adjacent to a residential district <sup>4</sup>	255	0 8	0	255	255	25	25	PDP <sup>3</sup>	255	25	25	255	35	35
Maximum Building Height	456	45 8	457	356	357	356	35	PDP <sup>3</sup>	356	356	456	357	35	35
Maximum Lot Co	verage				-									
Maximum Building Coverage	35%	100%	100%	50%	50%	50%	35%	PDP <sup>3</sup>	50%	50%	50%	50%	5%	35%
Maximum impervious surface	65%	100%	100%	75%	75%	75%	75%	PDP <sup>3</sup>	75%	65%	75%	75%	10%	50%

<sup>&</sup>lt;sup>5</sup> See article V for location requirements for accessory structures. Generally, accessory buildings are permitted only in rear yards at least 5 ft from any lot line.

<sup>&</sup>lt;sup>6</sup> 12,000 sq. ft. is required for the first 3 units and 3,000 sq. ft. is required for each additional dwelling unit.

<sup>&</sup>lt;sup>7</sup> No building shall exceed 3 stories or 45 ft in height unless 1 foot shall be added to the required front and side setbacks for each foot of building height in excess of 45 ft.

<sup>&</sup>lt;sup>8</sup> Parking areas in the front yard of a single-family or two-family residential property shall not eliminate more than 50% of the area available for grass or other landscaping.

<sup>&</sup>lt;sup>9</sup> The area encompassing wetlands and/or open water shall not be included in the calculation for compliance with the minimum lot size requirement.

<sup>\*</sup> Deviation from dimensional requirements may be allowed through a Planned Development Project approval. See section 23-224

<sup>†</sup> The building setback shall be measured from the roof's vertical support member located nearest to the property line from which the setback is required. The roof overhang or other projection shall not extend beyond the vertical support member more than twenty-four (24) inches into the required setback.

- <sup>1</sup> The minimum front setback shall be as designated or one-half (½) the width of the required right-of-way for the street on which the lot fronts, whichever is larger. For infill lots, the administrative official may grant a waiver allowing a reduction of the front yard setback requirement, provided the reduction is compatible with building setbacks in the immediate vicinity. Refer to Downtown Mixed-use Design Standards in Sec 23- 423 for requirements in the D-MU.
- <sup>2</sup> A front setback of more than five feet in a C-1 district requires a special permit from the Planning Board. In deciding upon the permit, the Planning Board shall consider the consistency of the proposed setback with other buildings within the district and on adjacent properties.
- <sup>3</sup> Setbacks in the C-5 districts shall be as approved for the planned development project. (See section 23-224.) In a C-5 district developed without a planned development project, the building setbacks shall be as for the C-2 district.
- <sup>4</sup> A five-foot landscaped buffer meeting the requirements of section 23-307 must be provided along any rear or side property line adjacent to a residential district.
- <sup>5</sup> The Planning Board may allow lesser side and rear setbacks adjacent to a residential district to enable redevelopment or infill. However, a solid buffer shall be provided.
- <sup>6</sup> The maximum building height may be increased provided one additional foot is added to each of the required setbacks for each foot of building height in excess of the maximum specified.
- <sup>7</sup> The Planning Board may allow a building to exceed the maximum building height in a D-MU, C-1, C-2R, or I-2 district following a public hearing and a finding that the proposed height and architecture of the building are compatible with other buildings in the district and on properties in the area.
- <sup>8</sup> Refer to Downtown Mixed-use Design Standards in Sec 23-423 for requirements.

#### **Notes:**

Dimensional requirements for the R-3 district apply for residential structures in non-residential districts. See Table 23-422A.

Dimensional requirements for accessory structures are set forth in article V.

(Ord. No. 2005-47, § 2, 10-18-05; Ord. No. 2007-02, §§ 15, 16, 3-6-07; Ord. No. 2007-33, § 5, 9-4-07; Ord. No. 2008-45, §§ 17, 18, 12-16-08; Ord. No. 2015-04, § 11, 7-7-15; Ord. No. 2020-30, § 1, 12-02-20; Ord. No. 2020-33, § 1, 1-05-21; Ord. No. 2022-06, § 1, 3-01-22; Ord. No. 2022-37, § 1, 9-07-22; Ord. No. 2022-45, § 1, 10-04-22)

# § 23-423. Downtown Mixed-use Design Standards

Effective: Tuesday, April 18, 2023

- a . **Purpose**. The purpose of the Downtown Mixed-use Design Standards is to provide standards for rehabilitating, restoring, and preserving buildings within the greater Downtown Mixed-use (D-MU) Area that includes the Historic Downtown and Crystal Lake. The Standards also recommend and shape new development and building reuse/restoration in a mixed-use, pedestrian-oriented manner and complementary to the form of historic buildings, according to the City's Comprehensive Plan and the vision described in the Lake Wales Connected plan. The Downtown Mixed-Use District, and the Downtown Historic Overlay and the Crystal Lake Overlay have different requirements than other commercial areas, especially pertaining to setbacks, parking requirements, height limitations and permitted land uses. These Standards are designed to meet the primary goal of protecting and reinforcing the unique visual and historic character of Lake Wales, as well as improving the quality of new construction.
- b. **Applicability**. The Downtown Mixed-use Design Standards apply to all development within the D- MU District (see Figure 23-423.b) and any improvement that meets the definition of a Substantial Improvement as per Chapter 23 of the Lake Wales Code of Ordinances, with modified provisions governing properties in the Downtown Historic Overlay as defined in Section 23-423.c, and modified provisions governing properties in the Crystal Lake Overlay as defined in Section 23-423.d. In the event of a conflict with other sections of Chapter 23, the Downtown Mixed-use Design Standards (Sec 23-423) shall apply, except as noted for the Downtown Historic Overlay (Sec 23-423.c.1).

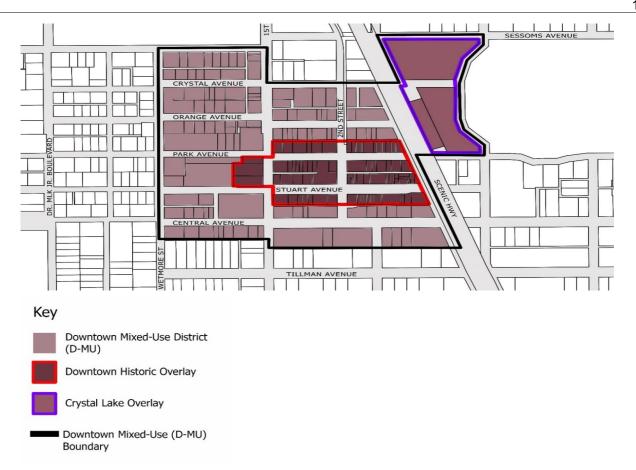


Figure 23-423.b: Downtown Mixed-use District

- c. **Downtown Historic Overlay**. The Downtown Mixed-use Design Standards supplement but do not replace required review and approval by the Historic District Regulatory Board for the Historic District and/or historically-designated properties.
  - 1. In the event of a conflict between the provisions of Sec. 23-423 "Downtown Mixed-use Design Standards" and the Historic Preservation sections of the Code of Ordinances (Sec. 23-208, 23-227, 23-651, 23-652, and 23-653), the provisions of the Historic Preservation sections shall supersede.
  - 2. A Certificate of Appropriateness is required for all applicable work in the Local Ordinance Downtown Historic District, and for all designated Historic properties, as defined in Section 23-227 of the Code of Ordinances, "Certificate of Appropriateness" and Section 23-653 of the Code of Ordinances, "Certificates of Appropriateness." All Certificate of Appropriateness applications shall be reviewed and considered for their compliance with the Downtown Historic Overlay Design Guidelines.
- d. **Crystal Lake Overlay**. The Downtown Mixed-use Design Standards supplement but do not replace the required building form standards, design standards, and approval process for the Crystal Lake Overlay.
  - 1. **Intent**. The intent of the Crystal Lake Overlay is to acknowledge the unique environmental and historical character of those commercially-zoned properties fronting Crystal Lake. These properties are the historic gateway to Lake Wales as we know it today, and they originally served as a municipal park, train depot, and hotel that welcomed the first residents of Lake Wales into the new City. The unique siting along the railroad line, but on a dramatic hill overlooking the steep shoreline of Crystal Lake, was a geographic feature that was the first impression of the earliest visitors and residents of Lake Wales. Over time, this unique environmental and historical condition has become more difficult to experience due to siting of roadways, siting of the library to face towards the Downtown, and the underutilized character of the old hotel site.
  - 2. **Process**. All new construction in the Crystal Lake Overlay of more than 15,000 sf will require Site Plan Review by process of a Planned Development Project (PDP) application as described in Sec 23-224, with the following additions and modifications to the PDP Process:
    - i. At least one mandatory Public Design meeting shall be held prior to any public hearing, in order to establish the community vision for the future of these significant parcels of land.

- ii. An Illustrative Master Plan shall be submitted as part of the required Site Plan application that demonstrates compliance with the Crystal Lake Design Standards (Sec 23-423.d.4) all applicable D-MU standards (Building Form, Sec 23-423.e; and Architecture, Sec 23-423.f), as well as community input from the mandatory Public Design meeting.
- 3 . **Historic importance of Crystal Lake**. The historic significance of Crystal Lake as the premiere waterfront destination in Lake Wales will be incorporated into all site planning, urban design, and architectural decisions for properties within the Crystal Lake Overlay. This shall include, but are not limited to the Design Standards outlined in Section 23-423.d.4.

# 4. Crystal Lake Design Standards.

- i. North 3 <sup>rd</sup> Street Setbacks. All buildings, parking, service areas, and any improvements to the site shall be setback a minimum of 70' from the property line along N. 3 <sup>rd</sup> Street, which fronts Crystal Lake; or an alternative setback or build-to line may be established through the public design meeting and master plan process. This mandatory setback shall be a landscaped, unenclosed open space that may be a passive open space that allows for uninterrupted views towards Crystal Lake and allows for the historic topography of the site to remain intact.
- ii. **Neighborhood Setbacks**. Setbacks from Sessoms Avenue and Park Avenue shall match the setback requirements for the civic and residential uses across the street.
- iii. **Downtown / Commercial Setbacks** Setbacks along Scenic Highway, Cypress Gardens Lane, and Crystal Avenue shall be a minimum of twenty feet (20'), or an alternative setback or build-to line may be established through the public design meeting and master plan process.
- iv. **Primary Frontage**. N. 3 <sup>rd</sup> Street shall be considered the Front Lot Line / Primary Lot Frontage and shall be considered a Primary Frontage (Sec 23-423.e.2) for all development within the Crystal Lake Overlay.
- v. **Historic Buildings.** Any structures associated with the original Lake Wales hotel that are still remaining within the Crystal Lake Overlay shall be preserved and repurposed on site. Structures may be adaptively reused for new purposes such as commercial use, retail, housing, tourism or civic use. Structures may be relocated on site in order to better accommodate new development on site. As a measure of last resort, these structures may be relocated and preserved off-site. If a structure is determined not to be structurally feasible to relocate by the City Building Official, the building may be documented, dismantled, and as much of the original materials as possible should be reused. If relocation or dismantling of a historic building occurs, a detailed preservation and relocation plan shall be incorporated into the Site Plan application and must be approved as part of the Site Plan application.
- vi. **Historic Landscape**. Specimen trees and any trees that are determined to have been part of the history of the site, such as the mature Sabal Palms, shall be preserved and incorporated into the Site Plan of any new development on site, particularly those trees located along the edge of the property and within the landscaped setback along North 3 <sup>rd</sup> Street.
- vii. **Historic Plaque**. A historic plaque documenting the history of Crystal Lake as the birthplace of Lake Wales, with the historic train depot, central park space, and the historic hotel, shall be provided along North 3 <sup>rd</sup> Avenue.

# e. Building Form Standards

# 1. Building Location

A Build-to Zone is a range of allowable distances from a street right-of-way that a building's facade (the facade facing the street) shall be built to in order to create a moderately uniform line of buildings along the street. The Front-Build-to Zone faces the Front of the Lot / Primary Street (see Figure 23-423.e.1.ii).

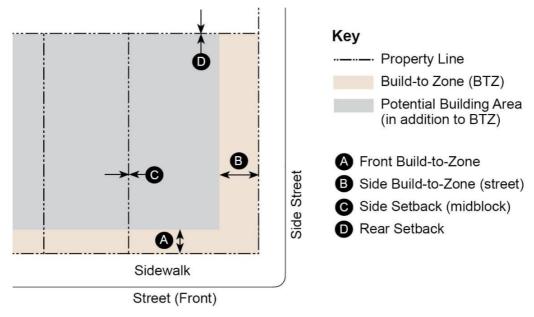


Figure 23-423.e.1.i: Building Location

- i. Front Build-to Zone: 0' min. to 5' max.
- ii. Side Build-to Zone (street): 0' min. to 10' max.
- iii. Side Setback (midblock): 0' min.
- iv. Rear Setback: 0' min.
- v. Side or Rear setback adjacent to a residential district shall be 10' minimum, including a 5' minimum landscape buffer.
- vi. Frontage Occupancy: 80% minimum Frontage Occupancy is the percentage of the total primary lot frontage width (see Figure 23- 423.e.1.ii) that is occupied by the primary building facade.
  - a. In the Downtown Historic Overlay:
    - The primary building façade's principal plane shall be located in the front build-to zone for at least the length of the frontage occupancy minimum (see Figure 23- 423.e.1.iii) and should align to other buildings on the same block.
    - Consistent with historic precedents, the primary building façade should fill most of the frontage area (up to 100% is encouraged). If a primary building façade does not fill the frontage, the remaining frontage area may be used for a walkway, landscaped space or outdoor dining. Service areas, including mechanical equipment and trash facilities, shall not be visible from public streets, sidewalks, parks, or squares.
  - b. Outside of the Downtown Historic Overlay:
    - Up to 50% of the width of the primary facade may be counted as meeting the frontage occupancy requirement even though it may be set back up to 10 feet further than the primary facade's principal plane (see Figure 23-423.e.1.iv).
    - A portion of the building's primary facade may be set back up to 20 feet further from the primary facade's principal plane if this space is constructed as a forecourt/pedestrian entryway that is open to the sidewalk. This recessed portion may be up to 40% of the total width of the primary facade and shall not be used by vehicles or a parking lot (see Figure 23-423.e.1.v).
    - A garden wall that meets the requirements of 23-423.e.6.iii may be counted toward the primary building facade to meet the frontage occupancy requirement with approval of the Administrative Official.

vii. A principal entrance for each building shall be located on the primary building facade, which should face the primary lot frontage; see Sec 23-423.f.3.iv.a.



Figure 23-423.e.1.ii: Front Lot Line / Primary Lot Frontage. The above map defines which lot line is considered the "front of the lot" or Primary Lot Frontage; this is the frontage where the Front Build-to Zone is located; where the Primary Building Façade shall face; and where the Frontage Occupancy requirement applies. Corner lots may have two Primary Frontages.

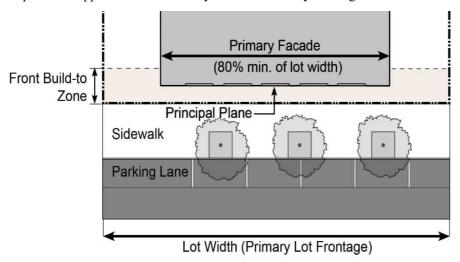


Figure 23-423.e.1.iii: Frontage Occupancy, the Primary Facade and its Principal Plane. The location of the primary facade's principal plane is not changed by facade extensions such as bay windows, awnings, porches, balconies, stoops, galleries, or by upper stories that are closer to or further from the street. (Applies to all of the D-MU, including the Downtown Historic Overlay.)

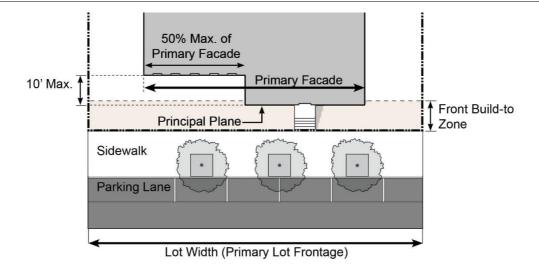


Figure 23-423.e.1.iv: Frontage Occupancy: Primary Façade and Permitted Setback (outside of the Downtown Historic Overlay)

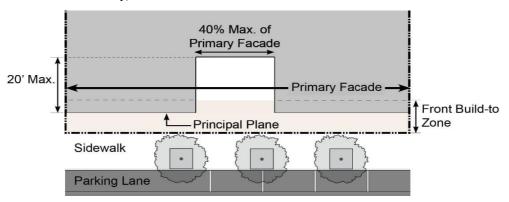


Figure 23-423.e.1.v: Frontage Occupancy: Primary Facade and Permitted Forecourts (outside of the Downtown Historic Overlay)

# 2. Primary Frontages

i. **Purpose**. Some street frontages in the D-MU are designed as "Primary" by virtue of their existing pedestrian-supportive qualities or their future importance to pedestrian connectivity (see Figure 23-423.e.2). Development facing Primary Frontages should be held to the highest standards for walkability and defining a high-quality public realm.

# ii. Requirements:

- a. Driveways, curb cuts and service areas shall be provided from an alley when present. If no alley is present, access should be provided from streets other than Primary Frontages whenever possible. Curb cuts or driveways on Primary Frontages are discouraged.
- b. New curb cuts or driveways are not permitted in the Downtown Historic Overlay.
- c. Additional requirements for Parking and Liner Buildings along Primary Frontages are included in Sec 23-423.e.4 and 23-423.e.5.

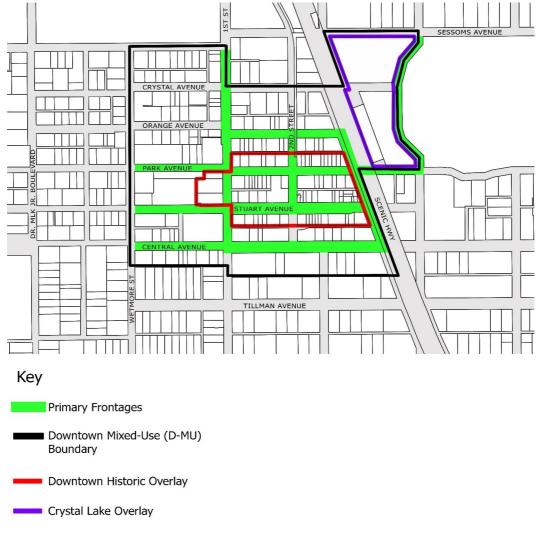
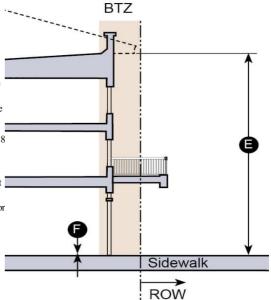


Figure 23-423.e.2: Primary and Secondary Frontages

#### 3. Building Height:

- i. Maximum Building Height in the D-MU shall be 3 stories / 45'maximum
- ii. Maximum Building Height shall be measured to the eave of the roof or roof deck (if flat).
- iii. Building Heights exclude attics or below grade parking that meets all parking standards in Section 23-423.e.4.
- iv. Outside of the Downtown Historic Overlay, one story of habitable attic space within a pitched roof is permitted above the designated height limit and does not count as a story. Dormers, if present, shall not be individually more than 15' wide and collectively not more than 50 percent of the facade elevation in length.
- v. Buildings may be one story in height, but their exterior walls must be at least 18 feet in height. This may be accomplished with higher ceiling heights and/or parapets.
- vi. Ground floor elevation is the distance of the first finished floor above adjacent sidewalk grade. Ground floor elevation for first floor commercial uses shall be sloped from the sidewalk between 0" and 6". Ground floor elevation for first floor residential uses shall be 24" minimum.
- vii. Existing historic buildings that exceed the maximum height limit may be renovated or rebuilt (to historically accurate conditions) to the same number of stories/height as existed at the time of adoption of this code.
- viii. Outside of the Downtown Historic Overlay, small footprint towers, cupolas, and other rooftop features may be designed to serve as visual landmarks and extend above the designated height limit as follows:
  - a. Towers/cupolas with a footprint smaller than 30 feet by 30 feet may extend up to 15 feet above the Maximum Building Height.
  - b. Towers/cupolas with a footprint smaller than 15 feet by 15 feet may extend up to 30 feet above the Maximum Building Height.



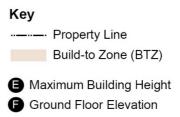
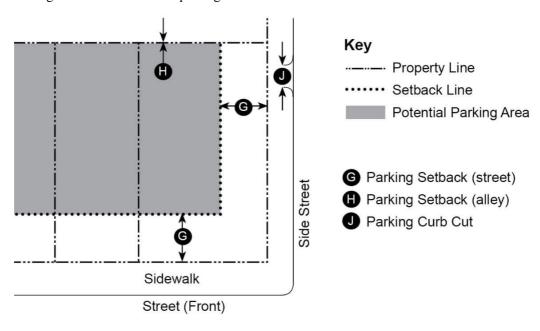


Figure 23-423.e.3: Building Height

### 4. Parking

- i. There shall be no minimum parking requirements for new development or building reuse / restoration within the Downtown Mixed-use District that meets the Design Standards of this Section. Each applicant shall provide a parking analysis justifying the proposed parking solution. Parking shall be provided as necessary to meet the requirements of the Americans with Disabilities Act.
- ii. Parking shall be located behind the primary facade of a building, and shall be setback 25 feet minimum from all public ROWs with the exception of alleys. Parking lot landscape areas shall be provided as described in 23-307.1.c. Perimeter landscape buffer requirements are not required where a building is located between the parking lot and the street.



# Figure 23-423.e.4: Parking Location

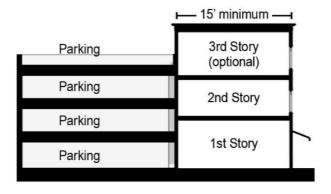
- a. The parking setback may be reduced when a liner building that meets the requirements of 23-423.e.5.ii is included.
- b. The parking setback and required landscape buffer area on a Side Street (see Figure 23-423.e.1.ii) may be reduced to 8 feet when a garden wall that meets the requirements of 23-423.e.6 and trees planted at 30' center along the length of the proposed parking area (between the parking and garden wall or decorative fence) is provided.
- c. The parking setback dimension on a Side Street (see Figure 23-423.e.1.ii) may be reduced upon approval of the Administrative Official if the parking lot paved area is less than 5,000 square feet in size.

### iii. Access to off-street parking:

- a. Alleys, when present, shall be the primary source of access to off-street parking. If alley access is not possible, the width of a parking driveway curb cut shall be 20' maximum.
- b. Garage doors, if present, shall face toward a rear alley. In locations where space does not permit the garage door to face the rear, or where there are not alleys, garage doors shall be positioned no closer to streets or public spaces than 20 feet behind the primary building façade. Garage doors facing streets or public spaces are not permitted in the Downtown Historic Overlay.
- c. New driveways and curb cuts from a Primary Frontage are prohibited within the Downtown Historic Overlay.

### 5. Special Building Types

- i. Large-Footprint Buildings: Buildings covering more than 15,000 square feet and/or with a building frontage of greater than 150 feet may be built within D-MU district by process of special exception only as defined in Section 23-216. Such buildings must abide by all standards of Section 23-423 and should reinforce the urban character of the downtown and its connected system of walkable street frontages in order to encourage use by pedestrians. Large-footprint buildings footprints may not be larger than a single block and may span an alley only if alley access to all other lots on the block is unimpeded.
- ii. Liner Building Requirements: The character of some uses of land, such as parking lots, parking structures, theaters, or grocery stores, may preclude buildings from complying with the Facade Composition requirements of 23-423.f.1. Such buildings shall be constructed in a manner that they are separated from adjacent streets (but not alleys) by liner buildings:
  - a. Liner buildings are required for new parking areas (surface lots as well as above or below grade structures) facing Primary Frontages.
  - b. Liner buildings are required for new buildings that cannot meet the facade transparency requirements of 23-423.f.1.iii.
  - c. Liner buildings shall be a minimum of two stories in height and fifteen (15) feet in depth. Liner buildings are encouraged to be greater than 15' in depth in the Downtown Historic Overlay.
  - d. Liner buildings may be detached from or attached to the primary building.
  - e. Liner buildings may be used for any purpose allowed on the lot on which they are located except for parking.
  - f. Liner buildings shall meet the Facade Composition requirements of 23-423.f.1.



Parking Garage Structure Attached Liner Building

Figure 23-423.e.5.ii.a: Attached Liner Building

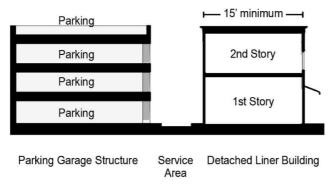


Figure 23-423.e.5.ii.b: Detached Liner Building

# 6. Garden Walls and Fences

A garden wall is a wall that defines the frontage line and/or the perimeter of a property. Garden walls are encouraged along all un-built street rights-of-way to shield views to parking, provide privacy to a side yard, and strengthen the spatial definition of the public realm.

- i. All garden walls or fences along property lines at public street rights-of-way shall be a maximum of three (3) feet in height.
- ii. All garden walls or fences that run along a side and/or rear property lines and do not front a public street right-of-way shall be a maximum of eight (8) feet in height. Garden walls or fences over 3 feet high should be a minimum of 30% permeable or articulated.
- iii. Specific to Garden Walls along a right-of-way:
  - a. Garden walls shall be constructed of brick, stone, cast stone, or other masonry faced with stucco, or may be constructed with iron, steel, or a combination of masonry, iron and steel.
  - b. When both the building walls and the garden walls are faced with stucco, the finish and color shall be identical on both.
  - c. Garden walls may include hedges between masonry piers. A hedge may be planted in lieu of a required garden wall.
  - d. All garden walls and piers shall have a cap (see Masonry Detailing).
- iv. Specific to Fences along a right-of-way:
  - a. Fences shall be constructed of wood (picket fences with corner posts) or metal. Dark colors for metal fences (black, bronze, or dark green) are required.
  - b. Fences are not permitted along a street right-of-way in the Downtown Historic Overlay.
  - c. Chain link fences are not permitted.

### 7. Mechanical Equipment & Service Areas

- i. For the purposes of these standards, mechanical equipment shall include any heating, ventilation, and air conditioning (HVAC) or electrical machinery but also includes air compressors, hoods, mechanical pumps, exterior water heaters, water softeners, utility and telephone company transformers, meters or boxes, garbage cans, storage tanks, generators, geothermal wells, and similar elements.
  - a. Mechanical equipment shall not be located on a front building facade where visible from streets and public spaces
  - b. If mechanical equipment is located at-grade, and is visible from an adjacent street or sidewalk, it shall be screened by a garden wall or fence. When equipment is taller than the maximum height for garden walls and fences, the height may be extended to match that of the mechanical equipment.
  - c. All mechanical equipment or penthouse screening to be placed on the roof shall be set back from the roof line by a distance at least equivalent to the height of the screening in order to minimize visibility from surrounding streets. In no case shall the height exceed 10 feet above the Building Height limitations; and equipment shall be located to minimize visibility to surrounding streets.
- ii. Service areaincluding loading docks and trash disposal facilities shall not be visible from public streets, sidewalks, parks, or squares, but may be visible from alleys.

#### f. Architectural Standards

The intent of the Architectural Standards is to shape future development in a walkable, mixed-use form that reflects and complements the materials, configurations and general scale of Lake Wales' historic downtown area and employs techniques that will result in long-lasting structures both in durability and design expression.

### 1. Facade Composition

### i. Expression Lines and Cornice

- a. Expression Lines shall either be moldings extending a minimum of two inches, or jogs in the surface plane of the building wall greater than two (2) inches.
- b. Facades may feature a change of colors, materials or textures at an expression line.
- c. A building mass may be subdivided by expression lines into one or two horizontal layers (see Figure 23-423.f.1.i).
- d. An expression line shall always be used at the top of shopfronts. This expression line may incorporate a band for signage.
- e. The top of each building may be emphasized with a projecting cornice. This cornice should feature a deeper projection, and therefore stronger shadow line, than any other expression line on a facade.

### ii. Centerlines / Facade Configuration

- a. Facades shall feature alternating structural centerlines and fenestration (window and door opening) centerlines.
- b. These centerlines shall extend from the top of a mass to the bottom of a mass.
- c. Multiple windows and/or doors may be grouped symmetrically around a single fenestration centerline.
- d. The spacing of centerlines may be identical across a facade, or may vary. When varying the spacing between centerlines of any one facade, using a ratio of proportion, or a repetitive sequence of bays as justification is recommended to provide order and balance.
- e. In the Downtown Historic Overlay, the size, proportion, and rhythm of windows should generally be similar to other buildings on the block, as described in the standards for Certificate of Appropriateness (Sec 23-653) and the Downtown Historic Overlay Design Guidelines.

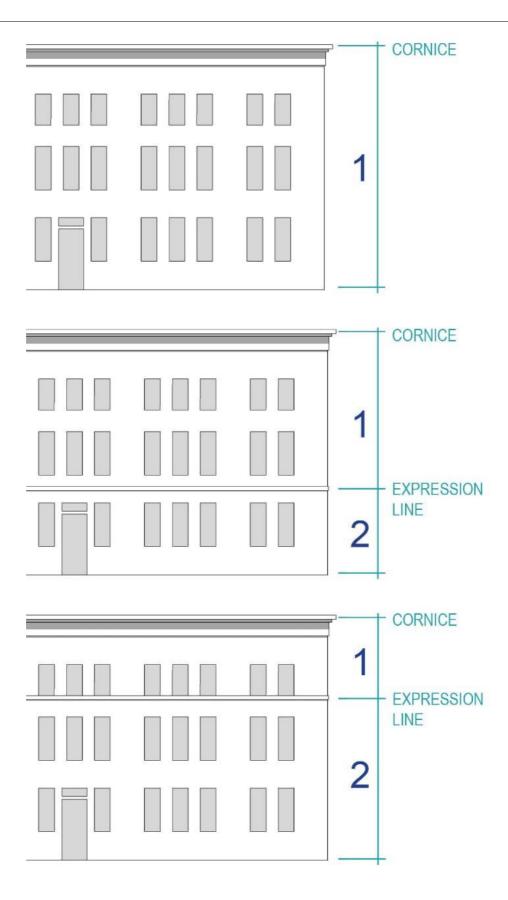


Figure 23-423.f.1.i: Facades divided into 1 and 2 horizontal layers.

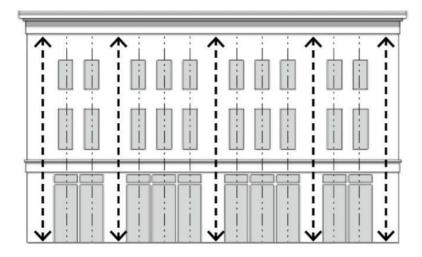


Figure 23-423.f.1.ii: Structural and fenestration centerlines, showing how the solid and voids in the facade align vertically.

- iii. Facade Transparency Requirements. All building facades which face onto a street or public space shall meet the minimum transparency requirements outlined below. The percentage of transparency (door and window openings) per story shall be calculated within the area between finished floors and shall be a total percentage of doors and windows along that portion of the facade. Upper floor transparency is measured to the finished ceiling. Applicants shall provide a diagram to demonstrate compliance with this provision.
  - a. Building facade transparency for ground story (any retail shopfront, and any building within the Downtown Historic Overlay): 60% minimum. Building facade transparency for ground story for any building within the Downtown Historic Overlay should aspire to be 80% minimum, in keeping with historic precedent. This shall be enforced by the Historic District Regulatory Board by way of the Certificate of Appropriateness process.
  - b. Building facade transparency for ground story (uses other than retail, and buildings outside of the Downtown Historic Overlay): 30% minimum
  - c. Building facade transparency for upper stories: 20% minimum
  - d. Blank wall areas (facade areas without doors or windows) shall not exceed 20' in length along any story facing a Primary Frontage. Blank wall areas shall not exceed 30' in length along any story facing a Secondary Frontage.

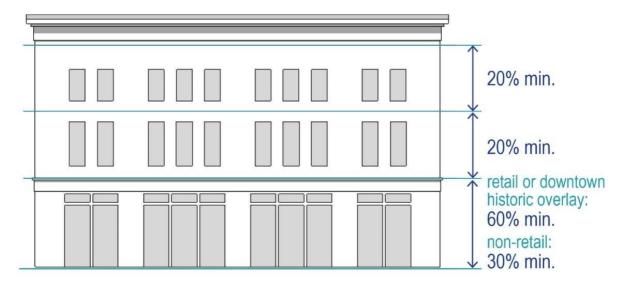


Figure 23-423.f.1.iii: Example of compliant facade transparency

# 2. Shopfront Design Requirements

i. The top of all shopfront windowsills shall be between one (1) and three (3) feet above the adjacent sidewalk. In the Downtown Historic Overlay kickplates shall be the same height as on other buildings on the same block.

- ii. Shopfront windows shall extend up from the sill at least eight (8) feet above the adjacent sidewalk and shall be the same height as on other buildings on the same block.
- iii. Shopfronts shall have a cornice or expression line above, between the first and second story.
- iv. Shopfront windows may not be made opaque by window treatments (excepting operable sunscreen devices within the conditioned space). Reflective, tinted (of any degree), and frosted glass is prohibited on shopfronts.

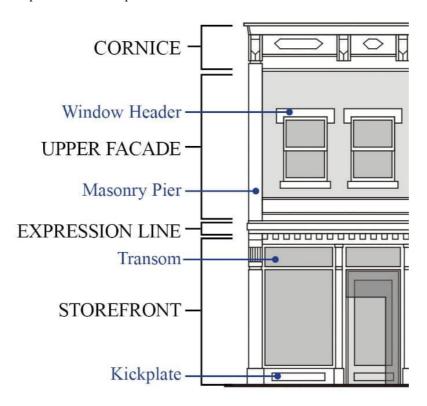


Figure 23-423.f.2: Shopfront Elements

- v. Doors or entrances for public access shall be provided on all shopfront building facades at intervals no greater than fifty (50) feet, unless otherwise approved as a Special Exception by the Planning Board, or by the Historic Board in the Downtown Historic Overlay. The intent is to maximize street activity, to provide pedestrians with frequent opportunities to enter buildings, and to minimize any expanses of inactive wall.
- vi. Shopfront doors shall be predominately glass. Solid doors are prohibited.
- vii. A minimum of fifteen (15) feet of depth of habitable space shall be provided behind each shopfront on the primary facade. This ensures that the area behind shopfronts is sufficient enough to be an actively used retail space.
- viii. There should generally be more glass and less wall at the storefront level, balanced by more wall and less glass on the upper façade (see Facade Transparency Requirements, 23-423.f.1).
- ix. Transoms help break up the effects of large sheets of glass and are encouraged. Transoms can be clear, tinted or stained glass. When feasible, transoms should align with adjacent storefronts.
- x. Within the Downtown Historic Overlay, facade improvements shall use traditional storefront design and similar architectural features to maintain continuity (e.g. color, canopy, window treatment). Old photographs of the building can be consulted for inspiration.

# 3. Building Elements

# i. Building Wall Requirements

a. Permitted finished building wall materials include: brick masonry, stone, cast stone, stucco, and pre-engineered metal and glass systems (for windows, doors, and shopfront conditions). Horizontal lap siding (of wood, cementitious, or composition board, such as HardiPlank®) is permitted outside of the Downtown Historic Overlay. Use of imitation materials, such as E.I.F.S., imitation wood or stone is prohibited as a wall material.

- b. Other siding materials (which may include metal or cementitious panels for ornamentation) shall not be used as a primary building wall material. Unfinished aluminum or steel is not appropriate. Vinyl and aluminum siding are not permitted.
- c. All siding materials shall incorporate vertical corner boards on outside building corners. Corner boards shall be a minimum of three (3) nominal inches in width and a minimum of one (1) inch thick.
- d. When materials are combined on a building facade horizontally, heavier materials should generally be located below lighter materials.
- e. For buildings with three (3) stories, the ground floor should be differentiated from those floors above in order to reinforce the pedestrian realm.
- f. Brick masonry should generally be comprised of a standard unit size and height. Oversized or utility dimensions are to be avoided.
- g. E.I.F.S., Fiberglass (as cornice material), and composite materials as an ornamental feature must be located out of reach of pedestrians and must visually appear to have a hand troweled finish.
- h. All stucco surfaces shall have a smooth or sand finish, be hand-troweled in texture, and painted. Sprayed on stucco finishes are prohibited.
- i. See also requirements for Facade Composition and Masonry Detailing.

#### ii. Roofs and Parapets

- a. In the Downtown Historic Overlay, the roof shall be flat or shed and concealed behind a parapet.
- b. For civic buildings in the Downtown Historic Overlay, a gabled or hipped roof may be permitted.
- c. In the D-MU, outside of the Downtown Historic Overlay, roofs may feature the following configurations: Gabled, Hipped, or Flat / Shed. Mansard roofs (a roof having two slopes, with the lower slope steeper than the upper one, which is often used to accommodate an additional habitable story) are prohibited.
- d. The minimum slope for a gabled or hip roof shall be 3:12, and the maximum slope shall be 9:12.
- e. Gabled and hipped roofs may either rise from a projecting cornice, or from behind a parapet.
- f. Visible gabled roof ends should be symmetrically pitched.
- g. Flat / Shed roofs shall always be concealed behind a parapet.
- h. The profile of parapets may be sculpted, with additional vertical emphasis corresponding to a prominent facade fenestration centerline.
- i. A taller portion of a sculpted parapet may incorporate a signage panel.

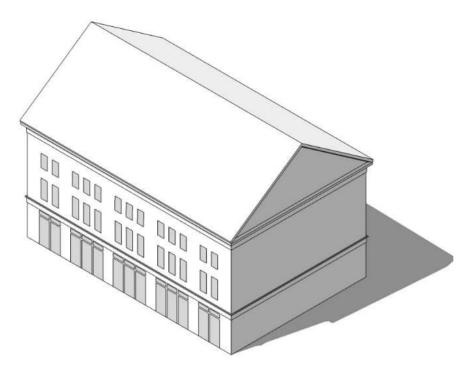


Figure 23-423.f.3.ii.a Gabled Roof

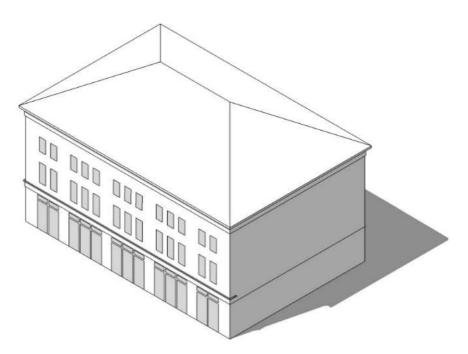


Figure 23-423.f.3.ii.b Hipped Roof

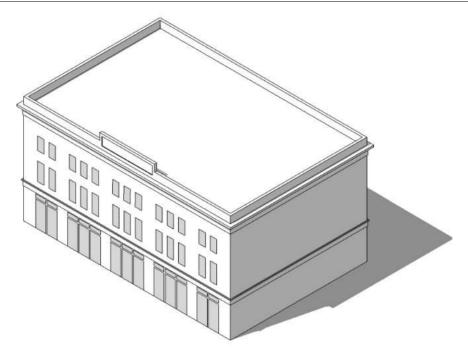


Figure 23-423.f.3.ii.c Flat Roof with Parapet

- iii. **Masonry Detailing**. These masonry standards shall apply to the facades and building walls of all structures which are faced with brick masonry, stone, or cast stone.
  - a. Headers: A header is the horizontal member (or assembly of members) visibly spanning the top of an opening.
    - All openings in masonry construction should be spanned by a header.
    - Permitted header forms shall be the lintel, arch, and jack arch (see Figure 23-423.d.3.iii.a).
    - Headers may be composed of more ornate moldings or pediments. The header shall visually appear able to carry the wall load above.
    - Headers may be comprised of a variety of materials, including: brick, stone, cast stone, cast concrete, wood, and metal.
    - All headers on a building should be of a matching style and material.
    - Headers shall be wider than the opening they span.
  - b. Sill: A sill is the horizontal member (or assembly of members) at the base of a window.
    - All window openings in masonry construction shall have a sill at their base.
    - Sills shall be generally rectangular in form, and slope slightly away from the opening to shed water.
    - Sills may be comprised of a variety of materials. Permitted materials include: brick, stone, cast stone, and concrete.
    - All sills on a building should be of a matching style and material.
    - Sills shall be a minimum of two (2) inches in height and should project from the wall surface a minimum of one half (1/2) inch. Sills shall be slightly wider than the opening.



Figure 23-423.f.3.iii.a Headers Steel Lintel (above) and Brick Jack Arch (below)





Figure 23-423.f.3.iii.b Sills Cast Concrete (above) and Brick (below)

- c. Cap: A cap is the protective top layer of a masonry structure exposed to weather from above, such as a wall, parapet, or chimney.
  - A cap shall protect the tops of all masonry structures exposed to the weather including: garden walls, stair treads, planter edges, parapets, and freestanding piers.
  - Caps shall be comprised of stone, cast stone, brick, concrete, tile, or slate.
  - The edges of caps may be rectangular, or may be more ornate.
  - Caps should project past the edge of the masonry structure below by a minimum of one half (1/2) inch.





Figure 23-423.f.3.iii.c Caps Concrete Pier (above) and Cast Stone Cornice (below)

# iv. Doors and Windows

- a. Principal entrances of every building must directly face a Primary Lot Frontage or public space accessible from the Primary Lot Frontage (see Figure 23-423.e.1.ii). Public space may include a central garden or courtyard when that public space opens directly onto the street. Additional building entrances are permitted.
- b. Entry / Exit Doors: Public entry and exit doors which swing outward shall be recessed into the facade a minimum of three feet from the property line.
- c. Window and door openings in masonry facades should express a structural lintel above to express the conveyance of building weight (see Masonry Detailing). A similar method using wood trim can be used on wood-clad facades.
- d. Windows and doors shall be vertically proportioned. Window openings may be horizontally proportioned, but only if composed of vertically proportioned windows grouped together and each separated by a mullion, column, or wall section with a minimum width of four (4) inches. Horizontally proportioned transom windows are permitted if part of an overall vertical composition.
- e. Permitted window types include: single-, double-, and triple-hung, sash, casement, and transom. Fixed glass windows may be used only within shopfronts or for small accent windows no more than ten (10) square feet in size. Specialty shopfront conditions, such as retractable windows that allow the frontage to open completely, may be permitted by the Administrative Official.

f. Shutters are not permitted in the Downtown Historic Overlay. When used in the D-MU, shutters shall be appropriately sized to cover the window opening, constructed of wood, metal, or composite material, and must be fully operable. "Shutter Dogs" shall be used to hold all shutters in place while open.

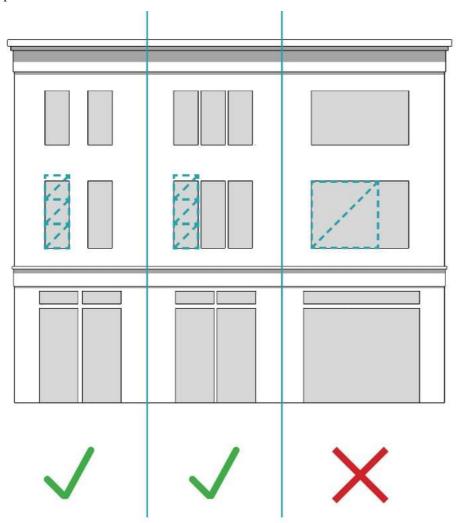


Figure 23-423.f.3.iv.a: Window proportions



Figure 23-423.f.3.iv.b: Shutter dog

# v. Columns & Railings

- a. General Regulations for Columns
  - All columns shall be either round or square in section.

- All columns shall be spaced at regular intervals and shall create openings which are square or vertically proportioned. (See Figure 23- 423.f.3.v.a1)
- Columns shall be constructed of wood, metal, stone, cast stone, brick, or fiberglass.
- Columns shall be a minimum of six (6) inches in width and depth.
- Columns should always support a structural spanning element, such as a beam, arch, or entablature. (See Figure 23-423.f.3.v.a2)
- Columns shall always be positioned so that the outside edge of the beam, arch, or entablature above aligns with the neck of the column. (See Figure 23- 423.f.3.v.a3)

# b. Railings

- Railings shall be constructed of wood or metal. A balustrade may be constructed of cast stone.
- All railings shall be supported at the ends by posts or building walls.
- All railings shall be comprised of a top and bottom rail, between which balusters and rungs are affixed.
- Balusters shall never be affixed directly to the floor.
- Parapet walls may be used in place of railings.

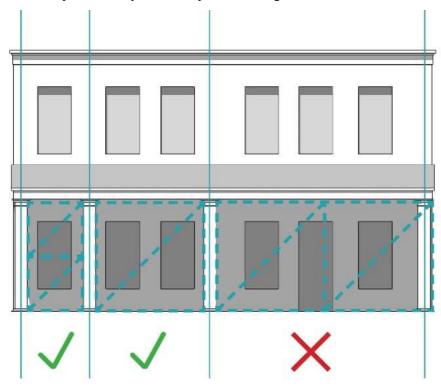


Figure 23-423.f.3.v.a1: Column spacing

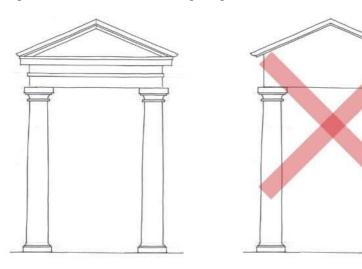


Figure 23-423.f.3.v.a2: Columns spanned by a visually structural element

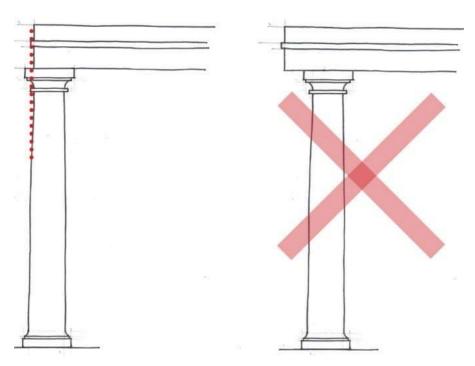
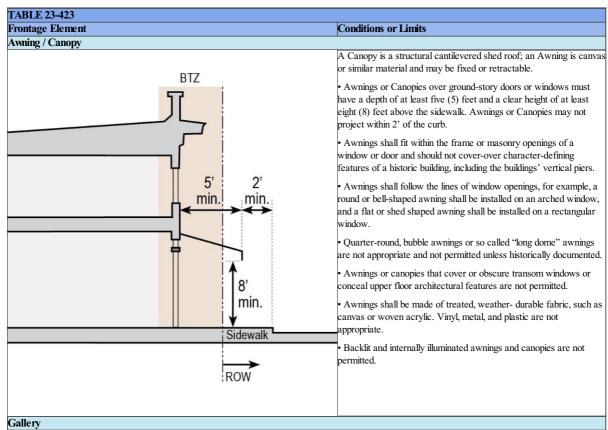
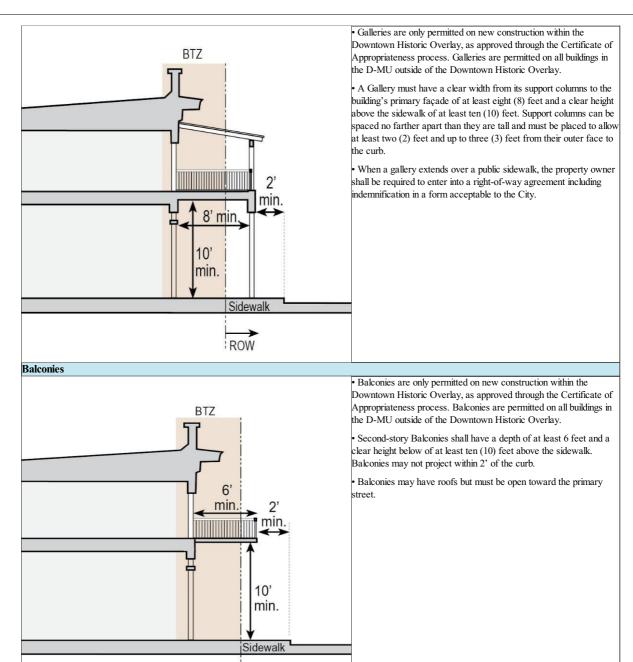


Figure 23-423.f.3.v.a3: Alignment of column neck and face of entablature

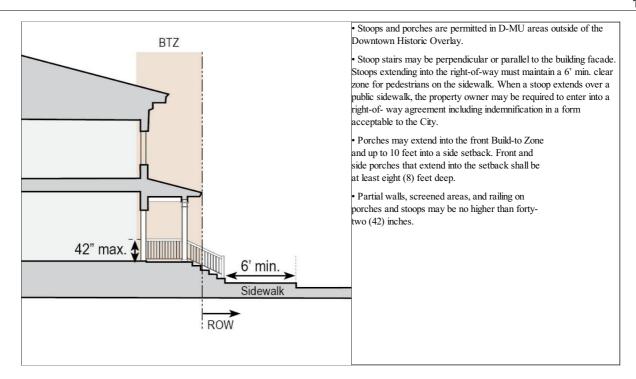
4. **Permitted Frontage Elements** The frontage elements in Table 23-423 may encroach forward of the build-to zone and may encroach into the public right-of-way with approval of the Administrative Official and including indemnification in a form acceptable to the City. Shopfront buildings with the exception of Contributing Buildings in the Downtown Historic Overlay, are required to have an Awning/Canopy, Gallery, or Second-story Balcony extend over at least seventy (70) percent of the building facade, to provide shelter for pedestrians on the sidewalk, reduce glare, and reduce the heat island effect. Contributing Buildings in the Downtown Historic Overlay may have an Awning/Canopy frontage, as provided through the Certificate of Appropriateness process.





ROW

Stoops & Porches



### g. Process for Review and Administrative Waiver.

- 1. Prior to the issuance of a building permit for the construction, renovation, or remodeling of any building exterior façade and/or new development, an approval by the Administrative Official is required. For purposes of this subsection, replacements, renovations or changes to canopies, awnings and to signage on walls, canopies or awnings shall be considered remodeling of the building façade.
- 2. The Administrative Official's decision shall be either an approval, an approval with conditions, or denial. Any applicant may elect to appeal a decision.
- 3. Waivers to the Downtown Mixed-use Design Standards may be granted by the Administrative Official (per Sec 23-422) as follows:
  - i. The Building Location requirements of 23-423.e.1 may be adjusted:
    - a. Where development envisioned by the code is not feasible due to irregularly- shaped parcels or environmental constraints, including mature trees; or
    - b. To allow for a new public green or plaza in front of the building facade. A parking lot is not permitted in front of the building façade.
    - c. Building location standards may not be adjusted for parking, stormwater retention, mechanical equipment, service, loading, or private walled gardens for individual residential units.
  - ii. Exceptions to the standards of 23-423.f (Architectural Standards) may be granted on the basis of architectural merit or where the requirements create undue hardship (as defined in Chapter 23), such as for building reuse or additions in which required elements are incompatible with existing or adjacent structures.
  - iii. Administrative Waivers are discouraged in the Downtown Historic Overlay and on Primary Frontages in the D-MU.

(Ord. No. 2022-37, § 1, 9-07-22; Ord. No. 2023-13, § 2, 4-18-23)

### **Division 3. Special Exception Use Regulations**

### § 23-431. Special exception uses.

a. Land uses which have the potential of disturbing other land uses in the zoning district require a special exception permit and discretionary review to ensure that they will be compatible with the surrounding uses in the zoning district in which they are allowed. Special exception uses are approved only if, in the specific instance under review, the use will be compatible with surrounding uses or can be made compatible through limitations of its operation or enhancements of the site development design.

- b. The special exception permit makes the stipulations of approval mandatory and is valid for the property on which it is issued for as long as the conditions are met, unless the approval stipulates otherwise.
- c. Table 23-421 indicates which uses require special exception permits in the various zoning districts of the city. Application and approval procedures are provided in section 23-216

# § 23-432. General standards.

All special exception uses shall comply at minimum with the following standards. Additional requirements may be made by the approving body to ensure compatibility of uses.

- a. All special exception uses shall be subject to the general requirements of these development regulations for single lot development, structures, lots, yards and vehicular use area as well as the specific dimensional requirements for lots and structures for the zoning district in which the special exception use is proposed.
- b. If the use is listed as a specific use in article III, division 3, the standards of that division must be met in addition to other applicable standards.
- c. When a particular special exception use requires permitting or licensing by county, state or federal agencies, no building permit or certificate of use shall be issued until the applicable county, state or federal permits, licenses or other authorizations have been presented.

# § 23-433. Review criteria.

- a. The permit granting authority for special exception use permits shall use the following criteria to determine whether a use is appropriate at the proposed location and to formulate any stipulations of approval deemed necessary to render the use compatible with the neighborhood. Stipulations of approval that may be imposed by the permit granting authority are not limited to the types specifically noted in the review criteria.
  - 1. consistency with the comprehensive plan, particularly in regard to the compatibility of the use with uses allowed under the future land use map classification of land in the neighborhood, whether those lands have been developed or not.
  - 2. the effect of the use on development and economic value of properties, including undeveloped lands, in the neighborhood.
  - 3. general compatibility of the use with existing land uses in the neighborhood with regard to proposed hours of operation, noise, fumes, dust, traffic, glare, dust, vibrations, and other characteristics. Conditions may be imposed such as requirements for buffers, noise barriers, additional setbacks, and/or limitations on activities and hours of operation to lessen impacts.
  - 4. suitability of building(s) in terms of size, type, and location on the site. Setbacks in excess of those required for the zone in which the property is located may be required to lessen the effect of the use.
  - 5. adequacy of parking and ingress/egress to the site and buildings with particular regard for automobile and pedestrian safety and convenience, traffic generation, flow and control, and emergency access.
  - 6. refuse and service areas, including loading and unloading facilities and practices, in regard to location, availability, adequacy, and effect upon surrounding properties.
  - 7. utilities, in regard to location, availability, adequacy, and effect upon surrounding properties.
  - 8. proposed signs and exterior lighting with reference to glare, traffic safety, and compatibility and harmony with the character of the neighborhood. Restrictions on sign types, sizes, locations, lighting, materials, and colors may be imposed for the purpose of increasing compatibility, provided adequate signage is allowed for viability of the proposed use.
  - 9. environmental quality of the area in which the use is proposed and the effect the special exception use might have on such quality.
  - 10. buffering and screening of the use from surrounding properties and from view from public roads, pathways, and parks.
- b. For the purposes of this section, "neighborhood" shall mean the area that the permit granting authority determines will be affected by the proposed use, and shall not necessarily be limited to immediately adjacent properties.

# § 23-434. Discontinued use (moved to 23-216.6.b.)

Effective: Tuesday, July 07, 2015

(Ord. No. 2015-04, § 3, 7-7-15)

# **Division 4. Planned Development Project Regulations**

# § 23-441. Applicability.

Planned development project (PDP) approval is required for projects meeting the criteria set forth in section 23-224.1.

A planned development project (PDP) may be approved in any zoning district through the process set forth in section 23-224. This section sets forth the standards for PDPs.

# § 23-442. General standards and regulations.

The PDP process is intended to promote high quality site design, and its use is encouraged. The process allows flexibility in project layout and relief from standard subdivision grids in order to preserve natural features of the land, maximize common open space and landscaping, and create vital neighborhoods. Creativity in housing types and site layout are encouraged.

Although the PDP process allows flexibility in regard to the requirements of this chapter, a PDP shall be approved only if the proposed plan demonstrates that the product will be superior to that of a standard subdivision. The PDP process is not intended to circumvent the regulations for residential development, but to allow creativity and variety. Deviation from the provisions of this chapter concerning lot size, setbacks, roadway design, and other requirements will be granted only if the proposed alternative allows for a superior project layout, provides enhanced open space and preservation of natural features, does not subvert the intent of this chapter, and does not compromise public safety.

- a. *Density and intensity*. PDPs may not exceed the density or intensity limitations established in the Future Land Use Element of the Comprehensive Plan for the land use classification applicable to the property or the density or intensity limitations of the zoning district in which the property is located.
- b. *Land uses*. Uses within a PDP are limited to permitted and special exception uses allowed in the zoning district in which the property is located, except that PDPs may include residential uses in areas where mixed use is a designated use under the Future Land Use classification of the property in the Comprehensive Plan. See Table 23-421 for permitted and special exception uses.
- c. Development standards.
  - 1. All planned developments shall comply with the provisions of this chapter, including land development regulations under article III and dimensional requirements for lots and structures under article IV and V, as applicable, unless specific waivers of requirements are approved under this section. (Note that a waiver of front yard requirements for accessory structures on subdivision lots with frontage on both an exterior and interior streets may be granted pursuant to section 23-522 without PDP approval.
  - 2. All planned developments shall adhere to the minimum design standards set forth in this section for the type of PDP proposed.
  - 3. All planned developments shall be consistent with all of the design guidelines set forth in this section for the type of PDP proposed. The "methods for achieving" a design guideline are suggestions; a guideline may be effectively addressed through other design features, not necessarily listed under a guideline.
- d. *Waivers*. Waivers of specific development standards of this chapter may be granted under the PDP process, except that the provisions for concurrency pursuant to article VII, div. 1, for public facilities impact fees pursuant to article VII, div. 4, and for resource protection pursuant to article VI shall not be waived.

e. *Master Plan*. Approval of a master plan of the proposed development, encompassing the entire property, is required prior to or in conjunction with approval of a preliminary plan for the first phase of a residential PDP. (See subsection 23-224.2 b)2 for procedural requirements.) The purpose of the master plan is to establish an overall design for the development. It is a concept plan, showing generalized features of the project, including natural features, connections to surrounding roadways and proposed internal circulation, proposed neighborhoods with acreage and proposed housing types and densities, proposed open space and recreation areas, the concept for connecting with utilities, and proposed phasing. Approval of the master plan does not constitute approval of any phase or the specific number of lots or units to be permitted within any phase.

The master plan must demonstrate that the site design accomplishes the following:

- a. Preserves and highlights the natural features of the property; incorporates existing trees, wetlands, ponds, natural topographic variation, and proposed storm water retention areas into the site layout and showcases them as design features for common enjoyment;
- b. Proposes a coherent network of streets and bike/pedestrian paths connected to surrounding roadways;
- c. Establishes discrete and identifiable neighborhoods and avoids the monotony of long rows or blocks of units or lots; provides a basis for varied streetscapes;
- d. Provides for an identity and privacy for future residents, but does not create a development that is isolated from the surrounding community.

### § 23-443. Residential PDPs.

Effective: Tuesday, March 01, 2022

Sec. 23-443.1 Minimum design standards—Residential PDPs. The preliminary plan for a residential PDP shall demonstrate that the site design complies with the minimum design standards of this section.

- a. *Density*. The number of units per acre shall not exceed the maximum as allowed for the classification of the property under the Future Land Use Element of the Comprehensive Plan. Acreage for density calculations shall not include areas of open water or lands within the "Conservation" classification of the Future Land Use Map.
- b. *Open space*. Excluding roadways and parking areas open space shall make up a minimum of twenty (20) percent of the site area. The recreation area required under section 23-310 may be included to meet the open space requirement except that recreation buildings and parking areas shall not be included.
- c. Recreation area. At minimum, recreation area shall be provided as required under section 23-310.
- d. *Parking spaces*. In single-family and duplex PDPs where reductions in minimum lot size are granted, and in all multi-family PDPs, visitor parking areas with spaces in a ratio of one space per 10 dwelling units shall be provided in each neighborhood in addition to the minimum of 2 parking spaces for each dwelling unit. In projects of 100 units or more, parking spaces shall be provided at the recreation area in a ratio of one space per ten dwelling units. Recreation area parking in projects with less than 100 units may be used to meet the visitor parking requirement.
- e. *Building setbacks*. The following minimum setbacks for principal buildings are required: 35 feet from any project property line and 50 feet from any major collector or arterial road as defined in section 23-303. For a building with more than one story, the building setback shall be increased by ten feet for each additional story. Exceptions:
  - 1. These requirements shall not apply to single-family houses on lots meeting the requirements for lot area and lot width at the building line for the zoning district in which the property lies.
  - 2. The minimum setback from a non-frontage project property line may be reduced for one-story single-family houses provided the approving authority determines that the reduction will not adversely impact adjacent property and provided the setback is not reduced below the minimum setback required for the house in the zoning district in which the property lies.
  - 3. The minimum front setbacks on a minor collector or local road may be reduced to allow for a neotraditional development.

(Ord. No. 2007-33, § 6, 9-4-2007; Ord. No. 2010-07, § 4, 4-20-10; Ord. No. 2015-02, § 1, 3-17-2015; Ord. No. 2020-30, § 1, 12-02-2020)

Sec. 23-443.2 Design guidelines for residential PDPs. Guidelines in this section are intended to assist the applicant in designing the project and the city in assessing the quality of the proposed development.

a. *Relationship to surrounding area*. The development is not isolated from the surrounding community, but is an integral part of the community. Methods for achieving:

Roadways and pedestrian/bike paths connect to the surrounding roadways, neighborhoods, commercial areas, and parks.

Streets extend or expand the existing street pattern. Collector streets do not terminate within the development.

Perimeter walls are discouraged in developments with under one hundred (100) units. In "gated" communities, perimeter walls are inconspicuous and heavily landscaped. Landscaping has a natural, rather than formalized appearance.

Entrances to the development are understated and do not promote the concept of a development that is separate from the surrounding community.

Pedestrian connections to surrounding streets are provided through landscaped buffers and perimeter walls.

b. *Overall design*. The layout of the development is suited to the configuration and characteristics of the land and integrates natural features into the overall design. Methods of achieving:

Natural features of the land, including wetlands, ponds, hills, and vegetation, are preserved and become the basis for the layout of the development.

Parks and open areas incorporate natural features for the enjoyment of all residents and become focal points for the development and for neighborhoods.

Roadways provide views of natural features and open space.

Changes in elevation are used as a design feature to provide interest.

Commercial areas in mixed-use developments are located for convenient and safe access from outside and inside the development by vehicles and pedestrians.

Location of buildings on ridges is avoided so that the rooftops do not dominate the landscape.

c . Neighborhoods. The development establishes identifiable neighborhoods engendering a feeling of belonging. Methods of achieving:

Dwellings are clustered rather than located in linear patterns on long streets. The number of dwellings in each single-family neighborhood does not exceed fifty (50).

Each neighborhood has its own common open space designed as a focal point and visible from most units. Central greens are encouraged.

Housing styles/types and streetscapes are chosen and designed to distinguish neighborhoods.

Front porches, small front yards, and walkways connecting to the street provide opportunities for social interaction.

d. *Streetscapes*. Streetscapes are designed to provide interest and variety; views of the street are attractive from the dwelling units and from the point of view of the pedestrian walking along the street. Methods of achieving:

Collector roads have landscaped medians or adjacent, landscaped pedestrian/bike corridors. Driveways intersecting collector roads are minimized.

Visual interest is provided along the street through distinctive landscaping and street lighting, and varied street and sidewalk patterns.

Location and orientation of houses or buildings on sites provides variety and distinctiveness to the street.

Building facades and entrance features are varied.

Building sizes and types are designed specifically for the lot size and shape.

Setbacks between houses are varied or breaks are provided in rows of houses for visual relief.

Mini-parks, neighborhood parks, and open space areas are located and landscaped to provide rest stops for pedestrians and to visually punctuate the streetscape. Benches or retaining walls provide seating.

Spine roads and long sections of local streets meander and are attractively landscaped

Long blocks are broken up with landscaped islands.

Plantings are chosen to distinguish the street or neighborhood from others.

Streets are oriented to provide views of open areas and vistas from hillsides.

Intersections have landscaping and design features to add interest and shield houses on corner lots.

Clutter along the street is minimized in dense neighborhoods by grouping mail boxes and trash collection stations, keeping signage to a minimum, and providing visitor parking areas.

See also Lighting.

e. *Street system.* A well-planned street system establishes coherence to the development, provides safe and efficient circulation for vehicles and pedestrians, and defines neighborhoods. Methods of achieving:

A hierarchy of streets is established, providing a coherent circulation system; a maze of local streets is avoided.

Loop roads and branches from a spine road provide access to neighborhoods. The use of *culs de sac* is minimized.

Streets within neighborhoods are designed to provide unity and definition to the neighborhood.

Streets are designed to allow for expansion of the development into nearby areas via collector roads.

f. *Pedestrian circulation*. A comprehensive system of sidewalks and bike paths throughout the development connects dwelling units to recreation areas, parking areas, public transportation stops, common buildings, and adjacent neighborhoods, and provides a safe and attractive walking environment for recreational and practical use.

The pedestrian/bike circulation system is planned as an integral part of the overall design of the development, providing connections between dwelling units and all facilities in the development.

Pedestrian/bike paths running along streets are buffered from the travel ways of streets by landscaped strips.

Pedestrian/bike paths are designed as recreational features or to double as recreational features. Paths that are separate from the vehicular ways are encouraged, provided they are in landscaped corridors and there are sufficient connections between dwelling units and likely destinations.

Paths meander through landscaped areas providing alternative routes for recreational walks and visual variety for the pedestrian; paths do not run unvaryingly parallel to streets.

Paths provide views of open areas, water bodies, wetlands, landscaped areas, streets, and neighborhoods.

g. Focal points and gathering places. Attractive and distinctive focal points and places for residents to gather, meet, and enjoy the outdoors are provided in the development. In keeping with a principle of Frederick Law Olmsted, the best part of the site is kept for the public. Methods of achieving:

In addition to neighborhood and mini-parks, recreation areas are provided to serve the entire community; these are located for easy access by all residents and incorporate and enhance natural features (whether existing or created), such as water bodies and groves of trees.

Landscaped areas double as recreation areas.

Recreation areas are designed to encourage gathering and interaction of residents. Path intersect, and benches or picnic areas are provided at intersections; gazebos, plazas, community buildings, playgrounds, picnic areas, seating near play courts, or similar facilities are provided.

In mixed-use developments, green areas are used to connect and integrate residential and mixed-use or commercial/professional areas.

Small parks provide focal points and gathering places within each neighborhood or for a group of neighborhoods.

Facilities in common areas are provided appropriate to the residents' ages and interests. Playgrounds, play courts, community buildings, bike paths, swimming pools, jogging paths, are examples.

h. *Landscaping*. Landscaping in the development provides visual interest, screening where needed, incorporates existing mature trees and other valuable vegetation, enhances natural features such as wetlands, and minimizes water use. Methods of achieving:

An overall landscaping concept is prepared for the development with attention to streetscape, plantings in recreation and common areas, attractive landscaping around buildings and in yards, retention of existing trees, and appropriateness of plant selections to the environment.

Streets, lot lines, and building envelopes are located to preserve existing trees, particularly in parks, front yards and in landscaped islands and street edges.

Native plant types and low water use species are used extensively.

Rear yards are buffered from roadways by landscaped buffers. A proliferation of individual privacy fences along streets is avoided.

Landscaping is provided to screen lots where a double line of lots is located so that back yards or side yards abut.

Where side building setbacks are small, plant materials are placed to screen side lot lines from the street.

All dumpsters and other mechanical facilities are screened attractively.

Frameworks for plants to grow on, such as trellises or arbors, are provided in parks and yards.

Existing or new large-caliper trees are used at focal points, providing the immediate impact of mature trees.

i. *Parking and access*. Sufficient provision is made for resident and visitor parking and access for services, such as deliveries and garbage pick-up, without street congestion or interference with sidewalks. Parking facilities do not dominate the streetscape. Methods for achieving:

Garages are recessed or oriented so that garage doors do not face the street.

Driveways run along the side of dwellings or extend to the back of the dwelling.

Parking areas are located to the side and rear of buildings; parking areas along street frontages are minimized.

Parking areas are set back from the road and are screened with landscaping, fences, or berms.

Small pods of parking are designed rather than large parking lots.

There is adequate street width where street parking is permitted.

Alleys provide service access and additional parking.

Driveways to dwellings are of adequate length to provide parking without vehicles encroaching on sidewalk.

Additional parking is provided for visitors and for recreation areas.

j. *Lighting*. Lighting is adequate for safety and enhances the streetscape, residential sites, parking areas, signs, and recreation facilities without being excessive or creating glare. Methods for achieving:

Light fixtures are directed downward to the areas targeted for illumination and do not create glare.

Decorative lighting is provided in recreation areas and along streets and pedestrian paths.

Signage is illuminated by upward directed spot lights and is not internally lit.

Bus stops, trash receptacles, mailboxes, and other facilities are well lit and accessed by pedestrian paths.

k. Neighborhood scale. Buildings are of appropriate scale for the lot or site and are compatible with adjacent existing or proposed development. Methods for achieving:

Architectural styles are chosen or guidelines are developed for each neighborhood in keeping with the lot sizes and layout in the neighborhood.

Multi-family buildings are broken into house-size building elements, especially where there is a building height transition from adjoining development.

Open space and landscaping separate neighborhoods or buildings with different scales.

Infill development is of the same scale as existing development in the neighborhood. Where proposed buildings are larger than existing buildings, the mass of the building is set back from the street, and the portion of the building along the street is compatible in scale with adjacent buildings.

Upper story planter boxes and roof plantings are provided for interest.

1. *Privacy, safety, and security.* Buildings and neighborhoods are designed to provide privacy, safety, and security for residents. Methods for achieving:

Window placement and landscaping provide privacy between houses, particularly on lots with small side yard setbacks.

Upper floors are stepped back to increase the distance of windows from the property lines.

Side and rear setbacks are not uniform; a side setback on one (1) side of a house is greater than on the other.

A greater side setback is provided for two-story houses than for one-story.

Front windows provide views of streets and neighborhood parks.

Rear yards are screened from adjacent rear yards through careful building configuration and landscaping.

Neighborhoods are small and have distinct entrances to promote a neighborhood identity and a sense of belonging for residents.

Where street parking is permitted, sidewalks are provided.

(Ord. No. 2006-24, § 15, 6-6-2006; Ord. No. 2022-06, § 1, 3-01-22)

# § 23-444. Commercial, industrial, and professional PDPs.

Sec. 23-444.1 Minimum design standards.

- a. *Intensity*. The PDP may not exceed the limits of intensity set forth in the Comprehensive Plan for the Future Land Use classification of the property where the PDP is proposed.
- b. *Building setbacks*. Principal buildings shall be set back thirty-five (35) feet from adjacent residential uses and zones and twenty (20) feet from other external property lines except front property lines. Principal buildings fronting on roads exterior to the project shall adhere to the front setback required in the zoning district where the project is located.
- c. *Buffers*. A ten-foot wide, landscaped separation strip shall be provided along all property lines abutting a residential use or zone. Within this strip, a permanent visual screen, such as a wall or evergreen hedge, with a minimum height of six (6) feet shall be provided.

Sec. 23-444.2 Design guidelines.

a. *Relationship to surrounding area*. The development is not isolated from the surrounding community, but is an integral part of the community. The site plan for the development is complementary to site features of surrounding development and does not create incompatible juxtapositions. Methods for achieving:

Pedestrian and bike paths connect the development with surrounding residential and non-residential land uses and with pedestrian and bike paths along roadways in the vicinity of the project.

Cross access easements, roadway connections, and location of entrances facilitate vehicular access to the development from residential and non-residential land uses in the area surrounding the project.

Open space in the development is connected to open space and parks in adjacent development.

The backs of buildings, loading docks, outdoor storage areas, and dumpsters are located away from surrounding residential and other sensitive uses and are screened with attractive landscaping and/or fencing from adjacent uses and roadways.

Distance and solid fencing reduce noise from such uses as dumpsters and loading docks.

The scale, architectural style, and location of buildings is chosen to be compatible with surrounding development and to provide transitions from large or massive buildings to surrounding land uses, particularly single-family development.

b. *Natural features of land*. The layout of the development is suited to the configuration and characteristics of the land and integrates natural features into the overall design. Methods of achieving:

Natural features of the land, including wetlands, ponds, hills, and vegetation, are preserved and become the basis for the layout of the development.

Open areas incorporate natural features become focal points for the development.

Site layout allows views of natural features and open space from project entrances and public spaces such as restaurants and outdoor plazas.

Changes in site elevation are used as a design feature to provide interest.

c. *Unified concept*. The project creates an attractive and pleasant grouping of buildings with a unique identity and sense of place for employees and clients; buildings are not lined up parallel to the roadway with a large parking lot in front. Methods for achieving:

Buildings have architectural harmony and are located in functional and attractive groupings.

A design concept for the development, including out-parcels, promotes functional and architectural coherence. The concept addresses the relationships of buildings in terms of appearance and access by vehicles and pedestrians, includes plazas for outdoor gatherings, incorporates open space and natural features into the design, and provides attractive landscaping throughout.

Outparcels are situated to complement the overall design and do not visually dominate the project frontage.

Parking areas are designed for both convenience and attractiveness. Large areas of asphalt are avoided through sectioning off small parking areas, using landscaped separation strips, and through creative site layout.

Signage and landscaping are planned to unify buildings and uses and to promote design coherence to the whole project.

The development has a unifying feature or features, such as a central plaza, giving a sense of overall design and providing places for outdoor events and social interaction.

The site layout and landscaping avoids the appearance from the street of a huge, unrelieved parking lot.

d. Circulation. The development is easily accessible to vehicles, bicycles, and pedestrians. Methods for achieving:

Vehicular entrances and access roads do not direct traffic entering the site directly to the front of the building, but to parking aisles.

The site design integrates parking among the buildings or wraps parking around two (2) or more sides of buildings rather than consolidating all parking spaces in a large parking area that is segregated from the building(s).

Multiple pedestrian access points to a group of buildings and adjacent parking areas avoids vehicular congestion at the front of a building and competition for parking near one (1) entrance.

The distance from any parking space to a building entrance is minimized; optimum distance: less than one hundred fifty (150) feet.

Parking aisles are short and wide to allow safe passage of pedestrians and vehicles.

Bicycle lanes or paths are provided from adjacent bike paths and local streets; bike racks are provided close to buildings.

Walkways, separate from vehicular ways are provided for pedestrians.

e. *Landscaping and lighting*. An attractive and pedestrian-scale atmosphere is created through abundant landscaping and pleasant, unobtrusive lighting. Methods for achieving:

Landscaped areas create green corridors through and around parking areas, breaking up large areas of parking.

Large caliper trees are preserved or planted in selected focal areas to provide immediate mature landscaping.

Lighting poles are decorative, low, and directed downward to light parking areas and pedestrian paths.

Landscaped areas are combined with pedestrian paths.

Tree locations and species are chosen to provide shade in parking areas and plazas.

Outdoor eating areas are located in areas specifically designed for them, such as plazas between buildings or open areas distant from high vehicular traffic.

(Ord. No. 2007-33, § 7, 9-4-2007)

### § 23-445. Mixed-use PDPs.

Effective: Wednesday, September 19, 2018

Mixed-use PDPs are allowed in C-1, C-2R, C-5, and PF zoning districts, and in the C-2 and C-3 zoning district where allowed under the land use classification on the Future Land Use Map of the Comprehensive Plan. Mixed-use developments in C-2R and PF zoning districts may be approved through the site plan process set forth in 23-222 unless there are multiple principal buildings, in which case, PDP approval is required.

Sec. 23-445.1 Minimum standards.

a. *Density and intensity*. Mixed-use developments shall not exceed the density and intensity limits for the Future Land Use designation of the property as set forth in the Future Land Use Element of the Comprehensive Plan.

Except in the C-1 (downtown) and C-5 (village center) districts, the maximum non-residential square footage allowed in a mixed-use development shall be determined by the following formula: Two thousand five hundred (2,500) times the maximum number of dwelling units allowed on the property per the Future Land Use Classification. Where fewer units are proposed than the maximum number of dwelling units allowed, an additional two thousand five hundred (2,500) square feet of non-residential area shall be added for each unit allowed, but not proposed.

- b. Building setbacks. Except in developments in the C-1 (downtown) and C-5 (village center) districts, principal buildings shall be set back fifty (50) feet from adjacent residential uses and zones and twenty (20) feet from other property lines except front property lines. In all districts, principal buildings fronting on an arterial or major collector road exterior to the project shall adhere to the front setback required in the zoning district where the project is located.
- c. *Buffers*. Except in developments in the C-1 (downtown) and C-5 (village center) districts, a ten-foot wide, landscaped separation strip shall be provided along all property lines abutting a residential use or zone. Within this strip, a permanent visual screen, such as a wall or evergreen hedge, with a minimum height of six (6) feet shall be provided.
- d. *Recreation*. Except in the C-1 district, recreation areas shall be provided per the requirements of section 23-310

Sec. 23-445.2 Design guidelines for mixed use PDPs except village centers. (See section 23-445.3 for design guidelines for village centers.)

The design guidelines for residential and those for commercial, industrial, and professional PDPs shall also apply to mixed use PDPs. In addition, dwelling units within a mixed-use development provide tenants with a setting and amenities appropriate for residential use; apartments do not appear as an afterthought in the development.

Methods for achieving:

Dwelling units are located away from busy roadways or are shielded from traffic noise by solid fencing and landscaping.

Outdoor space for recreation is located conveniently for the use of residents and provides facilities for their enjoyment.

The site layout and landscaping provides for the safety and privacy of residents.

Sec. 23-445.3 Design guidelines for village centers (C-5 districts).

a. *Overall concept*. A village center is a commercial, business, and social center with the characteristics of a traditional downtown. Its primary focus is serving residents in the surrounding residential area though it may have businesses that attract patrons from the larger community. Methods for achieving:

The center contains a variety of uses catering to residents, such as convenience stores, barber shops and hair salons, dry cleaning businesses, restaurants, branch banks, and video rental stores.

Mixed use buildings containing businesses and residences, as well as residential buildings, are included in the village center. Residential densities decrease with distance from the center, providing a transition to low density residential areas.

Buildings are arranged in a compact configuration with a pedestrian orientation.

Public spaces, such as plazas and central greens, provide focal points, informal gathering places, and opportunities for special events.

The village center is designed to serve the pedestrian rather than the vehicle.

b. Access and circulation. Access to the village center is safe and convenient for pedestrians, bicycles, and vehicles from nearby residential areas as well as exterior roadways; the village center is oriented for the pedestrian rather than the vehicle.

Access to the village center from surrounding residential areas is safe and convenient for pedestrians, bicycles, and vehicles.

Bike racks are provided close to businesses and parks.

A major or minor collector provides access from exterior roadways to the village center and provides a transition to minor collectors and local streets within the village center.

The village center streets have low speed limits and a comprehensive system of sidewalks and crosswalks.

Peripheral parking areas are provided; street parking is permitted.

Parking areas are located to the side and rear of buildings and serve multiple businesses.

c. Open space. Open space in the village center provides recreation for its residents and visitors and provides areas for special events. Methods for achieving:

Parks and open space provide connections between residential areas and the village center.

Plazas, greens, neighborhood parks, and mini-parks are centrally located within the village center.

Benches, gazebos, landscaping, decorative lighting and other facilities are provided to encourage social interaction and enjoyment of open space in the village center.

Outdoor eating areas are provided away from vehicular traffic and adjacent to public spaces.

d. Streetscape. The village center streetscape is similar to the traditional downtown. Methods for achieving:

Buildings are located close to streets and have direct access to the sidewalk.

Streets have sidewalks with low, decorative lighting, street trees, and street furniture.

Less than thirty (30) percent of the street frontage is occupied by parking areas.

Architectural guidelines ensure that all buildings in the village center are compatible in style and scale. No large scale buildings dominate the streetscape.

(Ord. No. 2018-07, § 5, 09-19-18)

### Division 5. Master Development Plan Regulations

## § 23-450. Master Development Plan (MDP)

Effective: Tuesday, October 20, 2020

## Sec. 23-450.1 Purpose and Intent.

The Master Development Plan process is designed to promote a form of development that is intended to encourage high quality master planned community development on large tracts of land, in order to promote a jobs/housing balance and a development pattern that <u>can</u> reduce reliance on the personal automobile by allowing a greater variety of land uses closer to work and home; protect and enhance environmental assets and provide for an orderly transition of land uses through a planning process that incorporates a build out vision with proper timing and location of adequate public facilities. This process is intended to facilitate the implementation of planned development zoning and Policy 2.18 of the Comprehensive Plan.

### **Unified Development**

An applicant who intends to file an MDP application shall present evidence of the unified control of the development area, and shall agree, if they proceed with the proposed development, to do so in accordance with the following:

- •The adopted MDP and all applicable conditions that are contained in a Development Order that accompanies the MDP.
- •Provide agreements, contracts, deed restrictions, covenants or sureties acceptable to the City for completion of the undertaking in accordance with the adopted MDP, as well as for the continuing operation and maintenance of such areas, functions and facilities that are not to be provided, operated or maintained at the expense of the general public.
- Bind their development successors in title to any commitments made in the above stated conditions.

**Sec.** 23-450.2 *Relationship to Comprehensive Plan* The MDP is intended to implement Policy 2.18 of the Comprehensive Plan, regarding Mixed-use development, by establishing a process for the development of major centers of suburban/urban activity, in areas with a high level of public facility availability, promoting a horizontal or vertical mix of residential and nonresidential uses, achieving internal trip capture and the development of a high quality environment for living, working or visiting. Density and/or intensity shall not exceed the maximums established in the Comprehensive Plan.

**Sec. 23-450.3** *Applicability.* An MDP may be approved in the Planned Development Mixed-use zoning district. The MDP process is intended to accomplish the following:

- 1. Establish complimentary groupings of residential, commercial, office, industrial, or other uses.
- 2. Promote large-scale master planned development at appropriate locations, in accordance with the goals, objectives, and policies of the Comprehensive Plan and in accordance with the requirements herein.
- 3. Development shall be designed with carefully located buildings, parking and service areas, open space and use mixtures that are scaled and balanced to reduce general traffic congestion, by providing interdependent uses and uses that are compatible with adjacent and surrounding land uses.
- 4. Application of appropriate review criteria shall be based on the specific facts of the proposal. The ranges of density and intensity shall be approved according to the guidelines set forth in the Comprehensive Plan. In no event shall uses permitted with a MDP exceed the maximum density or intensity in the Comprehensive Plan.

### Sec. 23-450.4 MDP Approval Process.

### 1. Application Requirements.

An MDP shall depict internal relationships between or among uses and activities proposed and their supporting systems and facilities, and relation to surrounding uses, activities, systems, and facilities. An MDP shall include all data necessary for determining whether the proposed development meets the specific requirements, limitations and the intent, concerning the Planned Development Mixed-use district.

#### 2. Design Requirements for MDPs.

In addition to other requirements stated in this section, the following standards shall be met, and compliance must be demonstrated with MDP approval.

- **A. Relation to public utilities, facilities and services.** MDPs shall be located in relation to transportation systems, sanitary sewers, emergency services, schools, public safety, water lines, storm and surface drainage systems and other utilities systems, including reclaimed water when the City makes it commercially available, and installations to ensure that services can reasonably be expected to be available at the time of request for concurrency reservation.
- **B. Relation to major transportation facilities.** MDPs, where appropriate because of the size or intensity of proposed development, shall be so located with respect to expressways, arterial and collector streets or mass transit facilities, and shall be designed to provide access to and from such districts without creating excessive traffic along minor streets in residential neighborhoods outside the project boundary.
- **C.** Compatibility to adjacent properties. MDPs shall be located and designed to minimize the negative effects of external impacts resulting from factors such as traffic, noise or lights. Project control shall be accomplished through such techniques as buffering, architectural design, site design, height transitions, and density or intensity transitions.
- **D. Transitions.** MDPs shall be responsive to the character of the area. When located in an area where land use types and/or intensities or densities vary, MDPs shall be designed to provide for appropriate transitions in intensity and/or density.
- **E. Design quality.** All MDPs shall be designed to address all of the criteria as set forth in this Section and shall generally be superior in design to conventional development site plans (like providing a hierarchy of the roadway network, unique public parks, wayfinding or other such upgrades), and consistent with all other factors in this Section.
- **F. Relationship to adjacent property.** Projects approved with MDPs shall include screening, buffering, transitional uses or other design features, as necessary to adequately protect existing or anticipated uses of surrounding property; and shall provide functional and logical linkages to activity centers and circulation facilities on such adjacent property.
- **G.** Access. Principal vehicular access points shall be designed to encourage smooth traffic flow with controlled turning movements and minimum hazards to vehicular or pedestrian traffic.

Vehicular access to streets or portions of streets from off-street parking and service areas shall be combined, limited, located, designed and controlled to channel traffic from and to such areas conveniently, safely, and in a manner which minimizes traffic friction, and excessive interruptions.

**H.Streets, drives, parking & service areas.** Streets, drives, parking and service areas shall provide safe and convenient access to all buildings and general facilities. Commercial and office uses shall be grouped in relation to parking areas so that after visitors arrive by automobile, establishments can be visited with a minimum of internal automotive movements. Facilities and access routes for deliveries, servicing and maintenance shall be located and arranged to minimize interaction with pedestrian traffic. Loading zones where customers pick up goods shall be located and arranged to minimize interaction with pedestrian movement, fire lanes, and other vehicular travel ways.

For all rights-of-way and private streets in planned developments, the following minimum design considerations shall be adequately addressed:

- 1. Safe vehicular travel;
- 2. The manner in which pedestrians, including the physically handicapped, can traverse in the planned development;
- 3. Structural stability of ALL construction materials;
- 4. Utility distribution, power, sewer, cable, potable water and fire protection routing, location, and sizing;
- 5. Horizontal and vertical sight distances;
- 6. Traffic safety requirements;
- 7. Emergency vehicle maneuverability and access;
- 8. Logical future extension of inter-neighborhood ties.
- I. Pedestrian systems. MDPs shall provide internal or external walkways to facilitate pedestrian circulation.

The future site plans shall provide for safe, efficient, convenient and harmonious groupings of structures, uses, facilities and open spaces in a manner facilitating pedestrian movement between major origins and destinations, within and adjacent to the district, with a minimum of conflicts with vehicular traffic. Access for pedestrians and cyclists entering or leaving the district shall be by safe and convenient routes. Where there are crossings of pedestrian ways and vehicular routes at edges of Planned Developments, such crossings shall be safely located, marked and controlled, and where such ways are exposed to substantial vehicular traffic at edges of districts, safeguards shall be required to prevent crossings, except at designated points. Bicycle or pedestrian paths, if provided, shall be so related to the vehicular system that street crossings are combined.

- **J. Natural and historic features, conservation and preservation areas.** MDPs shall be designed to preserve the natural features of the land, such as existing trees and natural topography, and archaeological and historic resources, as much as practicable.
- **K. Density/intensity**. Density and/or intensity may be clustered into development pods but shall not exceed maximums established in the Comprehensive Plan over the entire MDP. Densities/intensities shall be established after consideration of the Comprehensive Plan criteria and limits, neighborhood compatibility, transitions, and site design.
- **L. Height**. Height shall be determined after review of the nature of surrounding land uses to ensure that proposed development will not create any external impacts that would adversely affect surrounding development, existing or proposed.
- **M. Fences and screening.** Fences or vegetative screening along the project edge shall be provided to buffer adjacent parcels from views, lighting, noise or other off-site influence. When adjacent development is of either similar use or intensity, such screening may be reduced at the discretion of the Department Director.
- **N. Yards and setbacks.** Yard and setback requirements shall be established with each MDP to promote general health, safety, welfare, design excellence and neighborhood compatibility. Notwithstanding other required wetland and jurisdictional buffer requirements, all setbacks within a subphase shall maintain consistency with the approved MDP throughout the development. All proposed setbacks shall be shown on the MDP in either graphic or tabular form.
- **O. Trash and utility plant screens**. All central refuse, trash and garbage collection containers shall be screened from sight or located in such a manner so as not to be visible from any public area within or adjacent to the Planned Development district.
- **P. Signs**. Signs shall be in accordance with section 23-526 and 23-545. Alternatively, the development may establish a special sign district to create a strong sense of place and community while allowing each business/development to communicate with the public in a consistent, community-building, coordinated manner. However, a sign plan shall not have increased square footage or heights, unless a variance is obtained through Sec. 23-244.2.
- **Q. Landscaping.** At a minimum, landscaping shall comply with the design guidelines for residential, mixed-use village, or commercial, industrial and professional uses, as described in Sec. 23-450.5 through 450.7.

#### R. Environmental factors

- 1. Water Conservation. Creative site development concepts shall be used in order to promote water conservation. Water requirements may be reduced by providing for:
  - a. The preservation of existing plant communities;
  - b. The reestablishment of native plant communities;
  - c. Limited amount of lawn grass areas;
  - d. The use of site-specific plant materials;
  - e. The use of shade trees to reduce transpiration rates of lower story plant materials;
  - f. Site development that retains stormwater runoff on site; utilize non-standard retention in some areas to provide interest and education (i.e. implementation of Low Impact Design (LID) Standards, such as bioswales, pervious parking, or rooftop gardens; environmental education opportunities along trails, or trail enhancements with native vegetation);
  - g. The use of pervious paving materials;
  - h. Site development that addresses the carrying capacity of the land in its present form; and
  - i. Other environmentally sensitive site development concepts.
- 2. Minimum Open Space Requirements. Minimum open spacerequirements shall be established based upon a site-specific evaluation of the project and surrounding land uses. In no event shall open space be less than 20%.
- 3. Preservation of Existing Plant Communities.

- a. Existing native plant communities on sites proposed for development should be preserved and incorporated into the required open space wherever possible. Existing native plant communities that are specified to remain shall be preserved in their entirety, with all desirable trees, understory, and ground covers left intact and undisturbed.
- b. Existing trees 24" Diameter Breast Height (DBH) at time of measurement, shall be preserved, to the extent possible. Factors to consider for preservation include existing form, spread, height, as well as health and condition of the tree. Site design and long-term viability of the tree shall also be considered. If appropriate root zone protection and drainage can be provided, a tree should be preserved. Otherwise, trees that are anticipated to be significantly impacted by development may be removed.
- **S. Rights-of-Way and Utility Standards.** All improvements shall adhere to City requirements for all public and private rights-of-way construction.
- T. Stormwater Management. Stormwater management facilities shall adhere to City requirements.
- **U. Consistency with Comprehensive Plan.** No MDP shall be approved if it is inconsistent with the Comprehensive Plan.
- **V.Other Factors.** Other factors shall be applied which:
  - 1. Address views from limited access highways and major connectors;
  - 2. Generally, require greater open space than permitted in standard districts;
  - 3. Provide screening for exterior storage;
  - 4. Encourage parking and loading areas away from arterial roadways;
  - 5. Provide quality construction material and superior design;
  - 6. Maximize use of buffers and berms; and
  - 7. Otherwise encourage the establishment of high-quality projects at these critical locations.
- 3. Additional information. Additional information may be requested by the Administrative Official at the time of the preapplication meeting, when necessary to review a MDP. Such information, if requested by the Administrative Official, shall be provided at time of application submittal.
- 4. Site Plans. Demonstration of compliance with specific design standards shall be required at time of preliminary site plan as described in section 23-222.4.a.3. Exterior boundaries of an MDP shall be of a character and so located, designed, and buffered to establish a transition of intensity and uses across district boundaries.
- MDPs shall provide landscaped and pervious areas. In no event shall the landscaped and pervious area be less than 20% of the land area of the district.
- 5. Proposed Uses. Each use listed in the application must be a permitted or accessory use in the Planned Development Mixed-use district and shall be listed using the terminology used in this Code. To promote compatibility, the range of permitted uses may either be limited, or certain uses may not be permitted by the City Commission at the time of MDP approval.

### Sec. 23-450.5 Residential Design guidelines

Unless specific design criteria are established by the applicant, with the submittal of the MDP, the following design standards may be incorporated in the project design. Guidelines in this section are intended to assist the applicant in designing the project and the City in assessing the quality of the proposed development.

- a. Relationship to surrounding area. The development is not isolated from the surrounding community but is an integral part of the community. Methods for achieving:
- Roadways and pedestrian/bike paths connect to the surrounding roadways, neighborhoods, commercial areas, and parks. Streets extend or expand the existing street pattern. Collector streets do not terminate within the development. Pedestrian connections to surrounding streets are provided through landscaped buffers and perimeter walls.
- b. Overall design. The layout of the development is suited to the configuration and characteristics of the land and integrates natural features into the overall design. Methods of achieving:
- Natural features of the land, including wetlands, ponds, hills, and vegetation, are preserved and become the basis for the layout of the development. Parks and open areas incorporate natural features for the enjoyment of all residents and become focal points for the development and for neighborhoods. Roadways provide views of natural features and open space. Changes in elevation are used as a design feature to provide interest. Commercial areas are located for convenient and safe access from outside and inside the development by vehicles and pedestrians.
- c. Neighborhoods. The development establishes identifiable neighborhoods engendering a feeling of belonging. Methods of achieving:

Dwellings are clustered rather than located in linear patterns on long streets. Each neighborhood may have its own common open space designed as a focal point and visible from most units. Central greens are encouraged. Housing styles/types and streetscapes are chosen and designed to distinguish neighborhoods. Front porches, small front yards, and walkways connecting to the street provide opportunities for social interaction.

d. Streetscapes. Streetscapes are designed to provide interest and variety; views of the street are attractive from the dwelling units and from the point of view of the pedestrian walking along the street. Methods of achieving:

Collector roads may have landscaped medians or adjacent, landscaped pedestrian/bike corridors. Driveways intersecting collector roads are minimized. Visual interest is provided along the street through distinctive landscaping and street lighting, and varied street and sidewalk patterns. Location and orientation of houses or buildings on sites provides variety and distinctiveness to the street. Building facades and entrance features are varied. Mini-parks, neighborhood parks, and open space areas are located and landscaped to provide rest stops for pedestrians and to visually punctuate the streetscape. Spine roads and long sections of local streets meander and are attractively landscaped. Long blocks are broken up with landscaped islands. Plantings are chosen to distinguish the street or neighborhood from others. Streets are oriented to provide views of open areas and vistas from hillsides. Intersections have landscaping and design features to add interest and shield houses on corner lots. Clutter along the street is minimized in dense neighborhoods by grouping mailboxes and trash collection stations, keeping signage to a minimum, and providing visitor parking areas.

e. Street system. A well-planned street system establishes coherence to the development, provides safe and efficient circulation for vehicles and pedestrians, and defines neighborhoods. Methods of achieving:

A hierarchy of streets is established, providing a coherent circulation system.

Loop roads and branches from a spine road provide access to neighborhoods.

Streets within neighborhoods are designed to provide unity and definition to the neighborhood.

Streets are designed to allow for expansion of the development into nearby areas via collector roads.

f. Pedestrian circulation. A comprehensive system of sidewalks and bike paths throughout the development connects dwelling units to recreation areas, parking areas, public transportation stops, common buildings, and adjacent neighborhoods, and provides a safe and attractive walking environment for recreational and practical use.

The pedestrian/bike circulation system is planned as an integral part of the overall design of the development, providing connections between dwelling units and all facilities in the development.

g. Focal points and gathering places. Attractive and distinctive focal points and places for residents to gather, meet, and enjoy the outdoors are provided in the development. Methods of achieving:

In addition to neighborhood and mini-parks, recreation areas are provided to serve the entire community; these are located for easy access by all residents and incorporate and enhance natural features (whether existing or created), such as water bodies and groves of trees. Landscaped areas double as recreation areas. Recreation areas are designed to encourage gathering and interaction of residents. Path intersect, and benches or picnic areas are provided at intersections; gazebos, plazas, community buildings, playgrounds, picnic areas, seating near play courts, or similar facilities are provided. Green areas are used to connect and integrate residential and mixed-use or commercial/professional areas. Small parks provide focal points and gathering places within each neighborhood or for a group of neighborhoods.

h. Landscaping. Landscaping in the development provides visual interest, screening where needed, incorporates existing mature trees and other valuable vegetation, enhances natural features such as wetlands, and minimizes water use. Methods of achieving:

An overall landscaping concept is prepared for the development with attention to streetscape, plantings in recreation and common areas, attractive landscaping around buildings and in yards, retention of existing trees, and appropriateness of plant selections to the environment. Streets, lot lines, and building envelopes are located to preserve existing trees, particularly in parks, front yards and in landscaped islands and street edges. Native plant types and low water use species are encouraged. Rear yards are buffered from roadways by landscaped buffers. All dumpsters and other mechanical facilities are screened attractively.

i. Parking and access. Sufficient provision is made for resident and visitor parking and access for services, such as deliveries and garbage pick-up, without street congestion or interference with sidewalks. Parking facilities do not dominate the streetscape. Methods for achieving:

To the extent practical, parking areas are set back from the road and are screened with landscaping, fences, or berms. There is adequate street width where street parking is permitted. Alleys may be used to provide service access and additional parking. Driveways to dwellings are of adequate length to provide parking without vehicles encroaching on sidewalk. Additional parking is provided for visitors and for recreation areas.

j. Lighting. Lighting is adequate for safety and enhances the streetscape, residential sites, parking areas, signs, and recreation facilities without being excessive or creating glare. Methods for achieving:

Light fixtures are directed downward to the areas targeted for illumination and do not create glare. Decorative lighting is provided in recreation areas and along streets and pedestrian paths. Shorter light poles with closer spacing is preferred to create safe pedestrian and traffic areas. Bus stops, trash receptacles, mailboxes, and other facilities are well lit and accessed by pedestrian paths.

### Sec. 23-450.6 Design guidelines for Mixed-Use Villages.

a. Overall concept. A mixed-use village incorporates the characteristics of a traditional downtown with residential, commercial, business, and social centers. Its primary focus is serving residents in the surrounding residential area though it may have businesses that attract patrons from the larger community. Methods for achieving:

Mixed-use buildings containing businesses and residences, as well as residential buildings, are included in the mixed-use village. Residential densities should decrease with distance from the center, providing a transition to low density residential areas. Buildings are arranged in a compact configuration with a pedestrian orientation. Public spaces, such as plazas and central greens are encouraged to provide focal points, informal gathering places, and opportunities for special events.

b. Access and circulation. Access to the mixed-use village is safe and convenient for pedestrians, bicycles, and vehicles from nearby residential areas as well as exterior roadways; the mixed-use village should incorporate design elements that prioritize the pedestrian, rather than the vehicle.

Access to the mixed-use village from surrounding residential areas is safe and convenient for pedestrians, bicycles, and vehicles. Bike racks are provided close to businesses and parks. The mixed-use streets generally have low speed limits and a comprehensive system of sidewalks and crosswalks. Peripheral parking areas are provided; street parking is permitted.

c. Open space. Open space in the mixed-use village provides recreation for its residents and visitors and provides areas for special events. Methods for achieving:

Parks and open space provide connections between residential areas and the mixed-use village. Plazas, greens, neighborhood parks, and mini parks are centrally located within the mixed-use village. Benches, gazebos, landscaping, decorative lighting and other facilities are encouraged to promote social interaction and enjoyment of open space in the mixed-use village. Outdoor eating areas are encouraged.

d. Streetscape. The mixed-use village streetscape is similar to the traditional downtown. Methods for achieving:
Buildings are located close to streets and have direct access to the sidewalk. Streets have sidewalks with decorative lighting, street trees, and street furniture. Large scale buildings should not dominate the streetscape.

### Sec. 23-450.7 Commercial, industrial, and professional Design guidelines.

a. Relationship to surrounding area. The development should not be isolated from the surrounding community but should be an integral part of the community. The site plan for the development is complementary to site features of surrounding development and does not create incompatible juxtapositions. Methods for achieving:

Pedestrian and bike paths should connect the development with surrounding residential and non-residential land uses and with pedestrian and bike paths along roadways in the vicinity of the project. Cross access easements, roadway connections, and location of entrances should facilitate vehicular access to the development from residential and non-residential land uses in the area surrounding the project. Open space in the development is connected to open space and parks in adjacent development. The backs of buildings, loading docks, outdoor storage areas, and dumpsters are located away from surrounding residential and other sensitive uses and are screened with attractive landscaping and/or fencing from adjacent uses and roadways. Distance and solid fencing reduce noise from such uses as dumpsters and loading docks. The scale, architectural style, and location of buildings is chosen to be compatible with surrounding development and to provide transitions from large or massive buildings to surrounding land uses, particularly single-family development.

b. Natural features of land. The layout of the development should be suited to the configuration and characteristics of the land and integrate natural features into the overall design. Methods of achieving:

Natural features of the land, including wetlands, ponds, hills, and vegetation, are preserved and become the basis for the layout of the development. Open areas incorporate natural features become focal points for the development. Site layout encourages views of natural features and open space from project entrances and public spaces such as restaurants and outdoor plazas. Changes in site elevation may be used as a design feature to provide interest.

c. Unified concept. The project creates an attractive and pleasant grouping of buildings with a unique identity and sense of place for employees and clients; buildings are not lined up parallel to the roadway with a large parking lot in front. Methods for achieving:

Buildings have architectural harmony and are located in functional and attractive groupings. A design concept for the development, including out-parcels, promotes functional and architectural coherence. The concept addresses the relationships of buildings in terms of appearance and access by vehicles and pedestrians, includes plazas for outdoor gatherings, incorporates open space and natural features into the design, and provides attractive landscaping throughout. Outparcels are situated to complement the overall design and do not visually dominate the project frontage. Parking areas are designed for both convenience and attractiveness. Large areas of asphalt should be avoided, where possible, through sectioning off small parking areas, using landscaped separation strips, and through creative site layout. Signage and landscaping are planned to unify buildings and uses and to promote design coherence to the whole project. Where appropriate, the development has a unifying feature or features, such as a central plaza, giving a sense of overall design and providing places for outdoor events and social interaction.

e. Circulation. The development should be easily accessible to vehicles, bicycles, and pedestrians. Methods for achieving:

The site design should integrate parking among the buildings or wrap parking around two (2) or more sides of buildings rather than consolidating all parking spaces in a large parking area that is segregated from the building(s). Multiple pedestrian access points to a group of buildings and adjacent parking areas avoids vehicular congestion at the front of a building and competition for parking near one (1) entrance. Bicycle lanes or paths are provided from adjacent bike paths and local streets; bike racks are provided close to buildings. Walkways separate from vehicular ways are provided for pedestrians.

f. Landscaping and lighting. An attractive and pedestrian-scale atmosphere is created through abundant landscaping and pleasant, unobtrusive lighting. Methods for achieving:

Landscaped areas create green corridors through and around parking areas, breaking up large areas of parking. Lighting poles are decorative and directed downward to light parking areas and pedestrian paths. Landscaped areas are combined with pedestrian paths. Tree locations and species are chosen to provide shade in parking areas and plazas. Outdoor eating areas may be located in areas specifically designed for them, such as plazas between buildings or open areas a safe distant from high vehicular traffic.

23-450.8 - Demonstration of Compliance. Demonstration of compliance with design guidelines shall be required at time of Preliminary Site Plan, as described in sections 23-222.4.a.3, and Site Development Permit approval, as described in 23-217.

23-450.9 - Modification of an approved MDP. Requests for modifications to MDPs shall include a drawing indicating the property, a location drawing indicating the relationship of the portion to be revised with respect to the entire project; and such other information concerning the lot, adjoining lots, or other matters, to clearly represent the entire proposed change and any associated impacts upon the project and adjacent properties; in order to determine whether the provisions of the district and this Code are being observed.

#### 1. Approval Authority:

- **A.** Administrative Approval. The following changes to approved MDPs may be approved by the Administrative Official:
  - 1. Any change in the required parking areas resulting in an increase of less than ten (10) percent in the number of spaces approved for a particular use or phase;
  - 2. Structural alterations not significantly affecting the basic size and form of the building(s) as shown on the approved plan. Changes in form will only be considered substantial if they occur within fifty (50) feet of the project boundary or within fifty (50) feet of any part of any of the structures which have been constructed or sold to any owner or owners different from the applicant requesting the change;
  - 3. Any reduction in the amount of open space of less than five (5%) percent or any non-substantial change in the location or characteristics of open space;
  - 4. Non-substantial changes in location or type of pedestrian or vehicular accesses or circulation, which will still adhere to the City of Lake Wales Development Standards;
  - 5. Any increase in density or intensity for a portion of the project that is more than five hundred (500) feet from the project boundaries or more than two hundred (200) feet from any part of the project that has been constructed or sold to an owner or owners different from the applicant requesting the change (this does not authorize an increase in overall density or intensity);
  - 6. An increase in structure height less than eight (8) feet, or within fifteen (15) percent of the approved height, whichever is less, provided there is no increase in number of stories;
  - 7. Any increase in the number of pedestrian access points;
  - 8. Any changes in the phasing schedule which do not impact timing, amount, or completion of improvements; or the satisfaction of specific conditions;
  - 9. Any change in required yard setbacks of less than ten (10) percent, except any yard change which would encroach upon or affect any utility or drainage easement;
  - 10. Any increase in gross floor area of less than or equal to five (5) percent of the gross floor area for the project;
  - 11. The addition of any of the following uses, if Special Exception is not required: nursing care homes, permitted home occupations, bed and breakfast facilities, utility uses, and waterfront structure (residential); provided that any applicable use criteria shall be met.
  - 12. A change from multi-family to single family, if it does not increase external impacts such as, but not limited to transportation, schools, parks or utilities; and is consistent in lot size, coverage and yards with other single-family portions of the development. If the MDP does not specify dimensional requirements for single family units, the minimum requirements of the R-1D district shall be met.
- **B.** City Commission Approval All other changes shall require a recommendation by the Planning Board and approval by the City Commission at a noticed public hearing, except for those noted below as requiring a new application.
- **C.** Changes Requiring a New Application The following types of changes shall be considered substantial modifications requiring the submittal of a new application for MDP approval:
  - 1. An increase in intensity of use of more than five (5) percent of the usable floor area, or an increase of more than three (3) percent of the number of dwelling units, or an increase of more than five (5) percent of the amount

- of outside land area devoted to sales, displays or demonstrations. In no case shall the intensity or density be increased over the maximum permitted by the Planned Mixed-Use zoning district or the Comprehensive Plan.
- 2. Any change in use from the approved use, except as noted in subsection, A, above.
- 3. Any increase in traffic generation by more than ten (10) percent.
- 4. Any increase in the area allocated to any land use type by more than ten (10) percent.
- 5. Any change in structure height greater than fifteen (15) feet.
- 6. Any combination of changes which cumulatively are deemed by the Administrative Official to be of such significance that a new application is required.
- 7. Any change of a similar nature to the foregoing.

(Ord. No. 2020-27, § 1, 10-20-20)

### Article V. Accessory Uses And Structures

#### **Division 1. General Provisions**

### § 23-501. Generally.

Accessory uses and structures are permitted in all zoning districts subject to the restrictions contained in this article. The types of accessory uses and structures permitted are determined by the principal use of the property rather than by the zoning district in which the property lies. As an example, a residential property in a commercial zone would be allowed the uses and structures designated in this article as uses and structures permitted for residential buildings. Additional regulations may be required according to the zoning district of the property.

Residential properties are premises used primarily for dwellings.

Both accessory uses and accessory structures must be subordinate to the principal use or structure. Accessory uses shall involve no more than twenty-five (25) percent of the building or property, as applicable, where the use takes place. Accessory structures shall be governed by specific limits in this article and in no case shall exceed fifty (50) percent of the area of the principal structure or of the property, as applicable, occupied by the principal use.

#### a. Accessory uses.

- 1. Uses which do not comply with the restrictions for accessory uses shall be considered principal uses and shall be subject to the permitting requirements of these land development regulations for the zoning district in which the property lies. See Table 23-421 for permitted and special exception uses allowed in each zoning district.
- 2. Unless otherwise stated in these land development regulations, verification of zoning compliance and a certificate of use under section 23-212 and 23-213 are not required for the addition of an accessory use listed in Table 23-521 for residential properties or Table 23-541 for non-residential properties. If the accessory use is not listed on the applicable table, the administrative official must make a determination whether the proposed use qualifies as an accessory use by virtue of its being a use customarily incidental to the principal use of the property.
- 3. Addition of an accessory use to a property where the principal use is a special exception use under article IV requires a special exception use permit pursuant to section 23-216
- 4. Additional requirements may apply to the addition of accessory uses if either the principal use or the accessory use is regulated under article II, div. 2, specific use regulations.

### b. Accessory structures.

- 1. Verification of zoning compliance pursuant to section 23-212 is required for the construction or location of any accessory structure. A site plan and other information to verify compliance with the provisions of this chapter may be required by the administrative official prior to issuance of a building permit for an accessory structure.
- 2. An accessory structure may be located on a lot where no principal structure exists only upon the approval of a special exception use permit granted pursuant to section 23-216
- 3. Accessory structures on mixed-use properties (with both residential and non-residential uses) shall comply with the requirements for residential properties unless a special exception permit is granted by the planning board pursuant to section 23-216. Non-residential properties with accessory apartments shall not be classified as mixed-use properties for the purposes of this section.

- 4. Accessory structures with non-rigid roofs, such as tents, are not permitted except on a temporary basis, not to exceed four (4) weeks per calendar year.
- 5. Temporary accessory structures, including trailers, tents, and modular units, for occupation or storage use during construction, reconstruction, or repair of a principal structure may be permitted by the administrative official for specific time periods, subject to compliance with all applicable building codes.

### Division 2. Residential Accessory Uses And Structures

# § 23-521. Accessory uses, residential properties.

Effective: Tuesday, July 07, 2015

Accessory uses allowed in conjunction with residential properties are those activities which are ordinarily conducted in a house or its yard and include, but are not limited to those listed in Table 23-521. Residential properties are those used primarily as dwellings.

TABLE 23-521 ACCESSORY USES—RESIDENTIAL PROPERTIES

ALLOWED ACCESSORY USES	RESTRICTIONS
Garaging and parking of vehicles, trailers, recreational and noncommercial vehicles, and boats.  Note: Parking of commercial vehicles in residential districts and on residential properties is prohibited unless specifically approved as a special exception use by the board of appeals in accordance with section 20-12, Lake Wales Code of Ordinances.	Recreational vehicles, boats or trailers shall not be parked in the front yard except for a period not to exceed 24-hours for loading, unloading, and cleaning; unregistered or inoperable vehicles or trailers shall not be stored at residential properties, except a single such vehicle if it is stored in a garage or carport; no vehicle shall be parked on the lawn or other non-paved area in a front or side yard. (See subsection 23-306.1.)
Storing items used in the upkeep of the building and grounds, including the temporary storage of refuse for collection.	These items must not be stored outside, except that trash cans may be stored outside provided they are not permanently stored in a front yard or public right-or-way.
Keeping pets	Resident must comply with all provisions of Chapter 6, Lake Wales Code or Ordinances regulating the keeping of animals, fowl etc. within the city limits.
Accessory unit (apartment or guesthouse) at single-family residence	Special exception use permit required for the addition of an accessory unit. Living floor area of accessory unit shall be a minimum of 450 square feet and shall not exceed 50% of the living floor area of the principal dwelling.
Operating a bed and breakfast establishment	Allowed in specified districts with a special exception use permit and compliance with special regulations in section 23-345
Operating a family day care home (as defined by F.S. § 402.302)	Resident must comply with special conditions for day care homes (section 23-347) and all applicable provisions of F.S. ch. 402.
Conducting a home occupation	Certificate of Use pursuant to section 23-212 is required. Compliance with section 23-348, conditional use regulations for home occupations, is required.
Conducting a yard sale	Resident must comply with provisions of section 23-355

(Ord. No. 2007-02, § 17, 3-6-2007; Ord. No. 2007-33, § 8, 9-4-2007; Ord. No. 2015-04, § 10, 7-7-15)

## § 23-522. Accessory structures, residential properties.

Effective: Wednesday, September 19, 2018

See subsection 23-501(b)3. for accessory structures on mixed-use properties.

a. Location and setbacks. Accessory structures on residential properties shall not be located within the front yard except as otherwise noted and shall maintain a five-foot setback from any side or rear property line, except as otherwise noted.

b. Waiver of front yard requirements. Where lots within a subdivision have functional rear yards backing up to an exterior street and have functional front yards gaining access from an interior street, the planning board may grant approval for the functional rear yard to be considered a rear yard for the purposes of accessory structure locations and setbacks, provided a landscaped buffer is approved along the exterior street. The buffer shall be designed to provide a solid, continuous, screen of at least four (4) feet in height within two (2) years of planting. The buffer shall be as approved by the planning board, and shall meet the minimum standards for a "buffer along streets exterior to a development" in subsection 23-307.2.b.

The buffer shall not be included in calculations of lot area. Setbacks shall be measured from the interior edge of the buffer. (See Figure 23-522(b)).

23-521-01.png

- c. *Ground coverage*. Structures shall be limited by the ground coverage maximums listed in Table 23-422A, "Dimensional and Area Standards Residential Districts."
- d. *Types of structures*. Accessory structures which are permitted in conjunction with a residence include, but are not limited to, those listed in Table 23-522, and such structures are subject to the restrictions as indicated. If the type of structure proposed is not listed on the applicable table, the administrative official must make a determination whether the proposed structure is compatible with a residential neighborhood.

TABLE 23-522 ACCESSORY STRUCTURES RESIDENTIAL PROPERTIES

ALLOWED	DECEMBER OF THE PROPERTY OF TH	
ALLOWED ACCESSORY	RESTRICTIONS	
STRUCTURES		
Accessory unit, detached apartment or guest house, including apartment above garage (See Table 23-521.)	Requires special exception use permit.	
Decks and patios <sup>2</sup>	Decks and patios, whether or not attached or adjacent to a principal building, that have a floor or foot or more above grade shall meet the setback requirements for principal building (See Table 422A) in a front yard and a five-foot setback in a rear or side yard.	
Detached carports and garages <sup>1</sup>	Limited to one structure only, footprint not to exceed 600 square feet or 40% of the footprint of the principal structure, whichever is larger. On lots greater than two (2) acres in size, the accessory structure may be 1.25 times the size of the principal building. Garages and carports must meet the setback requirements for principal buildings.	
Accessory unit, including apartment over garage (See Table 23-521.)	Requires special exception use permit	
Docks and piers	Subject to requirements of section 23-523	
Doghouses, pens and other structures for the housing of pets, not including kennels or animal farms <sup>1</sup>	Subject to requirements of Chapter 6, Animals, Lake Wales Code of Ordinances.	
Driveways and parking areas	Driveways and parking areas are permitted in the front yard; all driveways and parking areas are subject to requirements of subsection 23-306.1(b).	
Dumpster enclosures <sup>1</sup>	Permitted only for multi-family dwellings; must be screened from view with fencing and landscaping.	
Fences and hedges	Subject to requirements of section 23-524	
Garbage can enclosures <sup>1</sup>	Must be screened with fencing and landscaping.	
Gazebo, lanais and similar structures <sup>2</sup>		
Recreational facilities such as tennis courts, shuffleboard courts, playground equipment etc.2		
Retaining walls	Structures meeting the definition for "retaining wall" (See section 23-802) shall meet the setback requirements for a principal building (See Table 422A) in a front yard and a five-foot setback in a rear or side yard.	
Satellite dishes or antennas	Subject to requirements of section 23-525	
Signs	Subject to requirements of section 23-526	
Solar collectors		
Storage buildings, greenhouses, utility sheds or bath houses <sup>1</sup>	Storage and utility sheds not to exceed 200 sq ft; limit 2 per residence.	
Swimming pools, above ground <sup>1</sup> in-ground <sup>2</sup>	Subject to requirements of section 23-527	
L	1	

(Ord. No. 2007-02, § 18, 3-6-07; Ord. No. 2008-45, § 19, 12-16-08; Ord. No. 2018-07, § 6, 09-19-18)

### NOTATION

Permitted in front, side and rear yards provided setback requirements for principal structures are met. In cases where the front setback of the dwelling unit is less than required in the zoning district, the minimum required front setback for the garage or carport shall be the front building line of the dwelling unit.

Permitted in front yards provided front yard setback for a principal structure is met. Pools in front yards shall be screened

# § 23-523. Docks and piers.

Effective: Tuesday, October 15, 2019

All docks and piers are subject to the dimensional requirements of this section.

- a. Docks and piers may be constructed beyond the shorelines of lakes provided the structure does not extend beyond the applicant's property. Docks or piers may extend beyond the applicant's property with written permission of the property owner of the effected property.
- b. All construction shall conform to the requirements of the Florida Building Code and City building regulations. Floating docks which are attached to shore are allowed and encouraged.
- c. Docks and piers that extend into public waters may be permitted by Special Exception Use Permit.

All marine structures constructed for use by a single-family residential property owner shall conform to the following regulations:

- d. The maximum distance that a dock or pier may extend from the property line abutting any lake shall be 50 (fifty) feet.
- e. In no case shall structures in canals extend from the canal bank or bulkhead beyond the twenty-five (25) percent of the canal's average width along the property fronting the canal.
- f. Docks and piers shall maintain a minimum of a five-foot setback from the side lines of the property or the extension thereof into the water body.
- g. Docks and piers constructed in residential, dead-end canals may not be closer than twenty-five (25) feet from another such structure.
- h. The main access pier from the shore to the dock or platform area shall not exceed six (6) feet in width. Handrails shall be provided on at least one (1) side of any part of a dock or pier which is three (3) feet or less in width.
- i. All docks and piers shall be constructed so as to be visible to marine traffic in times of high water by being equipped with a device or structure which is clearly visible at least six (6) feet above the water's surface at all times (e.g., orange flag, reflectors). Such device or structure shall be installed at the lakeward end of the structure and elsewhere along the structure, spaced no further than twenty-five (25) feet apart.
- j. The surface area of all docks and piers may not exceed a total of five hundred (500) square feet which includes the main access pier and platforms.
- k. The sides of any structure shall remain open except that see-through screening material shall be permitted.
- 1. No more than two (2) watercraft may be moored at any such structure.
- m. Living quarters and other non-water dependent structures are prohibited

(Ord. No. 2019-15, § 1, 10-15-2019)

### § 23-524. Fences and hedges

Effective: Tuesday, December 06, 2016

For the purposes of this section, the word "fence" shall include walls that are constructed to enclose or screen all or part of a property. Fences and hedges shall comply with the provisions of this section. Fences constructed to enclose swimming pools shall also comply with the requirements of section 23-527. See subsection 23-524(e) for requirements for temporary fences.

- a. No permanent fences shall be installed in any zoning district without the issuance of a permit from the city subject to site plan approval in accordance with section 23-222. All applications for a fence permit shall include a site plan which details the proposed fence construction, including fence location in relation to property lines and easements, as well as any other information deemed necessary by the administrative official for reviewing the application.
- b. Dimensional requirements. Fences and hedges shall be located a minimum of 3 feet from the property line along an alley. Otherwise, they are not subject to setback requirements and may be located anywhere within the property lines, provided the height limitations set forth in Table 23-524 are met.

The planning board may waive the height requirements for a valid purpose related to compatibility with the character of the neighborhood, addressing problems with slope or architecture, or screening an adjacent land use. Fences required for compliance with a permit granted by an agency for structures such as retention ponds are exempt from height restrictions. The administrative official may grant a waiver for fence height in a "functional" side-yard from 4 feet up to 6 feet in height.

TABLE 23-524
HEIGHT RESTRICTIONS FOR RESIDENTIAL FENCES AND HEDGES

Location	Maximum Height <sup>1</sup>
Within the front yard <sup>2</sup>	4 feet
Within the side or rear yard	6 feet
Within 35 feet of the intersection of streets, a street and a driveway to a parking area, or a street and an alley <sup>3</sup>	2 feet
Within 10 feet of the intersection of a single or two-family driveway with a street <sup>3</sup>	2 feet

(Ord. No. 2007-33, § 9, 9-4-07; Ord. No. 2008-45, § 20, 12-16-08; Ord. No. 2015-04, § 12, 7-7-15; Ord. No. 2016-01, § 7, 01-19-16; Ord. No. 2016-21, § 5, 12-06-16)

#### NOTATION

A waiver of the height requirement may be granted per subsection 23-524(b).

See paragraph (c), materials.

Measured from the edge of the pavement or travel way.

- c. Materials.
  - 1. Fence materials must be generally compatible with surrounding properties. Traditional materials such as wood, masonry, wrought iron, or other metal are preferred materials for fences in front yards. Fences constructed of vinyl or other plastic materials are not permitted as the exterior perimeter wall of a development. Chain link and solid fences such as stockade fences may be located in front yards provided shrubs are planted and maintained along the side of the fence facing any public right-of-way. Such shrubs must be at least two and one-half (2½) feet in height at the time of planting and shall be planted as a continuous hedge or shall be spaced a maximum of fifteen (15) feet apart. Chain link and solid fences constructed behind the front building line and parallel to the right-of-way must also be landscaped per these requirements, unless the administrative official determines that screening is not necessary because of site topography, adequate existing landscaping in the front yard, short length of fence, sufficient setback behind the building line, or other condition specific to the property.
  - 2. Fences must be constructed of new materials designed for that purpose or aged for proper architectural effect. Fences having a side with exposed or irregular structural components, and a more finished, uniform and aesthetically attractive side, shall be constructed and installed so that the more finished side faces outward from the fenced property toward the adjoining property.
  - 3. Fences or walls enclosing residential subdivisions shall be of masonry construction where they front on a public right-of-way, unless otherwise approved by the city commission, shall maintain a minimum setback of ten (10) feet from the public right-of-way, and shall be landscaped in accordance with requirements stipulated by the planning board.

- 4. Fences made with barbed wire, cloth, nylon, PVC pipe, corrugated materials, glass, spikes or other similar materials, and electric fences are prohibited on residential properties. No fence shall contain any substance designed or reasonably likely to inflict injury to any person or animal.
- d. *Maintenance requirements*. The property owner shall maintain any fence to its original designed condition. Missing boards, pickets, posts, gates, etc. shall be replaced in a timely manner with material of the same type, quality, and finish as the existing fence.
- e. *Temporary fences*. Temporary fences may be permitted by the administrative official for protection, screening or safety during construction, a special event, or other temporary circumstances. Height, placement, and materials requirements of this section may be waived provided public safety is not compromised. Temporary fences shall be granted for a specific time period not to exceed two (2) years, except that extensions of time may be granted for six-month increments if warranted.
- f. Easements. A fence or hedge may be permitted in an easement, provided the owner signs an affidavit agreeing to remove it at his expense if the city or a public utility requests it. The city shall not be responsible for improperly placed fences. When the administrative official determines that a fence has been improperly placed, the owner of the fence shall relocate the fence within ten (10) days of a notice of violation issued by the city. In an emergency, any obstacle or obstruction in an easement will be removed with no liability to the city.
- g. *Nonconformance*. Fences existing prior to the adoption of these land development regulations and which may not conform to the height, material and location requirements provided herein shall be deemed to be a nonconforming structure.

### § 23-525. Satellite dishes or antennas.

Satellite dishes or antennas shall be subject to the following restrictions. The administrative official may waive any of the restrictions below in cases where it is determined that compliance with the restriction interferes with the receipt of signals.

- a. The dish of the satellite antenna shall be neutral in color and compatible with the appearance of the neighborhood.
- b. No satellite antenna shall be mounted on the roof of any single-family or two-family structure.
- c. A satellite antenna may be mounted on the roof of a multi-family structure; however, all roof-mounted satellite antennas shall be located on the rear one-third (1/3) of the structure.
- d. No satellite antenna accessory to a single-family or two-family structure shall exceed fifteen (15) feet in height, measured from the highest point of the antenna when positioned for operation to the ground.
- e. All ground-mounted satellite antennas shall be screened from view by a six-foot high wood or masonry fence or plants, being eighty (80) percent opaque when viewed between two (2) and six (6) feet above grade.
- f. All satellite antennas for multi-family structures adjacent to single-family structures shall require a special exception use permit unless the satellite antenna complies with the single-family residential requirements.
- g. No satellite antenna shall be used for a sign.

### § 23-526. Signs.

This section establishes regulations for signs on residential properties in Lake Wales.

*Intent of sign regulations.* These regulations are designed to protect and promote the public health, safety, and welfare by controlling the type, number, location, and physical dimensions of signs, to prevent the disruptions, obstructions, and hazards to vehicular and pedestrian traffic that signs may cause, and to enhance the quality of the environment in residential districts. More specifically, it is the purpose of this section to:

- a. Implement the comprehensive plan and planning policies of the city.
- b. Provide liberally for the free expression of ideas through signs in the city.
- c. Encourage the effective use of signs as a means of communication.
- d. Balance the desire and need of individuals to express their creativity in signs with the desire to maintain a pleasing visual environment for residents and visitors.
- e. Protect and enhance the value of properties and to have signage appropriate to the planned character and development of each area in the city.
- f. Balance the need for information for motorists and pedestrians with the need for traffic safety by limiting signs or characteristics of signs that may be particularly distracting to drivers.
- g. Provide clear and objective sign standards.
- h. Provide a clear and efficient review procedure for sign applications.
- i. Enable fair and consistent enforcement of the regulations set forth in this section.

Sec. 23-526.1 Applicability. Placement of a sign anywhere in Lake Wales shall require permit. For the purposes of sign regulation, a "permit" shall mean "verification of zoning compliance" under section 23-212 unless the type of sign is specifically exempted from the requirement for a permit under section 23-526.2.

To "place" a sign shall mean construct, paint, install, erect, post, sculpt, project, or otherwise display. Placement of a sign may also require a building permit.

A sign is defined in section 23-802. See also definition of "commercial message" under definition of "sign."

The following are not considered signs for the purposes of regulation under this section:

- a. Decorations or displays of non-commercial nature.
- b. Cornerstones, foundation stones and memorial signs or tablets displaying the names of buildings and date of erection, when cut into any masonry surface or inlaid so as to be part of the building or when constructed of bronze or other incombustible material.

A permit is not required for a change in the message on an existing sign provided that the new message is not a commercial message where only a non-commercial message is allowed and provided there is no change in the structural components of the sign.

All applications must include a survey or scale drawing of the proposed sign with dimensions, including lettering size, and a clear diagram showing placement of the sign on the property and/or building.

Sec. 23-526.2. Prohibitions and permit exemptions.

- a . *Prohibitions*. The following signs and those prohibited under section 23-545.5 are prohibited on residential properties:
  - 1. Signs with commercial messages except as specifically allowed under section 23-526.3. See section 23-802 for definition of "commercial message."
  - 2. Lighted signs except as specifically allowed under section 23-526.3.
  - 3. No sign, except those placed by an authorized governmental agency, shall be placed in or project into the public right-of-way or public parks or other public property.
  - 4. No sign shall be placed on a roof or above the roof line of a building.

- 5. No sign shall interfere with traffic or be confused with or obstruct the view or effectiveness of any official traffic sign, traffic signal, traffic marking or obstruct the sight distance of motorists or pedestrians.
- 6. No sign shall be painted on or attached to a tree or utility pole.
- 7. All signs not specifically allowed are prohibited.
- b. *Exemptions from permit requirement*. The following signs or sign elements are exempt from the requirement for a permit and do not count against the sign allowance for a property:
  - 1. Any sign installed in a building or enclosed space and not legible from the public right-of-way or from private or public property other than the property on which it is located.
  - 2. Any sign that is less than four (4) square feet in area and less than four (4) feet in height (if freestanding), that is not separately illuminated and that is not legible from the public right-of-way or from private or public property other than the property on which it is located.
  - 3. Signs required by law or deemed by the administrative official as necessary for safety or warnings, including on-site traffic safety signs and street address numbers.
  - 4. Temporary signs as allowed under section 23-526.3.
  - 5. Signs painted on or attached (as a magnetic sign) to a vehicle which is used on a regular basis for transportation by the tenant of the property and which is legally parked.

Sec. 23-526.3 Regulations for signs on residential properties. For the purposes of sign regulation, "commercial message" is defined as follows:

Commercial message means a sign, wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service or other commercial activity or to an institution or other non-residential activity or use. For the purposes of sign regulation, the following are not considered commercial activities: proposed sale, rental or lease of the real estate where the message is displayed; the incidental and occasional sale of personal property on site; residential yard sales held in compliance with the provisions of this chapter; and construction/renovation on site.

- a. *Single- and two-family properties*. Signs displaying commercial messages are not permitted on single-family or two-family properties except as specifically provided below.
  - 1. Signs with non-commercial messages. The purpose of this provision is to allow temporary signs for free expression on residential properties. Temporary signs meeting the requirements of this section may display political, real estate, "no trespassing," yard sale, public interest, and other miscellaneous non-commercial messages. For the purposes of this provision, "temporary" pertains to the nature of the sign as not permanently installed, rather than to the duration of its display. Permits are not required for temporary signs with non-commercial messages on single-and two-family properties subject to the following restrictions:
    - A. No more than four (4) signs are displayed at any time.
    - B. The signs are not illuminated, are made of rigid materials, and are securely anchored with posts, prongs, or other device.
    - C. No sign exceeds four (4) square feet in area or five (5) feet in height.
    - D. No sign is displayed in the public right-of-way.
    - E. Signs pertaining to an event shall be removed within seven (7) days of the close of the event.
  - 2. Signs with commercial messages. A single-family unit or a unit in a two-family building may display a commercial message or a non-commercial message on one (1) permanent sign provided the unit has been approved for a primary commercial use, such as a day-care home or bed and breakfast establishment, as listed on table 23-421 "Permitted Uses and Special Exception Uses in Standard Zoning Districts." (Note: "home occupations" are accessory uses, not primary uses, and are not allowed to display a sign with a commercial message. See section 23-348, home occupations.) The following restrictions apply:
    - A. The sign may be a wall sign or a ground sign and shall not exceed six (6) square feet in area or five (5) feet in height if freestanding.
    - B. The sign may be lighted by a white spotlight. Internally lit signs are prohibited.

### C. A sign permit is required.

b. *Multi-family buildings and developments*. Placement of a sign on a property with two (2) or more multifamily buildings shall be in compliance with a master signage plan. (See section 23-545.3 for requirements.)

### 1. Single building.

- A. One (1) wall or ground sign displaying a non-commercial message may be located at a multi-family building that is not part of a multi-family development, provided the wall sign does not exceed two (2) square feet per linear foot of building frontage on the side it is displayed and a ground sign does not exceed sixteen (16) square feet in area or six (6) feet in height. Landscaping shall be planted at the base of a ground-mounted sign; plant materials shall be sufficient to screen the sign's supports to a height of fifty (50) percent of the distance from the ground to the bottom of the sign within a period of two (2) years.
- B. Temporary signs for non-commercial messages. The purpose of this provision is to allow temporary signs for free expression on residential properties. Temporary signs meeting the requirements of this section may display political, real estate, "no trespassing," yard sale, public interest, and other miscellaneous non-commercial messages. For the purposes of this provision, "temporary" pertains to the nature of the sign as not permanently installed, rather than to the duration of its display.

Permits are not required for temporary signs with non-commercial messages at a multi-family building subject to the following restrictions:

- i. No more than four (4) signs are displayed at any time.
- ii. The signs are not illuminated, are made of rigid materials, and are securely anchored with posts, prongs, or other device.
- iii. No sign exceeds four (4) square feet in area or five (5) feet in height.
- iv. No sign is displayed in the public right-of-way.
- v. No such sign shall be attached to a tree, hedge, street sign, light pole, or other appurtenance.
- vi. Signs pertaining to an event shall be removed within seven (7) days of the close of the event.
- 2. Multi-family complex or residential development.
  - A. One (1) sign displaying a non-commercial message may be located at each street entrance to a residential development (single-family or duplex subdivision, planned development or multi-family complex). The sign may be a wall mounted or ground-mounted sign not exceeding thirty-two (32) square feet in area or ten (10) feet in height.

Such a sign may be illuminated by a white spotlight. Internally lit signs are prohibited. Landscaping shall be planted at the base of a ground-mounted sign; plant materials shall be sufficient to screen the sign's supports to a height of fifty (50) percent of the distance from the ground to the bottom of the sign within a period of two (2) years.

B. Temporary signs for non-commercial messages. The purpose of this provision is to allow temporary signs for free expression on residential properties. Temporary signs meeting the requirements of this section may display political, real estate, "no trespassing," yard sale, public interest, and other miscellaneous non-commercial messages. For the purposes of this provision, "temporary" pertains to the nature of the sign as not permanently installed, rather than to the duration of its display.

Permits are not required for temporary signs with non-commercial messages on multi-family properties subject to the following restrictions:

- i. No more than four (4) signs are displayed at a multi-family building any time.
- ii. The signs are not illuminated, are made of rigid materials, and are securely anchored with posts, prongs, or other device.
- iii. No sign exceeds four (4) square feet in area or (5) feet in height.
- iv. No sign is displayed in the public right-of-way.
- v. Signs pertaining to an event shall be removed within seven (7) days of the close of the event.
- vi. No such sign shall be attached to a tree, hedge, street sign, light pole, or other appurtenance.

- c. Vacant residential property—Temporary signs with non-commercial messages. The purpose of this provision is to allow temporary signs for free expression on vacant residential properties. No permit is required for a temporary sign meeting the requirements of this section. The sign may display a political, real estate, "no trespassing," public interest, and other miscellaneous non-commercial message. For the purposes of this provision, "temporary" pertains to the nature of the sign as not permanently installed, rather than to the duration of its display. One (1) temporary sign displaying a non-commercial message may be placed on a vacant or developing residentially zoned property for each street frontage or each five hundred (500) feet of frontage, subject to the restrictions below.
  - 1. The sign shall be non-illuminated, made of rigid materials, and securely anchored with posts, prongs, or other device.
  - 2. For a single lot under an acre in size, the sign shall not exceed four (4) square feet in area and five (5) feet in height.
  - 3. For a development with multiple lots or a parcel exceeding one (1) acre in size, the sign shall not exceed thirty-two (32) square feet in area or ten (10) feet in height.

Sec. 23-526.4. Maintenance, non-conforming, and enforcement.

The following provisions for signs on non-residential properties shall apply also to signs on residential properties:

Sec. 23-545.8. Maintenance of signs.

Sec. 23-545.9. Non-conforming signs.

Sec. 23-545.10. Enforcement.

Sec. 23.526.5. Severability.

If any clause, section or provision of the sign regulations for residential properties (section 23-526) shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said section shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

(Ord. No. 2005-47, § 3, 10-18-2005; Ord. No. 2006-24, § 16, 6-6-2006; Ord. No. 2007-02, § 19, 3-6-2007; Ord. No. 2007-33, § 10, 9-4-2007; Ord. No. 2013-05, § 4, 6-18-13)

# § 23-527. Swimming pools.

- a. Definitions.
  - 1. Swimming pool, public. A watertight structure of concrete, masonry, fiberglass, stainless steel or plastic which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply.
  - 2. Swimming pool, private. Any structure located in a residential area, that is intended for swimming or recreational bathing and contains water over twenty-four (24) inches deep including but not limited to inground, above-ground and on-ground swimming pools, hot tubs and non-portable spas.
- b. *Plans*. Plans for family pools shall meet the submittal specifications of the standard swimming code adopted by the city and shall be submitted to and approved by the building official in accordance with sections 7-151 and 7-152 of the Lake Wales Code of Ordinances.
- c. Location and setbacks. A pool is permitted in a front yard provided the front yard setback for a principal structure is met. Pools in front yards shall be screened. The edge of the pool proper (not including deck unless elevated) and the enclosure must meet the five-foot setback requirement from any side or rear lot line.
- d. Enclosure.
  - 1. Every swimming pool constructed within the city limits shall be completely surrounded by a fence or wall not less than four (4) feet in height. Exempt from the requirement for enclosure are:
    - A. Any pool constructed above ground where the edge of a pool is four (4) feet above ground and having a removable ladder or, for an elevated pool deck four (4) feet above ground, having a self-latching gate equipped with a release device no less than fifty-four (54) inches from the bottom of the gate. When the ladder or steps are secured, locked or removed, any opening created shall not allow the passage of a four-inch diameter sphere.

- B. Any pool constructed on private property where the individual homeowner has property consisting of twenty (20) acres or more with only one (1) dwelling thereon.
- 2. All pools required to be enclosed shall be provided with barriers. Such barriers shall not have any gaps, openings, indentations, protrusions, or structural components that could allow a young child to crawl under, squeeze through, or climb over the barrier. Openings in any barrier shall not allow passage of a four-inch diameter sphere.
- 3. All pool enclosures having a gate or door which does not lead directly into an adjacent building shall be self-closing and equipped with a self-latching devices fitted at the minimum height of fifty-four (54) inches to keep the gate or door securely closed at all times when not in actual use.
- 4. During construction, the contractor or owner shall install and maintain a temporary fence or enclosure meeting the height and latching requirements of the above paragraphs.
- e. Connection to sanitary or storm sewer system. No person shall connect, or cause to be connected, any swimming pool to the sanitary system of the City of Lake Wales; no person shall cause or allow contents of any swimming pool to drain into said sanitary or storm system.
- f. Conformance to standard swimming code. No person shall construct or cause to be constructed any swimming pool which is not in conformance with provisions of the standard swimming pool code adopted by the City of Lake Wales as its official swimming code (see sections 7-151 and 7-152).
- g. *Prevention of nuisance*. Swimming pools which are not sufficiently maintained so as to prevent a hazard to the public health, safety and welfare in the nature of allowing growth of algae, bacteria and breeding of mosquitos and other pest are hereby prohibited.
- h. *Enforcement*. Any person violating the requirements of this subsection shall be subject to code enforcement procedures and penalties in accordance with Chapter 12, Lake Wales Code of Ordinances.

(Ord. No. 2008-45, § 21, 12-16-08)

### Division 3. Nonresidential Accessory Uses And Structures

### § 23-541. Accessory uses.

Accessory uses allowed in conjunction with nonresidential properties are those activities which are ordinarily conducted in conjunction with a nonresidential principal use and include, but are not limited to those listed in Table 23-541.

TABLE 23-541 ACCESSORY USES—NONRESIDENTIAL PROPERTIES

ALLOWED ACCESSORY USES	RESTRICTIONS
Day care for children of employees	Services shall be limited to children of employees, and no outside signs indicating the service shall be displayed.
Food sales, including snack bars and vending machines	Food sales shall be conducted either in the interior of the principal building or within a roofed accessory structure. Vending machines located along the front wall of the principal building are not required to be within a roofed structure.
Special sale or event	Any use of parking area or outdoor display, sale, or storage of merchandise or services requires a special permit pursuant to section 23-216 except as allowed under section 23-343, Auctions, sales, and events, temporary.
Garaging and parking of vehicles	In accordance with section 23-306. All vehicles shall be parked in approved parking spaces and shall not be parked in unpaved areas unless specifically approved pursuant to a site plan review under section 23-222.5.
Newsracks/Modular Newsracks	See section 23-352
Personal services establishment	Such uses shall be accessory only to offices, hotel, motels or health care facilities which have a minimum gross floor area of 20,000 sq. ft.
Retail sales of items related to the principal use of the property	Sales area is limited to 25 percent of the total building floor area.
Service and repair of items sold or rented out by the principal business (example, auto service department of an auto sales business)	

Storage of items related to the principal use, including temporary storage	Provided that no storage shall be outside except as otherwise allowed by
of refuse for collection.	these land development regulations and except for dumpsters or other
	trash receptacles which are enclosed, screened and landscaped

(Ord. No. 2008-45, § 13, 12-16-08; Ord. No. 2012-04, § 3, 3-6-12)

# § 23-542. Accessory structures, in general.

a. *Location*. Accessory structures in nonresidential districts shall not be located within the front yard unless otherwise noted.

b. *Setbacks*. Unless otherwise noted, an accessory structure shall maintain the setbacks required in the zoning district (See Table 23-422B) and shall be limited by the ground coverage maximum as required by the zoning district in which the property is located. See Table 23-422B, "Dimensional and Area Standards—Nonresidential Districts."

TABLE 23-542 ACCESSORY STRUCTURES—NONRESIDENTIAL PROPERTIES

ALLOWED ACCESSORY STRUCTURES	RESTRICTIONS	
Buildings, including, but not limited to, garages, carports, vending machine shelters, offices, storage sheds and utility buildings <sup>1</sup>	Vending machine shelters that serve the public, as at a gasoline station, they may be located within the front yard, but no closer than 15 feet to the front property line, and shall be landscaped per the requirements of the administrative official.	
Decks and patios	Decks and patios, whether or not attached or adjacent to a principal building, that have a floor on foot or more above grade shall meet the setback requirements for principal structures (See Table 422B) in a front yard and a five-foot setback in a rear or side yard.	
Driveways and parking areas	Driveways and parking areas are permitted in the front yard subject to requirements of section 23 306	
Dumpster and garbage can enclosures 1	Must be screened from view with landscaping or a solid fence with landscaping. No setback required.	
Fences and hedges	Subject to requirements of section 23-543	
Mechanical equipment including, but not limited to heating, ventilating and air conditioning machinery, and natural or propane gas tanks	Must be screened from public view; screening may include any combination of landscaping and building material. If building material is to be utilized for screening purposes and is visible from the right-of-way, such materials shall be consistent with the architectural design of the principal structure. No setback required.	
Recreational facilities such as tennis courts, shuffleboard courts, playground equipment etc. <sup>1</sup>	No setback required.	
Retaining walls	Structures meeting the definition for "retaining wall" (See section 23-802) shall meet the setback requirements for a principal structure (See Table 422B) in a front yard and a five-foot setback in a rear or side yard.	
Satellite dishes or antennas	Subject to requirements of section 23-544	
Signs	Subject to requirements of section 23-545	
Swimming pools <sup>1</sup>	Subject to requirements of section 23-546	
Tents	Permitted only in conjunction with special sales or public events subject to issuance of permit by administrative official and inspection by building official and fire marshal. Special permit approval required for location in parking area.	
Accessory structures must meet setback requiren	nents of zoning district, unless otherwise noted. See Table 23-422B.	

(Ord. No. 2007-02, § 20, 3-6-2007)

Permitted in side and rear yards provided setback requirements are met. Recreational facilities, including swimming pools, may be allowed in the front yard by special permit pursuant to section 23-216

### § 23-543. Fences and hedges.

Effective: Tuesday, July 07, 2015

For the purposes of this section, the word "fence" shall include walls that are constructed to enclose or screen all or part of a property. Fences and hedges are required to comply with the requirements stated herein.

Notwithstanding the provisions of this section, the use of security fencing may be used at sites, such as electrical substations and communications facilities, where such fencing is required by federal, state or local law, or other sections of this Code. Further, temporary security fencing may be utilized for construction sites while a permit for the work is active for the construction site. All temporary fences shall be removed prior to the issuance of a certificate of occupancy.

- a. *Permit.* No fences shall be installed without the issuance of a permit from the city subject to verification of zoning compliance in accordance with section 23-212. All applications for a fence permit shall include a site plan which details the proposed fence construction, including fence location in relation to property lines and easements, as well as any other information deemed necessary by the city for reviewing the application.
- b. *Right-of-way*. No fence, wall, or hedge shall be constructed or planted in any right-of-way, except as may be placed as part of a public highway safety or beautification project and only as approved by the administrative official. No fence, wall, or hedge shall be constructed or planted in any location that will interfere with visibility at an intersection or otherwise jeopardize the public safety.
- c. *Dimensional requirements*. No fences shall be installed, constructed or erected without complying with the following regulations:
  - 1. Maximum height. The maximum height of a fence shall be four (4) feet in the front yard and six (6) feet in the rear and side yards except in the I-1, 1-2 and BP zoning district, where the maximum height shall be eight (8) feet in any yard. The planning board may waive the height requirements for a valid purpose related to compatibility with the character of the neighborhood, addressing problems with slope or architecture, screening an adjacent land use, or security for industrial uses.

The following uses shall be exempt from maximum height requirements:

Utility and power substations;

Water and wastewater facilities;

Municipal facilities;

Public swimming facilities;

Storm water retention ponds (when fence is required by water management district).

- 2. *Location and setbacks*. Fences and hedges are not required to meet building setback requirements and may be located anywhere on a property, except as follows:
  - A. *Intersection*. Fences shall be set back thirty-five (35) feet from the intersection of two (2) streets. A fifteen-foot setback is required from the intersection of a driveway, alley, or parking lot entrance with a street or access way. The setback shall be measured from the edge of pavement or travel way.
  - B. Alley. Fences and hedges shall be located a minimum of three (3) feet from an alley.
- 3. *Materials*. Fences must be constructed of new materials designed for that purpose or aged for proper architectural effect. Fences having a side with exposed or irregular structural components, and a more finished, uniform and aesthetically attractive side, shall be constructed and installed so that the more finished side faces outward from the fenced property toward the adjoining property. Chain link and solid fences abutting or parallel to public right-of-way or abutting a residential property shall be screened on the exterior side of the fence by a hedge having a minimum height of two (2) feet and fifty (50) percent view blockage at the time of planting with the capability of attaining a minimum height of four (4) feet and one hundred (100) percent view blockage within two years. Such fences shall be set back from the property line a minimum of three (3) feet to accommodate the hedge. Walls shall be of masonry construction. No fence shall contain any substance designed or reasonably likely to inflict injury to any person or animal, including, but not limited to, razor wire, glass, or electrically charged wire. In Industrial zoning districts and on industrial properties, three (3) strands of barbed wire may be used on top of a fence a minimum of six (6) feet in height. Barbed wire may also be used on agricultural lands.
- 4. *Swimming pools*. Fences constructed as swimming pool enclosures shall comply with the requirements of section 23-527 in addition to the requirements herein.

- 5. Temporary fences. Temporary fences may be permitted by the administrative official for protection, screening or safety during construction, a special event, or other temporary circumstances. Height, placement, and materials requirements of this section may be waived provided public safety is not compromised. Temporary fences shall be granted for a specific time period not to exceed two (2) years, except that extensions of time may be granted for six-month increments if warranted.
- 6. Placement in easement. A fence or hedge may be permitted in an easement, provided the owner signs an affidavit agreeing to remove it at his expense if the city or a public utility requests it. The city shall not be responsible for improperly placed fences. When the administrative official determines that a fence has been improperly placed, the owner of the fence shall relocate the fence within ten (10) days of a notice of violation issued by the city.
- d. *Maintenance*. The property owner shall maintain any fence to its original designed condition. Missing boards, pickets, posts, gates, etc. shall be replaced in a timely manner with material of the same type, quality, and finish as the existing fence.
- e. *Nonconforming fences*. Fences existing prior to the adoption of this ordinance and which may not conform to the height and location requirements provided herein shall be deemed to be a nonconforming structure, subject to the provisions of section 23-244

(Ord. No. 2007-33, § 11, 9-4-07; Ord. No. 2008-45, § 20, 12-16-08; Ord. No. 2015-04, § 12, 7-7-15)

# § 23-544. Satellite dishes or antennas.

Satellite dishes or antennas shall be subject to the following restrictions. The administrative official may waive any of the restrictions below in cases where it is determined that compliance with the restriction interferes with the receipt of signals.

- a. The dish of the satellite antenna shall be neutral in color and compatible with the appearance of the neighborhood.
- b. All roof-mounted satellite antennas shall be located on the rear one-third (1/3) of the structure.
- c. All ground-mounted satellite antennas shall be screened from view by a six-foot high wood or masonry fence or plants, to be eighty-one (81) percent opaque when viewed between two (2) and six (6) feet above grade.
- d. A satellite antenna to be located on property adjacent to single-family zoning or use shall require a special exception use permit unless the satellite antenna complies with the single-family residential requirements.
- e. No satellite antenna shall be used for a sign.

# § 23-545. Signs.

Effective: Wednesday, September 07, 2022

The purpose of this section is to establish a comprehensive scheme for the regulation of signs on non-residential properties in the city. These regulations are designed to protect and promote the public health, safety, and welfare by controlling the type, number, location, and physical dimensions of signs to prevent the disruptions, obstructions, and hazards to vehicular and pedestrian traffic that signs may cause, and to enhance the quality of the environment in residential and non-residential districts. More specifically, it is the purpose of this section to:

- a. Implement the comprehensive plan and planning policies of the city;
- b. Provide liberally for the free expression of ideas through signs in the city;
- c. Encourage the effective use of signs as a means of communication;
- d. Balance the desire and need of individuals to express their creativity in signs with the desire to maintain a pleasing visual environment for residents and visitors;
- e. Protect and enhance the value of properties and to have a signage appropriate to the planned character and development of each area in the city;
- f. Balance the need for information for motorists and pedestrians with the need for traffic safety by limiting signs or characteristics of signs that may be particularly distracting to drivers;

- g. Provide clear and objective sign standards;
- h. Provide a clear and efficient review procedure for sign applications; and
- i. Enable fair and consistent enforcement of the regulations set forth in this section.

Sec. 23-545.1 Applicability. The regulations in this section apply to all signs on nonresidential properties in the city. Placement of a sign anywhere in the city shall require a permit unless the type of sign is specifically exempted from the requirement for a permit under section 23-545.4. For the purposes of sign regulation, a "permit" shall mean "verification of zoning compliance" under section 23-212. To "place" a sign shall mean construct, paint, install, erect, post, sculpt, project, or otherwise display. Placement of a sign may also require a building permit. A permit is not required for a change in the message on an existing sign provided that the new message is not a commercial message where only a non-commercial message is allowed and provided there is no change in the structural components of the sign.

a. Definition of sign.

*Sign*. Any device, structure, fixture, painting, or visual image using words, graphics, symbols, numbers, or letters, designed and/or used for the purpose of communicating a message or attracting attention.

- b. Exclusions. The following are not considered signs for the purposes of regulation under this section:
  - 1. Decorations or displays of non-commercial nature.
  - 2. Cornerstones, foundation stones and memorial signs or tablets displaying the names of buildings and date of erection, when cut into any masonry surface or inlaid so as to be part of the building or when constructed of bronze or other incombustible material.

Sec. 23-545.2 General regulations for signs on non-residential properties.

- a. Sign allowance.
  - 1. Each developed non-residential property shall be allowed signs subject to the provisions of table 23-545, "LOCATION, AREA, AND HEIGHT REQUIREMENTS FOR SIGNS FOR NON-RESIDENTIAL USES."
  - 2. Individual units in a business complex shall be allocated wall signs in proportion to their building frontage based on the formula in table 23-545, unless allocation is otherwise set forth in the approved master signage plan filed by the owner under section 23-545.3. Allocation of space on a business complex wall or ground sign shall be the prerogative of the owner, subject to the lettering size requirements in table 23-545
- b. Commercial and non-commercial messages. Signs allowed on table 23-545 may display a commercial or non-commercial message. Other signs allowed on non-residential properties may display a commercial message only if specifically stated in the provision allowing the sign. "Commercial message" is defined as follows:

Commercial message means a sign, wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service or other commercial activity or to an institution or other non-residential activity or use. For the purposes of sign regulation, the following are not considered commercial activities: proposed sale, rental or lease of the real estate where the message is displayed, the incidental and occasional sale of personal property on site, residential yard sales held in compliance with the provisions of this chapter, and construction/renovation on site.

Sec. 23-545.3 Design. It is the intent of these regulations to promote high quality design in signage. The administrative official may provide guidelines to assist applicants in designing signage, and the city may adopt guidelines separate from this chapter for use in reviewing and deciding upon "master signage plans" and signs in C-1 and D-MU zoning districts.

a. *Master plan for signage*. A master plan for signage shall be required for any nonresidential development with more than one (1) principal building, for business complexes, shopping centers, and for buildings with multiple tenants. For the purpose of sign regulation, multi-tenant properties shall be referred to as "business complexes." The purpose of a master plan for signage is to promote high quality signs and design consistency within a development.

The plan shall be submitted with a site plan application pursuant to section 23-222.

Proposed design standards, including sizes, styles, colors, lighting, and placement shall be provided for the purpose of demonstrating consistency among the signs on the property. At the discretion of the owner, the master plan may provide for a share of the wall sign and ground sign allowance for tenants in the business complex.

A master signage plan shall be approved by the administrative official if it provides for consistency of sign type, lighting, placement, size, and style for the business complex sign (if proposed), tenant signs, and other signs proposed on the property and meets all other applicable requirements of this chapter. A certificate of appropriateness for the master signage plan is required for properties within the Downtown Historic District. (See section 23-227.)

Approved master plans for signage shall govern all signage for the project, including "outparcels." Amendments to the plan may be approved by the administrative official or referred to the planning board for review if the master signage plan was approved by the planning board as part of the site plan process.

For existing business centers or buildings with multiple tenants, a master plan for signage shall be required with any application for a sign, including any sign for an individual unit or tenant. All new or modified signs shall comply with the master plan as approved. The plan shall include a schedule for bringing all signs into compliance with the master plan.

b. *Business complex signage*. A "business complex" sign is allowed for a business complex, provided that the name of the building or shopping center is displayed prominently on the sign. A bonus in size is granted for a business complex ground sign. See table 23-545 for dimensional and other requirements.

"Business Complex" ground signs are encouraged in lieu of multiple ground signs for out-parcels. If "business complex" signs display the names of individual businesses within the complex, the master plan must contain design requirements for the listings.

For buildings with multiple businesses, a wall sign with tenant listings and a clearly stated name for the building is encouraged in lieu of individual wall signs or a ground sign with a listing of tenants.

Sec. 23-545.4 Exempt signs. The following signs are exempt from the requirement for a permit and do not count against the sign allowance for the property:

- a. Incidental signs not directed at or legible or visible by persons off-site.
- b. Signs required by law or deemed necessary by the administrative official for safety or warnings, including traffic signs and street address numbers.
- c. One (1) sign per frontage displaying a street number, unit number, or other identifying information, provided the area encompassing the information does not exceed two (2) square feet.
- d. Signs erected by the city or approved by the city commission to designate historic districts, business districts, parks, or public facilities or banners erected or approved by the city in connection with streetscape projects or to publicize special events.
- e. Temporary signs with non-commercial messages as allowed under section 545.6.b.2.
- f. A sign on the back wall of a building in a delivery area is allowed, provided the sign area does not exceed ten (10) square feet.
- g. Flags and insignia of any government. Such flags shall be limited to three (3) per property and shall conform to the standards of the Veteran's Administration in regard to size of flag and height of pole.
- h. Signs that are wholly within a group of buildings or complex or at a drive-up window or other part of the site not visible from the public thoroughfare.
- i. Vehicle identification signs, including painted or magnetic signs attached to a vehicle. Such signs shall not be illuminated unless it identifies an emergency vehicle, bus or taxi. No vehicle or trailer displaying a sign shall be parked to so as to serve as a sign.
- j. One (1) neon sign not exceeding two (2) square feet in size in one (1) display window per business.

Sec. 23-545.5 Prohibitions.

- a. No sign shall be placed on a roof or above the roof line of a building.
- b. No sign, except those placed by an authorized governmental agency, shall be placed in or project into the public right-of-way or in public parks or other public property except as follows:

- 1. The administrative official is authorized to approve temporary signs on public property and in the right-of-way of city streets for community-wide special events sponsored or approved by the city, provided such signs are in keeping with any policies or practices established by the city manager or city commission and provided such signs do not present a hazard to public safety.
- 2. Nothing in this regulation shall be construed to prohibit an authorized government agency from placing, or allowing to be placed, signs in the public right-of-way or on public property deemed necessary or helpful for the public.
- 3. "Right-angle" and "projecting" signs as permitted by the provisions of table 23-545
- 4. A-frame sidewalks signs as allowed in section 545.6(a).
- c. No sign shall interfere with traffic or be confused with or obstruct the view or effectiveness of any official traffic sign, traffic signal, traffic marking or obstruct the sight distance of motorists or pedestrians.
- d. No sign shall be painted on or attached to a tree or utility pole.
- e. Portable signs are prohibited except as specifically allowed herein.

#### f. Lighting.

- 1. Lights of colors other than white or yellow are prohibited in residential and professional (PF) zoning districts, except for Christmas or seasonal lighting. Lights of colors other than white or yellow are permitted in commercial and industrial areas provided they cannot be confused with traffic lights.
- 2. Floodlights may not shine onto adjoining property or in the eyes of motorists or pedestrians.
- 3. Flashing, strobe, or other moving lights or lighted copy are prohibited except electronic signs as allowed under section 23-545.6.c.
- 4. Internally lit signs, including those designed for internal lighting are prohibited except in the areas listed below:
  - A. C-3 Highway Commercial zoning districts.
  - B. C-4 and C-5 Village Center districts.
  - C. On properties fronting on US Highway 27.
  - D. In the PF-Professional District on State Road 60 between US Highway 27 and First Street.
  - E. In the PF-Professional District on the south side of State Rd. 60 between Third and Fourth Street.
  - F. In the PF-Professional District on the north side of State Road 60 between Marietta Street and Thirteenth Street.
  - G. On properties fronting on Central Ave, between SR 60 and the Scenic Highway.
  - H. On properties fronting on First Street, between SR 60 and Sessoms Avenue.
  - I. On properties fronting the Scenic Highway (SR 17) south of Polk Avenue, and north of Wiltshire Boulevard.
- g. Signs on vacant properties are prohibited except signs meeting the requirements of section 23-545.6.b. for temporary signs with non-commercial messages.
- h. Wind signs, including banners, pennants, spinners, streamers, and other wind-actuated components may be permitted accompanying a temporary sign permit application made to the Administrative Official.
- i. Signs containing any statement, word, character or illustration of an obscene, indecent or immoral nature are prohibited.
- j. All signs not specifically allowed are prohibited.

### Sec. 23-545.6 Special signs.

- a. *A-frame sidewalk signs*. An A-frame sidewalk sign is a portable sign which has no prongs or solid base and is supported on two (2) display boards hinged at the top. A-frame sidewalk signs are allowed for the purpose of communicating messages to pedestrians walking along a sidewalk in a commercial area and are not meant to be placed for or legible by people in passing vehicles. An A-frame sidewalk sign shall be permitted only if it meets all of the following restrictions:
  - 1. Areas allowed. A-frame sidewalk signs are permitted only in pedestrian areas, as specified below:

- A. On a sidewalk between the Scenic Highway and Wetmore Street on Central Avenue, Stuart Avenue, Park Avenue, and Orange Avenue and between "A" Street and "D" Street on Lincoln Avenue.
- B. On a sidewalk running along and abutting the front of any commercial building provided the sidewalk exceeds five (5) feet in width.
- 3. Display.
  - A. Only one (1) A-frame sidewalk sign may be permitted per business frontage.
  - B. The sign may be displayed only in front of the business for which it is permitted and in the location designated on the permit. It may not be displayed at any other off-premises site.
  - C. The sign may be displayed only during hours of operation of the business and must be removed at the close of business each day.
  - D. The sign may display a commercial or non-commercial message on each side of the sign.
  - E. The sign's message must be clearly and neatly displayed and shall be securely attached to the display face.
  - F. No balloons, streamers, pinwheels, extensions, or other devices may be attached to the sign.
  - G. Signs with prongs to attach the sign to the ground and signs with legs or solid bases are not permittable.
- 4. Dimensions. An A-frame sidewalk sign shall not exceed four (4) feet in height and two (2) feet in width.
- 5. *Placement*. The permit shall designate a location or locations in front of the business where the sign may be displayed.
  - A. The location may be on the public sidewalk provided the sign does not impede or restrict the flow of pedestrian traffic or violate the standards of the Americans with Disabilities Act.
  - B. The sign shall not be placed on landscaping other than grass directly adjacent to the sidewalk. If there is no location where the sign can be placed without violation of these location criteria, the permit shall be denied.
- 6. *Violations*. Portable signs displayed in the public right-of-way in violation of the provisions of this section shall be removed by the city without notice.
- b. *Temporary signs*. For the purposes of this provision, "temporary" pertains to the nature of the sign as not permanently installed, rather than to the duration of its display.
  - 1. For special events, signs approved under section 23-343 ("Auctions, sales, and events, temporary") may display commercial messages.
  - 2. For non-commercial messages. The purpose of this provision is to allow temporary signs for free expression on non-residential properties.

Temporary signs meeting the requirements of this section may display non-commercial messages such as political, real estate, "no trespassing," public interest, and other non-commercial messages. (Note: signs permitted for commercial purposes may also be used to display non-commercial messages.)

See definition of "commercial message" in section 23-802 under "sign."

Permits are not required for temporary signs with non-commercial messages on non-residential properties subject to the following restrictions:

- A. Signs with messages pertaining to an event such as an election shall be removed within seven (7) days of the close of the event.
- B. No such sign shall be placed in or overhang into the public right-of-way.
- C. No such sign shall be attached to a tree, hedge, street sign, light pole, or other appurtenance.
- D. No such sign shall be placed so as to block visibility at the intersection of a roadway and another roadway, alley, or driveway.
- E. Signs must be non-illuminated, made of rigid materials, and securely anchored with posts, prongs, or other device.

- F. Signs may be mounted on a building or fence or be free-standing.
- G. Dimensions. One (1) freestanding sign may be placed on a vacant non-residentially zoned property or on a developed non-residential property for each street frontage or each five hundred (500) feet of street frontage, provided that for a lot under an acre in size, the sign shall not exceed twelve (12) square feet in area or five (5) feet in height, and for a parcel exceeding one (1) acre in size, the sign shall not exceed thirty-two (32) square feet in size or ten (10) feet in height. In addition, one (1) wall sign not exceeding twelve (12) square feet in area may be placed on each side of a building visible from a vehicular or pedestrian way.
- 3. Temporary painted or paper signs in windows, limited to twenty-five (25) percent of the total window area.
- c. Changeable copy and electronic signs. Changeable copy may constitute up to one-half (½) of the sign area of a ground or wall sign. Electronic copy is permitted as an integral part of a ground sign in all C-3 Highway Commercial districts and in LCI-Limited Commercial districts and 1-2 Industrial Infill districts fronting on US Highway 27 and Mt. Lake Cutoff Road provided the copy does not change more frequently than every thirty (30) seconds.

Sec. 23-545.7 Maintenance of signs.

- a. Condition. All signs must be legible, well painted, in good repair, properly maintained and sturdy.
- b. Abandoned signs. A sign shall be determined to be abandoned if the business or other use it served has been discontinued for a period of six (6) months. In making a determination as to abandonment, the enforcing official may consider, among other factors, the existence or absence of a current local business tax receipt, utilities service deposit at that location, use of the premises and relocation of a business.

Upon determining that a sign is abandoned, the administrative official shall notify the owner by certified mail that corrective action is required within thirty (30) days. The notice shall require the removal of the sign, except that, in lieu of removal, a sign found to be in sturdy condition by the building official may be covered with a fitted cloth or plastic sleeve designed for such purpose or may have a blank sign face installed, subject to a temporary sign permit. Repairs to the sign to restore it to a safe condition may be required as a condition of the temporary permit. Nothing in this section shall exempt a non-conforming sign from the provisions of this chapter for non-conforming signs.

- Sec. 23-545.8. Nonconforming signs. Nonconforming signs are signs that do not meet current requirements of this chapter. Those signs that were in accordance with the sign regulations at the time they were placed are considered "legally" nonconforming signs and may remain in place subject to the provisions of this section. Nonconforming signs that are not "legally" nonconforming shall be removed immediately.
  - a. *Maintenance*. Nonconforming signs shall maintain the same appearance and safe conditions as required by this chapter and by the city's building code for conforming signs.
  - b. Alterations and modifications to a legally nonconforming sign shall be permitted providing that the degree of nonconformity is not increased and provided the change does not exceed fifty (50) percent of what it would cost the owner to alter or replace the sign to conform with this chapter.
  - c. If a nonconforming sign becomes damaged from any cause and the cost to repair exceeds fifty (50) percent of what it would cost the owner to conform with this chapter, the sign will lose its privilege to remain nonconforming, and it shall be removed or made to conform within ninety (90) days.
  - d. All legally nonconforming signs existing on property at the time of its annexation into the city limits must be removed, changed, or altered to conform to the provisions of this chapter within five (5) years after the effective date of the ordinance annexing the property into the city limits.

Sec. 23-545.9. Enforcement.

- a. The administrative official and code enforcement officers shall be the enforcing officials.
- b. An enforcing official is authorized and directed to lawfully enter all premises at reasonable times to determine whether a sign complies with the provisions of this chapter.
- c. If a violation exists, the enforcing official shall send written notice to the occupant and owner shown on the most recent tax roll and to the holder of the certificate of occupancy, if different from both the occupant or owner.

- d. Service of the notice shall be deemed complete if mailed to the owner at the address appearing on the most recent tax roll.
- e. If violation is not corrected within a reasonable time as specified in the notice, the enforcing official is authorized to remove the sign at the owner's expense, to utilize the code enforcement procedures and penalty provisions of Chapter 12 of the Code.

Sec. 23-545.10. Severability.

If any clause, section or provision of the sign regulations for non-residential properties (section 23-545) shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said section shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

TABLE 23-545 LOCATION, AREA AND HEIGHT REQUIREMENTS FOR SIGNS FOR NONRESIDENTIAL USES

TYPE OF SIGN	D-MU, C-1, C-2, C-3, C-5 & LCI DISTRICTS	I and BPC DISTRICTS	PF, C-4, C2R, and R Districts
WALL SIGN			
A sign affixed to or painted on the wall or window of a building, mounted parallel to the wall and projecting not more than 12 inches, not extending above the roof line or facade, and not interrupting the building's architectural features.	One wall sign may be permitted for each side of a building that is visible from a common travelway, pedestrian or vehicular. In a shopping center or other business complex, wall signs for tenants shall be as provided in the approved master signage plan filed by the owner under sec. 23-545.3.	Same requirements as for C-3 district.	Same requirements as for C-1 and C-5 districts.
	In the D-MU, C-1 and C-5 districts, no wall sign may be permitted above the expression line <sup>1</sup> of a building except for window signs not exceeding 2 square feet		
	Maximum size: 2 sq. ft. (1 sq. ft. in C-1A district) of sign for each linear foot of the side of the building on which the sign is placed, not to exceed 60 sq. ft. in the D-MU, C-1 and C-5 districts and 90 sq. ft. in the C-2 district.		
BUSINESS COMPLEX SIGN			
A ground sign for a shopping center, professional office center, industrial park or other grouping of two or more buildings or businesses.	Allowed only with an approved master signage plan under sec. 23-545.3 One ground sign permitted on the primary street frontage of a business complex and a one ground sign permitted on each secondary street frontage, provided the distance between the primary ground sign and secondary ground sign is at least 150 feet measured along abutting roadways; not permitted in C-1 and D-MU districts.	Same as for "C" districts.	Same as for "C" districts except as noted.
Landscaping shall be planted at the base of ground-mounted signs; plant materials shall be sufficient to screen the sign's supports to a height of 50% of the distance from the ground to the bottom of the sign within a period of 2 years.	Maximum area: Primary frontage sign - 36 sq. ft. or 1.5 times the total business floor area in the complex divided by 1,000, not to exceed 225 square feet.		Maximum area: Primary frontage sign - 36 sq. fl. or 1.5 times the total business floor area in the complex divided by 1,000, not to exceed 100 square feet.
	Secondary frontage sign - 50 percent of the permitted primary frontage sign area, not to exceed 36 sq. ft.		Secondary frontage sign - 50 percent of the permitted primary frontage sign area, not to exceed 20 sq. ft.

All ground signs shall be located 35 feet from the intersection of the edge of pavement of any travel lanes or ways, including entrance roads and alleys unless the sign does not block visibility between 3 and 10 feet in height.	Maximum height: Primary frontage sign - 18 ft. or 0.9 times the total business floor area in the complex divided by 1,000, not to exceed 30 feet. Secondary frontage sign - 15 ft.		Maximum height: Primary frontage sign - 15 feet Secondary frontage sign - 10 ft.
GROUND SIGN	Lettering requirements: The name of the business complex shall be legibly displayed on the sign and shall be written in letters with a minimum height of 10 inches in a space or band a minimum of 18 inches measured vertically. Tenant signs shall be designed as integral components of the sign and not as "add-ons." Each tenant band on the sign shall be a minimum of 12 inches and shall have a minimum lettering size of 6 inches. The maximum lettering size for a tenant name shall be 2/3 of the size of the lettering of the business complex name. Lettering styles and colors shall be consistent.		Lettering requirements: Same as for C-2, C-3, C-5, and LCI districts except minimum lettering size for the name of the business complex shall be 8 inches in a space or band a minimum of 12 inches measured vertically and tenant bands shall be a minimum of 9 inches and shall have a minimum lettering size of 6 inches.
	0	G C. HOW P	G C HOW TO I
Any sign which is supported by masonry, wood, metal or similar structure uprights or braces and is permanently installed in or on the ground on a permanent base.	One ground sign permitted on the primary street frontage. The sign may be placed at the intersection of two streets. A secondary ground sign is permitted only where the street frontage where the sign is to be located is opposite of, rather than at a right angle to, the primary frontage. A monument style sign is permitted in C-1 and D-MU district provided the front yard setback of the building is 20 feet or greater.	Same as for "C" districts.	Same as for "C" districts except as noted below.
	If the nearest edge of a building wall is set back from the edge of the adjacent street 35 ft or more, a ground sign is allowed in addition to a wall sign.		
Landscaping shall be planted at the base of ground-mounted signs; plant materials shall be sufficient to screen the sign's supports to a height of 50% of the distance from the ground to the bottom of the sign within a period of 2 years.	May be displayed only on a frontage of 75 ft or more and may not be closer than 75 ft to any other ground sign.		
	Maximum area: Primary frontage sign - 32 sq. ft. or 1.2 times the total business floor area divided by 1,000, not to exceed 180 square feet. Secondary frontage sign - 20 sq. ft.		Maximum area: 32 sq. ft. or 1.2 times the total business floor area divided by 1,000, not to exceed 70 sq. ft.
	Maximum height: Primary frontage sign - 15 ft. or 0.6 times the total business floor area divided by 1,000, not to exceed 24 ft. Secondary frontage sign - 10 ft.		Maximum height: 15 ft.
DICHT ANGLESION	Lettering requirements: The minimum height of lettering on a sign on an arterial roadway shall be 6 inches.		
RIGHT-ANGLE SIGN	Park trade and to 1, 22	NI/A	Come on for IICII district
Any sign which is affixed to any building, wall or structure and which extends more than 12 inches horizontally from the building wall and projects from the wall at an angle of 90 degrees. Also includes signs hung under a canopy.	Each businesses in a buildings set back no more than 10 feet from a public sidewalk or a sidewalk in a business complex may have a right-angle sign. Signs in a business complex shall conform to an approved master signage plan filed by the owner. (See 23-545.3(b).	N/A	Same as for "C" districts

	Sign must clear the sidewalk by at least 8 ft and project no more than 5 ft from the building or ½ the width of the sidewalk, whichever is less. Sign should be mounted at least 6 inches from the wall and may not be placed above the expression line of the building facade. Sign may not project at the corner of the building and may not be displayed closer than 20 ft from any other right-angle sign.		
WINDOW SIGN			
A sign painted, etched or otherwise affixed to a window.			Same as for "C" districts.
AWNING SIGN			
A sign on a shelter supported entirely from the exterior wall of a building and composed of non-rigid materials except for the supporting framework.	ntirely from the exterior wall of a uilding and composed of non-rigid naterials except for the supporting provided that the area of the awning		Same as for "C" districts.
A-FRAME SIDEWALK SIGNS			
A portable sign which has no legs or solid base and which is supported on two display boards hinged at the top.	Allowed in portions of C-1 and D-MU districts only pursuant to § 23-545.6 a.		

#### NOTES:

- 1. Sign area. The area of a sign shall be measured to include the entire area within a continuous perimeter and a single plane composed of a square, circle or rectangle which encloses the extreme limits of the advertising message or announcement of wording together with any frame, background, trim or other integral part of the display excluding the necessary supports or uprights on which such sign is placed. The owner may not increase the allowed total area, but may use more than one (1) square, circle or rectangle in order to calculate the area. Sign area of a ground-mounted sign is the entire area of one (1) side of such sign so that two (2) sides which are back to back are counted only once.
- 2. Sign height measurement. The height of a sign shall be measured from the average grade within a tenfoot radius of the base of the sign.

(Ord. No. 2005-47, §§ 4—8, 9(Att. A), 10-18-2005; Ord. No. 2006-47, § 3, 12-5-2006; Ord. No. 2006-24, § 17, 6-6-2006; Ord. No. 2007-02, §§ 21—23, 3-6-2007; Ord. No. 2007-33, § 12, 9-4-2007; Ord. No. 2010-13, § 5, 6-18-2013; Ord. No. 2013-05, §§ 5, 6, 6-18-2013; Ord. No. 2020-30, § 1, 12-02-2020; Ord. No. 2022-37, § 1, 9-07-2022)

# § 23-546. Swimming pools.

See section 23-527 for regulations.

(Ord. No. 2008-45, § 22, 12-16-08)

#### **Article VI. Resource Protection Standards**

Division 1. Development In Flood Prone Areas

<sup>&</sup>lt;sup>1</sup>"Expression line" means the architectural feature on the façade of a building delineating the transition between the ground floor and the upper façade.

#### § 23-601. GENERAL

Effective: Tuesday, October 18, 2016

- a. Title. These regulations shall be known as the Floodplain Management Ordinance of City of Lake Wales, hereinafter referred to as "this Division."
- b. Scope. The provisions of this Division shall apply to all development that is wholly within or partially within any flood hazard area, including but not limited to the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the *Horida Building Code*; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development.
- c. Intent. The purposes of this Division and the flood load and flood resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:
  - (1) Minimize unnecessary disruption of commerce, access and public service during times of flooding;
  - (2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
  - (3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;
  - (4) Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
  - (5) Minimize damage to public and private facilities and utilities;
  - (6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;
  - (7) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and
  - (8) Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.
- d. Coordination with the Florida Building Code. This ordinance is intended to be administered and enforced in conjunction with the Florida Building Code.

  Where cited, ASCE 24 refers to the edition of the standard that is referenced by the Florida Building Code.
- e. Warning. The degree of flood protection required by this ordinance and the Florida Building Code, as amended by this community, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this ordinance.
- f. Disclaimer of Liability. This ordinance shall not create liability on the part of the City of Lake Wales or by any officer or employee thereof for any flood damage that results from reliance on this ordinance or any administrative decision lawfully made thereunder.

(Ord. No. 2016-19, § 2, 10-18-16)

#### § 23-601.1. Definitions.

The following terms are defined for use in carrying out the provisions of this section.

Addition (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

Appeal means a request for a review of the administrative official's interpretation of any provision of this section or a request for a variance.

Area of shallow flooding means a designated AO or VO Zone on a Community's Flood Insurance Rate Map (FIRM) with base flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of special flood hazard is the land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year.

Base flood means the flood having a one (1) percent chance of being equaled or exceeded in any given year (also called the "100-year flood" and the "regulatory flood"). Base flood is the term used throughout this section.

Base flood elevation means the highest water-surface elevation associated with the base flood.

Basement means that portion of a building having its floor sub-grade (below ground level) on all sides.

*Breakaway wall* means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

Building. See structure

*Development* means any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of materials or equipment.

*Elevated building* means a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), shear walls, or breakaway walls.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Boundary and Floodway (FBFM) means the official map of the Lake Wales area on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

Flood Insurance Rate Map (FIRM) means an official map of the Lake Wales area on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) is the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FHBM (where applicable) and the water surface elevation of the base flood.

Floodplain means any land area susceptible to flooding.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

*Floor* means the top surface of an enclosed area in a building (including basement), i.e. top of slab in concrete slab construction or top of wood flooring in wood frame construction. The terms does not include the floor of a garage used solely for parking vehicles.

*Freeboard* means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management.

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

*Hardship,* (as relating to variances of the provisions of this section) means the exceptional hardship associated with the land that would result from a failure to grant the requested variance. A hardship must be unusual and peculiar to the property involved. Financial hardship alone is not considered exceptional. Inconvenience aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a building.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the non-elevation design standards of this ordinance.

Manufactured home means a building, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes part trailers, travel trailers, and similar transportable structures placed on a site for one hundred eighty (180) consecutive days or longer and intended to be improved property.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Existing—A manufactured home park or subdivision is considered "existing" if the construction of facilities for servicing the lots on which the homes are to be affixed were complete (including at minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before 1988, the effective date of the first floodplain management regulations adopted by the City of Lake Wales. Such a park or subdivision is considered "new" if it was or is commenced after that date.

Expansion of an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction or streets, and either final site grading or the pouring of concrete pads.)

*Market value* means the building value, excluding the land as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of the building, or adjusted assessed values.

*Mean sea level* means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this chapter, the term is synonymous with national vertical datum (NGVD).

*National Geodetic Vertical Datum (NGVD)* as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

Recreational vehicle means a vehicle that is: built on a single chassis, four hundred (400) square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

Start of construction refers to substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within one hundred eighty (180) days of the permit date.

The "actual start" of construction means the first placement of permanent construction of a building (including manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation.

"Permanent" construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main building.

For substantial improvements, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*Structure* means a walled and roofed building, including gas or liquid storage tanks and manufactured homes, that are principally above ground.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. The administrative official may require verification of the "market value" in making a determination of "substantial improvement" or "substantial damage."

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, taking place within a calendar year, the cumulative cost of which equals or exceeds fifty (50) percent of the "market value" of the structure before the "start of construction" of the improvement or, in the case of repairs, before the damage occurred. The administrative official may require verification of the "market value" in making a determination of "substantial improvement" or "substantial damage." The term "substantial improvement" also includes structures that have incurred "substantial damage" or "repetitive loss" regardless of the actual repair work performed. This term does not, however, include any repair or improvement of a structure to correct violations of state or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official prior to the application for, permit for improvement and which are the minimum necessary to assure safe living conditions.

*Variance* is a grant of relief from the requirements of this ordinance, which permits construction in a manner otherwise prohibited by this section and which is based on a finding that specific enforcement of the provisions of this section would result in a hardship.

### § 23-602. APPLICABILITY

Effective: Tuesday, October 18, 2016

- a. General. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.
- b. Areas to which this ordinance applies. This ordinance shall apply to all flood hazard areas within the City of Lake Wales, as established in section 23-602(c)
- c. Basis for establishing flood hazard areas. The Flood Insurance Study for Polk County, Florida and Incorporated Areas dated December 22, 2016, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the Building Department, Municipal Administration Building.
- d. Submission of additional data to establish flood hazard areas. To establish flood hazard areas and base flood elevations, pursuant to section 23-605 the Floodplain Administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the community indicates that ground elevations:
  - (1) Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of this Division and, as applicable, the requirements of the *Florida Building Code*.
  - (2) Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.
- e. Other laws. The provisions of this Division shall not be deemed to nullify any provisions of local, state or federal law.
- f. Abrogation and greater restrictions. This Division supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances including but not limited to land development regulations, zoning ordinances, stormwater management regulations, or the Florida Building Code. In the event of a conflict between this Division and any other ordinance, the more restrictive shall govern. This Division shall not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall also be governed by this Division.
- g. Interpretation. In the interpretation and application of this Division, all provisions shall be:
  - (1) Considered as minimum requirements;
  - (2) Liberally construed in favor of the governing body; and
  - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 2016-19, § 2, 10-18-16)

#### § 23-603. DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

- a. Designation. The Building Official is designated as the Floodplain Administrator. The Floodplain Administrator may delegate performance of certain duties to other employees.
- b. General. The Floodplain Administrator is authorized and directed to administer and enforce the provisions of this Division. The Floodplain Administrator shall have the authority to render interpretations of this Division consistent with the intent and purpose of this Division and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this Division without the granting of a variance pursuant to section 23-607.
- c. Applications and permits. The Floodplain Administrator, in coordination with other pertinent offices of the community, shall:
  - (1) Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
  - (2) Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this Division;
  - (3) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation;
  - (4) Provide available flood elevation and flood hazard information;
  - (5) Determine whether additional flood hazard data shall be obtained from other sources or shall be developed by an applicant;
  - (6) Review applications to determine whether proposed development will be reasonably safe from flooding;
  - (7) Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code, when compliance with this Division is demonstrated, or disapprove the same in the event of noncompliance; and
  - (8) Coordinate with and provide comments to the Building Official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this Division.
- d. Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:
  - (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
  - (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
  - (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
  - (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the Florida Building Code and this Division is required.
- e. Modifications of the strict application of the requirements of the Florida Building Code. The Floodplain Administrator shall review requests submitted to the Building Official that seek approval to modify the strict application of the flood load and flood resistant construction requirements of the Florida Building Code to determine whether such requests require the granting of a variance pursuant to section 23-607.
- f. Notices and orders. The Floodplain Administrator shall coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this Division.
- g. Inspections. The Floodplain Administrator shall make the required inspections as specified in section 23-606 for development that is not subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. The Floodplain Administrator shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit.
- h. Other duties of the Floodplain Administrator. The Floodplain Administrator shall have other duties, including but not limited to:
  - (1) Establish, in coordination with the Building Official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to section 23-603(d);
  - (2) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);
  - (3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available;

- (4) Review required design certifications and documentation of elevations specified by this Division and the Florida Building Code to determine that such certifications and documentations are complete; and
- (5) Notify the Federal Emergency Management Agency when the corporate boundaries of the City of Lake Wales are modified.
- i. Floodplain management records. Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this Division and the flood resistant construction requirements of the Florida Building Code, including Flood Insurance Rate Maps; Letters of Map Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the Florida Building Code and this Division; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this Division and the flood resistant construction requirements of the Florida Building Code. These records shall be available for public inspection at the Building Department, Municipal Administration Building.

(Ord. No. 2016-19, § 2, 10-18-16)

# § 23-604. PERMITS

- a. Permits required. Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this Division, including buildings, structures and facilities exempt from the Florida Building Code, which is wholly within or partially within any flood hazard area shall first make application to the Floodplain Administrator, and the Building Official if applicable, and shall obtain the required permit(s) and approval(s). No such permit or approval shall be issued until compliance with the requirements of this Division and all other applicable codes and regulations has been satisfied.
- b. Floodplain development permits or approvals. Floodplain development permits or approvals shall be issued pursuant to this Division for any development activities not subject to the requirements of the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a floodplain development permit or approval is required in addition to a building permit.
- c. Buildings, structures and facilities exempt from the *Florida Building Code*. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals shall be required for the following buildings, structures and facilities that are exempt from the *Florida Building Code* and any further exemptions provided by law, which are subject to the requirements of this Division:
  - (1) Railroads and ancillary facilities associated with the railroad.
  - (2) Nonresidential farm buildings on farms, as provided in section 604.50, F.S.
  - (3) Temporary buildings or sheds used exclusively for construction purposes.
  - (4) Mobile or modular structures used as temporary offices.
  - (5) Those structures or facilities of electric utilities, as defined in section 366.02, F.S., which are directly involved in the generation, transmission, or distribution of electricity.
  - (6) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
  - (7) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
  - (8) Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.
  - (9) Structures identified in section 553.73(10)(k), F.S., are not exempt from the *Florida Building Code* if such structures are located in flood hazard areas established on Flood Insurance Rate Maps
- d. Application for a permit or approval. To obtain a floodplain development permit or approval the applicant shall first file an application in writing on a form furnished by the community. The information provided shall:
  - (1) Identify and describe the development to be covered by the permit or approval.

- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan or construction documents as specified in section 23-605.
- (5) State the valuation of the proposed work.
- (6) Be signed by the applicant or the applicant's authorized agent.
- (7) Give such other data and information as required by the Floodplain Administrator.
- e. Validity of permit or approval. The issuance of a floodplain development permit or approval pursuant to this Division shall not be construed to be a permit for, or approval of, any violation of this Division, the Florida Building Codes, or any other Division of this community. The issuance of permits based on submitted applications, construction documents, and information shall not prevent the Floodplain Administrator from requiring the correction of errors and omissions.
- f. Expiration. A floodplain development permit or approval shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each shall be requested in writing and justifiable cause shall be demonstrated.
- g. Suspension or revocation. The Floodplain Administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this Division or any other ordinance, regulation or requirement of this community.
- h. Other permits required. Floodplain development permits and building permits shall include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:
  - (1) The Southwest Florida Water Management District; section 373.036, F.S.
  - (2) Florida Department of Health for onsite sewage treatment and disposal systems; section 381.0065, F.S. and Chapter 64E-6, F.A.C.
  - (3) Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; section 161.055, F.S.
  - (4) Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
  - (5) Federal permits and approvals.

 $(Ord.\ No.\ 2008-45,\ \S\ 23,\ 12-16-08;\ Ord.\ No.\ 2015-04,\ \S\ 13,\ 7-7-15;\\ Ord.\ No.\ 2016-19,\ \S\ 2,\ 10-18-16)$ 

# § 23-605. SITE PLANS AND CONSTRUCTION DOCUMENTS

- **a.** Information for development in flood hazard areas. The site plan or construction documents for any development subject to the requirements of this Division shall be drawn to scale and shall include, as applicable to the proposed development:
  - (1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.
  - (2) Where base flood elevations or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with section 23-605(b)2 or (b)3.
  - (3) Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and the base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with section 23-605(b)1.
  - (4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures.
  - (5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
  - (6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
  - (7) Existing and proposed alignment of any proposed alteration of a watercourse.

The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by this Division but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this Division.

b. Information in flood hazard areas without base flood elevations (approximate Zone A). Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the Floodplain Administrator shall:

- (1) Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices.
- (2) Obtain, review, and provide to applicants base flood elevation and floodway data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation and floodway data available from a federal or state agency or other source.
- (3) Where base flood elevation and floodway data are not available from another source, where the available data are deemed by the Floodplain Administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:
  - (a) Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices; or
  - (b) Specify that the base flood elevation is two (2) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two (2) feet.
- (4) Where the base flood elevation data are to be used to support a Letter of Map Change from FEMA, advise the applicant that the analyses shall be prepared by a Florida licensed engineer in a format required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.
- c. Additional analyses and certifications. As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:
  - (1) For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in section 23-605(d) and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction documents.
  - (2) For development activities proposed to be located in a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated, no encroachment, including fill material and structures, shall be located within a distance of the stream bank equal to two (2) times the width of the stream (measured at top of bank) or twenty (20) feet each side from the top of bank, whichever is greater, unless hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
  - (3) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in section 23-605(d).
- d. Submission of additional data. When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

(Ord. No. 2016-19, § 2, 10-18-16)

# § 23-606. INSPECTIONS

- a. General. Development for which a floodplain development permit or approval is required shall be subject to inspection.
- **b. Development other than buildings and structures.** The Floodplain Administrator shall inspect all development to determine compliance with the requirements of this Division and the conditions of issued floodplain development permits or approvals.
- c. Buildings, structures and facilities exempt from the Florida Building Code. The Floodplain Administrator shall inspect buildings, structures and facilities exempt from the Florida Building Code to determine compliance with the requirements of this Division and the conditions of issued floodplain development permits or approvals.

- d. Buildings, structures and facilities exempt from the Florida Building Code, lowest floor inspection. Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the Florida Building Code, or the owner's authorized agent, shall submit to the Floodplain Administrator:
  - (1) If a design flood elevation was used to determine the required elevation of the lowest floor, the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor; or
  - (2) If the elevation used to determine the required elevation of the lowest floor was determined in accordance with section 23-605(b)3.b, the documentation of height of the lowest floor above highest adjacent grade, prepared by the owner or the owner's authorized agent.
- e. Buildings, structures and facilities exempt from the Florida Building Code, final inspection. As part of the final inspection, the owner or owner's authorized agent shall submit to the Floodplain Administrator a final certification of elevation of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations shall be prepared as specified in section 23-606(d).
- f. Manufactured homes. The Floodplain Administrator shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this Division and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted to the Floodplain Administrator.

(Ord. No. 2016-19, § 2, 10-18-16)

#### § 23-607. VARIANCES AND APPEALS

- a. General. The board of appeals, pursuant to section 23-244, shall hear and decide on requests for appeals and requests for variances from the strict application of this Division. Pursuant to section 553.73(5), F.S., the board of appeals shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the Florida Building Code.
- b. Appeals. The board of appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the administration and enforcement of this Division. Any person aggrieved by the decision may appeal such decision to the Circuit Court, as provided by Florida Statutes.
- c. Limitations on authority to grant variances. The board of appeals shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in section 23-607(g), the conditions of issuance set forth in section 23-607(h), and the comments and recommendations of the Floodplain Administrator and the Building Official. The board of appeals has the right to attach such conditions as it deems necessary to further the purposes and objectives of this Division.
- d. Restrictions in floodways. A variance shall not be issued for any proposed development in a floodway if any increase in base flood elevations would result, as evidenced by the applicable analyses and certifications required in section 23-605(c).
- e. Historic buildings. A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the Florida Building Code, Existing Building, Chapter 12 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the Florida Building Code.
- f. Functionally dependent uses. A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this Division, provided the variance meets the requirements of section 23-607(d), is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.
- g. Considerations for issuance of variances. In reviewing requests for variances, the board of appeals shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this Division, and the following:
  - (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
  - (2) The danger to life and property due to flooding or erosion damage;
  - (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
  - (4) The importance of the services provided by the proposed development to the community;
  - (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
  - (6) The compatibility of the proposed development with existing and anticipated development;

- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.
- h. Conditions for issuance of variances. Variances shall be issued only upon:
  - (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this Division or the required elevation standards;
  - (2) Determination by the board of appeals that:
    - (a) Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
    - (b) The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and
    - (c) The variance is the minimum necessary, considering the flood hazard, to afford relief,
  - (3) Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected parcel of land; and
  - (4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25 for \$100 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

(Ord. No. 2016-19, § 2, 10-18-16)

#### § 23-608. VIOLATIONS

Effective: Tuesday, October 18, 2016

- a. Violations. Any development that is not within the scope of the Florida Building Code but that is regulated by this Division that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with this Division, shall be deemed a violation of this Division. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this Division or the Florida Building Code is presumed to be a violation until such time as that documentation is provided.
- **b. Authority.** For development that is not within the scope of the *Florida Building Code* but that is regulated by this Division and that is determined to be a violation, the Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.
- c. Unlawful continuance. Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law.

(Ord. No. 2016-19, § 2, 10-18-16)

#### **§ 23-609. DEFINITIONS**

- a. Scope. Unless otherwise expressly stated, the following words and terms shall, for the purposes of this Division, have the meanings shown in this section
- b. Terms defined in the Florida Building Code. Where terms are not defined in this Division and are defined in the Florida Building Code, such terms shall have the meanings ascribed to them in that code.

c. Terms not defined. Where terms are not defined in this Division or the Florida Building Code, such terms shall have ordinarily accepted meanings such as the context implies.

#### d. Definitions.

Alteration of a watercourse. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal. A request for a review of the Floodplain Administrator's interpretation of any provision of this Division.

ASCE 24. A standard titled Flood Resistant Design and Construction that is referenced by the Florida Building Code. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base flood. A flood having a 1-percent chance of being equaled or exceeded in any given year. [Also defined in FBC, B, Section 202.] The base flood is commonly referred to as the "100-year flood" or the "1-percent-annual chance flood."

Base flood elevation. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in FBC, B, Section 202.]

Basement. The portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in FBC, B, Section 202; see "Basement (for flood loads)".]

Design flood. The flood associated with the greater of the following two areas: [Also defined in FBC, B, Section 202.]

- (1) Area with a floodplain subject to a 1-percent or greater chance of flooding in any year; or
- (2) Area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

**Design flood elevation**. The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where the depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet. [Also defined in FBC, B, Section 202.]

**Development.** Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities.

**Encroachment.** The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

Existing building and existing structure. Any buildings and structures for which the "start of construction" commenced before March 16, 1988. [Also defined in FBC, B, Section 202.]

**Existing manufactured home park or subdivision**. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before March 16, 1988.

Expansion to an existing manufactured home park or subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA). The federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land from: [Also defined in FBC, B, Section 202.]

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood damage-resistant materials. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in FBC, B, Section 202.]

Flood hazard area. The greater of the following two areas: [Also defined in FBC, B, Section 202.]

- (1) The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.
- (2) The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Flood Insurance Rate Map (FIRM). The official map of the community on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community. [Also defined in FBC, B, Section 202.]

Flood Insurance Study (FIS). The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map, the Flood Boundary and Floodway Map (if applicable), the water surface elevations of the base flood, and supporting technical data. [Also defined in FBC, B, Section 202.]

**Floodplain Administrator.** The office or position designated and charged with the administration and enforcement of this Division (may be referred to as the Floodplain Manager).

Floodplain development permit or approval. An official document or certificate issued by the community, or other evidence of approval or concurrence, which authorizes performance of specific development activities that are located in flood hazard areas and that are determined to be compliant with this Division.

Floodway. The channel of a river or other riverine watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot. [Also defined in FBC, B, Section 202.]

Floodway encroachment analysis. An engineering analysis of the impact that a proposed encroachment into a floodway is expected to have on the floodway boundaries and base flood elevations; the evaluation shall be prepared by a qualified Florida licensed engineer using standard engineering methods and models.

Florida Building Code. The family of codes adopted by the Florida Building Commission, including: Florida Building Code, Building; Florida Building Code, Building; Florida Building Code, Florida Building Co

Functionally dependent use. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

Historic structure. Any structure that is determined eligible for the exception to the flood hazard area requirements of the Florida Building Code, Existing Building, Chapter 12 Historic Buildings.

**Letter of Map Change (LOMC).** An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light-duty truck. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

- (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- $\hbox{(2)} \ \ \text{Designed primarily for transportation of persons and has a capacity of more than 12 persons; or }$
- (3) Available with special features enabling off-street or off-highway operation and use.

Lowest floor. The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the *Florida Building Code* or ASCE 24. [Also defined in FBC, B, Section 202.]

Manufactured home. A structure, transportable in one or more sections, which is eight (8) feet or more in width and greater than four hundred (400) square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer." [Also defined in 15C-1.0101, F.A.C.]

Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value. The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this Division, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, Actual Cash Value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser.

**New construction.** For the purposes of administration of this Division and the flood resistant construction requirements of the *Florida Building Code*, structures for which the "start of construction" commenced on or after March 16, 1988 and includes any subsequent improvements to such structures.

**New manufactured home park or subdivision.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after March 16, 1988.

Park trailer. A transportable unit which has a body width not exceeding fourteen (14) feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. [Defined in section 320.01, F.S.]

Recreational vehicle. A vehicle, including a park trailer, which is: [see in section 320.01, F.S.)

- (1) Built on a single chassis;
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Special flood hazard area**. An area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 202.]

Start of construction. The date of issuance of permits for new construction and substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 202.]

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. [Also defined in FBC, B Section 202.1]

Substantial improvement. Any repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in FBC, B, Section 202.]

- (1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- (2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.

Variance. A grant of relief from the requirements of this Division, or the flood resistant construction requirements of the Florida Building Code, which permits construction in a manner that would not otherwise be permitted by this Division or the Florida Building Code.

Watercourse. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

(Ord. No. 2016-19, § 2, 10-18-16)

#### § 23-610. BUILDINGS AND STRUCTURES

- a. Design and construction of buildings, structures and facilities exempt from the Florida Building Code. Pursuant to section 23-604(c), buildings, structures, and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings shall complywith the requirements of section 23-616.
- b. Limitation on lots created after October 1, 2008. One- and two-family dwellings shall not be permitted on lots that lie entirely with a special flood hazard area unless the lot was created prior to October 1, 2008.

(Ord. No. 2016-19, § 2, 10-18-16)

#### § 23-611. SUBDIVISIONS

Effective: Tuesday, October 18, 2016

- a. Minimum requirements. Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:
  - (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
  - (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
  - (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.
- **b. Subdivision plats.** Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:
  - Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats;
  - (2) Where the subdivision has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with section 23-602(b)1; and
  - (3) Compliance with the site improvement and utilities requirements of section 23-612.

(Ord. No. 2016-19, § 2, 10-18-16)

#### § 23-612. SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS

- a. Minimum requirements. All proposed new development shall be reviewed to determine that:
- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.
- b. Sanitary sewage facilities. All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.
- c. Water supply facilities. All new and replacement water supply facilities shall be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.
- d. Limitations on sites in regulatory floodways. No development, including but not limited to site improvements, and land disturbing activity involving fill or regrading, shall be authorized in the regulatory floodway unless the floodway encroachment analysis required in section 23-605(c)1 demonstrates that the proposed development or land disturbing activity will not result in any increase in the base flood elevation.

e. Limitations on placement of fill. Subject to the limitations of this Division, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the *Florida Building Code*.

(Ord. No. 2016-19, § 2, 10-18-16)

# § 23-613. MANUFACTURED HOMES

Effective: Tuesday, October 18, 2016

- a. General. All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to section 320.8249, F.S., and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this Division. Installation of manufactured homes shall not be permitted in floodways.
- **b. Foundations.** All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that are designed in accordance with the foundation requirements of the *Florida Building Code Residential* Section R322.2 and this Division. Foundations for manufactured homes subject to section 23-612(f) are permitted to be reinforced piers or other foundation elements of at least equivalent strength.
- c. Anchoring. All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.
- d. Elevation. Manufactured homes that are placed, replaced, or substantially improved shall comply with section 23-613(e) or (f), as applicable.
- e. General elevation requirement. Unless subject to the requirements of section 23-612(f), all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A).
- f. Bevation requirement for certain existing manufactured home parks and subdivisions. Manufactured homes that are not subject to section 23-612(e), including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:
  - (1) Bottom of the frame of the manufactured home is at or above the elevation required in the Florida Building Code, Residential Section R322.2 (Zone A); or
  - (2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.
- g. Enclosures. Enclosed areas below elevated manufactured homes shall comply with the requirements of the Florida Building Code, Residential Section R322.2 for such enclosed areas.
- h. Utility equipment. Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with the requirements of the Florida Building Code, Residential Section R322.

(Ord. No. 2016-19, § 2, 10-18-16)

#### § 23-614. RECREATIONAL VEHICLES AND PARK TRAILERS

- a Temporary placement. Recreational vehicles and park trailers placed temporarily in flood hazard areas shall:
  - (1) Be on the site for fewer than 180 consecutive days; or
  - (2) Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.
- **b. Permanent placement.** Recreational vehicles and park trailers that do not meet the limitations in section 23-614(a) for temporary placement shall meet the requirements of section 23-613 for manufactured homes.

(Ord. No. 2016-19, § 2, 10-18-16)

#### § 23-615. TANKS

Effective: Tuesday, October 18, 2016

- a. Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.
- b. Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of section 23-615(c) shall be permitted in flood hazard areas provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.
- c. Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.
- d. Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:
  - At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
  - (2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(Ord. No. 2016-19, § 2, 10-18-16)

# § 23-616. OTHER DEVELOPMENT

Effective: Tuesday, October 18, 2016

- a. General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this Division or the Florida Building Code, shall:
  - (1) Be located and constructed to minimize flood damage;
  - (2) Meet the limitations of section 23-612(d) if located in a regulated floodway;
  - (3) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood:
  - (4) Be constructed of flood damage-resistant materials; and
  - (5) Have mechanical, plumbing, and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.
- **b. Fences in regulated floodways.** Fences in regulated floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of section 23-612(d).
- c. Retaining walls, sidewalks and driveways in regulated floodways. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of section 23-612(d).
- d. Roads and watercourse crossings in regulated floodways. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of section 23-612(d). Alteration of a watercourse that is part of a road or watercourse crossing shall meet the requirements of section 23-605(c)3.

(Ord. No. 2016-19, § 2, 10-18-16)

#### Division 2. Potable Water Wellhead Protection Areas

# § 23-621. Purpose and intent.

The purpose and intent of this division is to safeguard the health, safety and welfare of the citizens of the city by registering all land uses and activities that occur within wellhead protection areas surrounding potable water supply wells, thereby providing protection of the principal source of water for domestic, agricultural, and industrial use. The availability of adequate and dependable supplies of potable quality water is of primary importance to the future of the city; therefore, standards are described in this division with the intent of protecting both the quantity and quality of the groundwater supply. It is further the intent of this division to control development in and adjacent to designated wellheads to protect water supplies from potential contamination.

#### § 23-622. Applicability.

Development regulations established in this division shall be applicable to designated wellhead protection areas for all public supply water wells.

# § 23-623. Wellhead protection area and zones.

- a. *Establishment of wellhead protection area*. The wellhead protection area shall consist of a radius of five hundred (500) feet around each of the city's public supply potable water wells.
  - 1. Zone of exclusion. A 300-foot radius measured from a well shall be a zone of exclusion, within which all development activities are prohibited. It is the intent and purpose of the city to prohibit new land uses and activities within three hundred (300) feet of a wellhead and to monitor and existing land uses and activities within this zone.
  - 2. Zone of protection. The radius from three (300) feet to five hundred (500) feet measured from a wellhead is declared to be the Zone of Protection. It is the intent of the city to monitor and restrict land uses and activities within the zone of protection.
- b. Wellhead protection area map. The administrative official shall maintain a wellhead protection area map showing the zone of exclusion and zone of protection established pursuant to this division.
  - 1. Where a property lies partly outside the wellhead protection area, development standards contained in this division shall apply only to that part of the property lying within the wellhead protection area.
  - 2. Where the wellhead protection area boundary passes through a building, the entire building shall be considered to be in the protection area.
- Sec. 23-623.1 Regulation of land uses and activities. Land uses and activities in zones of exclusion and zones of protection shall be regulated in accordance with this section.
  - (a) Zone of exclusion. No new land uses shall be established within a zone of exclusion. Any existing land use or activity within three hundred (300) feet of a wellhead shall be deemed to be a nonconforming use. It is the intent and purpose of the city to eliminate all land uses and activities within three hundred (300) feet of a wellhead.
  - (b) Zone of protection. Land uses and activities permitted in accordance with the provisions of article IV, district regulations, are permitted in the zones of protection except for the following uses and activities, which are prohibited.
    - 1. Landfills;
    - 2. Facilities for bulk storage, handling or processing of materials on the Florida Substance List;
    - 3. Activities that require the storage, use, handling, production or transportation of restricted substances, agricultural chemicals, petroleum products, hazardous toxic waste, medical waste, or similar substances; non-residential use, handling, production or storage of hazardous substances in any quantity; and, residential use of more than five (5) gallons;
    - 4. Feed lots or other commercial animal facilities;
    - 5. Wastewater treatment plants, percolation ponds or similar facilities;
    - 6. Mines; and
    - 7. Excavation of waterways or drainage facilities which intersect the water table.

- Sec. 23-623.2 Registration of land uses and activities in wellhead protection areas. All land uses and activities within the wellhead protection area, including those within the zones of exclusion and the zones of protection, must be identified and registered with the city within one (1) year of the adoption of this division. The registration is to enable the city to eliminate all potential sources of contamination of the potable water supply. Registration of new land uses and activities shall be required by the administrative official at the time of the verification of zoning compliance, required pursuant to section 23-212. The administrative official shall maintain a record of all land uses and activities within the wellhead protection area of all wells.
  - a. *Registration procedure*. Each landowner with a legal use or activity between three hundred (300) feet and five hundred (500) feet of a wellhead shall notify the city as to the nature of the use or activity. The information shall be sent to the administrative official by letter. The information required is as follows:
    - 1. Name, address, and phone number of the property owner, operator, and/or agent, and the tax parcel number;
    - 2. Signature of agent or owner;
    - 3. Locational description of the property, such as "located on Highway 17 between Pine and Redwood Streets."
    - 4. A description of the land use or activity at the location;
    - 5. A list of all known hazardous substances that may be utilized, generated and/or stored at the described property;
    - 6. If required by the administrative official, a survey or scale drawing of the property, identifying existing structures, adjacent streets and water bodies in relation to the wellhead.
  - b. *Exemptions*. The following activities or uses are exempt from registration requirements in the zone of protection:
    - 1. The transportation of any hazardous substance through the zone of protection;
    - 2. Fuel in a vehicle fuel tank or as lubricant in a vehicle;
    - 3. Repairing or maintaining any facility or improvement on lands within the zone of protection; and
    - 4. Geotechnical borings.
  - c. *Notice of discontinuation of land use or activity.* If a land use or activity ceases, the owner must notify the city by registered letter within thirty (30) days of cessation of use.

#### § 23-624. Modification of requirements.

- a . Any person affected by this division may petition the city commission for modification from the prohibitions and registering requirements of this section, provided that the person demonstrates that special or unusual circumstances and adequate technology exists to isolate the facility or activity from the potable water supply in the event of a spill.
- b. The city commission shall determine whether the land use or activity shall be approved under the provisions of this division. In making this decision, the commissioners shall consider:
  - 1. The cumulative impacts of the land use or activity on the zone of protection in combination with other uses or activities that have been permitted within said zone; and
  - 2. Whether the proposed use end product that is a threat to the water supply can be contained in the case of a spill.

# § 23-625. Location of new wells.

No new public supply water wells shall be located such that the wellhead protection area extends past the boundaries of private property.

# Division 3. Florida Water Star<sup>SM</sup> Certification Required

# § 23-631. Purpose and Intent

Effective: Tuesday, January 03, 2023

It is the intent and purpose of this Section to implement uniform procedures that promote water conservation through the MANDATORY installation of more efficient plumbing fixtures and appliances and installation of more efficient landscapes and irrigation systems and methods.

(Ord. No. 2022-52, § 1, 1-03-23)

# § 23-632. Applicability.

Effective: Tuesday, January 03, 2023

MANDATORY Water Conservation for ALL NEW CONSTRUCTION WITHIN THE CITY OF LAKE WALES FOR efficient Indoor Plumbing Requirements, Landscape Design and Installation Standards, and Irrigation System Design and Installation Standards. Verification of the installation of efficient indoor and outdoor Florida Water Star fixtures, appliances, landscapes and irrigation systems is completed by a Florida Water Star inspector. Official Florida Water Star Certificate of Compliance must be submitted to obtain the Certificate of Occupancy.

(Ord. No. 2022-52, § 1, 1-03-23)

#### § 23-633. Definitions

Effective: Tuesday, January 03, 2023

For the purposes of this Section, the following words, and terms shall have the meaning given herein:

- (1) Automatic irrigation system. An irrigation system designed to operate following a preset program entered into an automatic controller.
- (2) *Automatic controller*. A mechanical or electrical device capable of automated operation of valve stations to set the time, duration and frequency of a water application (Florida Department of Environmental Protection [DEP] Model Ordinance).
- (3) Certificate of Occupancy (CO). A formal document issued by the City of Lake Wales Building Official or assignee certifying a building's compliance with applicable plans and specifications that were submitted to and approved by the permitting department of Lake Wales.
- (4) *Distribution equipment*. The water emitters on irrigation systems, including but not limited to sprinklers, rotors, spray heads and micro-irrigation devices.
- (5) ENERGY STAR®. A joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy, with the purpose of reducing energy costs and protecting the environment, through energy- and water-efficient products and practices
- (6) Florida Water Star. Certificate of Compliance. A Florida water conservation certification program that is mandatory for new residential and commercial construction in Lake Wales which shall include indoor and outdoor water-efficient criteria and prevent leaks.
- (7) Florida Water Star Inspector. Person that verifies Florida Water Star program criteria in accordance with program documents. Inspectors demonstrate sufficient knowledge to verify appropriate subcategories (irrigation, landscape and plumbing). Inspectors are permitted to use construction documents, affidavits, and field verification during the verification period. See Florida Water Star certification program process web page at FloridaWaterStar.com (Florida Water Star).
- (8) Florida Water Star Irrigation and Landscape Accredited Professional (AP). A landscape or irrigation professional who has successfully passed the Florida Water Star AP exam and is in good standing with the program (Florida Water Star).
- (9) *Head-to-head spacing*. Spacing of sprinkler heads so that each sprinkler throws water to the adjacent sprinkler (Irrigation Association [IA] Glossary).
- (10) *High-volume irrigation*. An irrigation system with a minimum flow rate per emitter of more than 30 gallons per hour (gph) or higher than 0.5 gallons per minute (gpm). High-volume is usually measured as gpm (Florida Water Star).
- (11) *Irrigation professional*. Any person installing or maintaining an irrigation system in the City of Lake Wales for payment from a customer.
- (12) *Irrigation design professional*. An irrigation design professional shall include state-licensed plumbers operating within the limits of the Florida Building Code, professional engineers or landscape architects licensed by the State of Florida, Florida Water Star Irrigation and Landscape Accredited Professionals and irrigation designers certified by the Irrigation Association or the Florida Irrigation Society.

- (13) *Irrigation system.* A set of components that may include the water source, water distribution network, control components, and other general irrigation equipment which has been installed to provide irrigation (Florida Water Star).
- (14) *Landscaped area*. The entire parcel less the building footprint, driveways, hardscapes, decks and patios, and nonporous areas (DEP Model Ordinance).
- (15) Licensed Irrigation Professional. An irrigation specialty contractor who obtains the irrigation specialty license from The Florida Construction Industry Licensing Board and maintains continuing education requirements.
- (16) Low-volume irrigation. Any emitter or sprinkler that applies less than 30 gallons per hour (gph) or 0.5 gallons per minute (gpm) (Florida Water Star).
- (17) *Matched precipitation*. Expressed in inches per hour, precipitation rate is the rate at which sprinklers apply water. Matched precipitation usually implies that all the sprinklers in a particular zone apply similar amounts of water to a given area (Florida Water Star).
- (18) *Micro-irrigation*. The application of small quantities of water directly on or below the soil surface or plant root zone, usually as discrete drops, tiny streams, or miniature sprays through emitters placed along the water delivery pipes (laterals). Micro-irrigation encompasses a number of methods or concepts, including drip, subsurface, micro-bubbler, and micro-spray irrigation, previously known as trickle irrigation, low volume or low-flow irrigation (Appendix F, Florida Building Code).
- (19) *Rotor*. Sprinkler that rotates and specifically, a gear-driven sprinkler. Often delivers a thin stream of water in a circular pattern over a longer distance with a precipitation rate from 0.1 inches per hour to 1.5 inches per hour (Florida Water Star).
- (20) Side-strip sprinkler. Sprinkler nozzle that sprays a long, but narrow pattern.
- (21) Spray head. Sprinkler head with a fixed orifice that does not rotate (Florida Water Star).
- (22) *Substantial modification*. Any modification to an existing irrigation system such that 50 percent or more of the irrigation system (by area) is replaced or altered.
- (23) *Temporary establishment irrigation*. The temporary use of irrigation for the establishment of new vegetation that shall be removed once the plants are established or within two years, which occurs first.
- (24) *WaterSense*®. A program sponsored by the U.S. Environmental Protection Agency to promote the use of water-efficient products and services (Florida Water Star).

(Ord. No. 2022-52, § 1, 1-03-23)

# § 23-634. Efficient Plumbing Requirements

Effective: Tuesday, January 03, 2023

- (A) Contractors obtaining City of Lake Wales Building Permits, for all new residential, commercial and institutional construction, no more than 60 days after the effective date of this Ordinance, shall incorporate WaterSense plumbing fixtures (faucets, showerheads and toilets) and ENERGY STAR appliances (clothes washer and dishwasher) into said construction. All new construction shall incorporate WaterSense plumbing fixtures and ENERGY STAR appliances prior to issuance of certificate of occupancy.
- (B) In appliances where WaterSense plumbing fixtures and ENERGY STAR appliances are not available, the fixture or appliance must meet the same flow rate as WaterSense or ENERGY STAR specs, or a written request for an exception must be submitted with the building permit application and approved by the City. For exception to be approved, a best alternative water and/or energy conservative fixture and/or appliance must be identified in the submittal.

(Ord. No. 2022-52, § 1, 1-03-23)

# § 23-635. Irrigation System

Effective: Tuesday, January 03, 2023

# Section 23-635.1 Design and Installation Standards

(A) Applicability. Irrigation system design and installation standards shall apply to the following:

- (1) All new residential, commercial, and institutional construction where a new landscape irrigation system is required.
- (2) Where significant rehabilitation (50% or greater) of an existing landscape irrigation system will be conducted.

#### (B) General.

- (1) Nothing within this Section shall require the installation of an irrigation system. Requirements for installing irrigation systems are specified in other Articles within Chapter 23 of the Zoning, Land Use and Development Regulation and Chapter 21 of the Utilities Code.
- (2) All irrigation systems shall be designed by an irrigation professional consistent with the irrigation systems standards and as set forth in this Section.
- (3) All irrigation systems must be properly installed and maintained and must operate technology such as rain and/or soil moisture sensors that inhibit or interrupt operation of the irrigation systems during periods of sufficient moisture.
- (4) Compliance with this Section shall not exempt an individual from any other local, state or federal requirements.
- (C) System Design and Installation Standards. Irrigation system design and installation shall be consistent with the irrigation system standards and the following requirements:
  - (1) The maximum total irrigated area on residential lots, regardless of lot size, shall not exceed 0.5 acres. This provision does not apply to temporary irrigation such as portable hoses and sprinklers.
  - (2) High-volume irrigation area shall not exceed 60 percent of the landscaped area. This standard is applicable on residential lots over 1/8 acre and commercial lots over 1/8 acre. This standard applies to common areas and open space in developments. This standard excludes vegetable gardens and fruit or nut trees on individual lots or community gardens.
  - (3) Narrow areas, four feet wide or less, shall not be irrigated unless correctly installed low-volume irrigation or correctly installed side-strip irrigation are used.
  - (4) High-volume irrigation shall not be used for trees, shrubs, or groundcover beds. Permanent micro-irrigation may be used in these areas. The City encourages the use of temporary establishment irrigation.
  - (5) Irrigation zones shall be divided according to vegetated groupings (e.g., turfgrass, shrubs, native plants, trees) and the water requirements of the plants. Turf grass and landscaped beds, such as trees, shrubs, and groundcover beds, shall not be irrigated in the same zone as each other.
  - (6) Sprinkler head types, such as spray heads and rotors, shall not be mixed in the same zone.
  - (7) Distribution equipment in each zone shall have matched precipitation rates.
  - (8) Rotors and spray sprinkler heads in turfgrass areas shall be spaced to provide head-to-head coverage.
  - (9) A minimum separation of four inches shall be required between distribution equipment and pavement.
  - (10) A minimum separation of 24 inches shall be required between distribution equipment and buildings and other vertical structures, except fences.
  - (11) Technology that inhibits or interrupts operation of the irrigation system during periods of sufficient moisture shall be required on all irrigation systems to avoid irrigation during periods of sufficient rainfall. Examples of such devices include soil moisture sensors, weather stations, and rainfall shut off devices. The technology shall override the irrigation cycle when adequate rainfall has occurred. Technology that depends on rainfall for bypassing irrigation shall be placed where it is exposed to unobstructed natural rainfall and in compliance with section 373.62, Fla. Stat., as amended.
  - (12) Permanent irrigation systems shall be equipped with an automatic control system to provide the following minimum capabilities:
    - a. Ability to be programmed in minutes, by day of week, season, and time of day;
    - b. Ability to accommodate multiple start times and programs;
    - c. Automatic shut off after adequate rainfall;
    - d. Ability to maintain time during power outages; and
    - e. Operational flexibility to meet applicable year-round water conservation requirements.

- (13) Sprinklers in low-lying areas have check valves to prevent head drainage.
- (14) Irrigation system equipment shall be installed in accordance with manufacturer's specifications.
- (15) No direct spray shall be allowed onto walkways, buildings, roadways, drives and impervious surfaces.
- (16) Pipelines shall be designed to provide the system with the appropriate pressure required for maximum irrigation uniformity.
- (17) All sprinkler heads with spray nozzles (non-rotary) shall be pressure- regulated at the head or zone valve.
- (18) All irrigation system underground piping shall have minimum soil cover of six inches.
- (19) Sprinklers shall rise above turfgrass height: a minimum of 6-inch pop-up for sprays and 4-inch pop-up for rotors for St. Augustine, Zoysia and Bahia grasses; a minimum of a 4-inch pop-up for sprays and rotors for Centipede, Bermuda and Seashore Paspalum grasses.

#### Section 23-635.2 Maintenance of Irrigation Systems

- (A) An irrigation professional responsible for installing or substantially modifying an irrigation system shall provide the property owner with a maintenance checklist affixed to or near the controller and accompanied by a recommended maintenance schedule, proper irrigation system settings according to season, recommendations for checking technology that inhibits or interrupts operation of the system during periods of sufficient moisture, filter cleaning recommendations, if applicable, and information on the current water restrictions.
- (B) A property owner shall ensure that irrigation systems on their property are inspected at least annually for leaks, overspray, maladjusted heads, and heads that may be capped due to changes in the landscape, such as maturity or changes in plants. Technology that inhibits or interrupts operation of the system during periods of sufficient moisture may need to be replaced every few years and shall be correctly functioning to be in compliance with this article. Irrigation systems with known leaks shall not be operated until the leaks are repaired, except for testing purposes.
- (C) Within 60 calendar days after landscape installation, the property owner shall ensure that the irrigation controller is adjusted to operate according to normal, established landscape conditions or irrigation restrictions, if the irrigation system is installed as part of newly established landscaping.

#### Section 23-635.3 Exemptions

The following are exempted from the provisions of this article, but should follow the Florida Department of Environmental Protection's applicable "Florida-Friendly Best Management Practices for the Protection of Water Resources by the Green Industries":

- (1) Bona fide agricultural activities;
- (2) Vegetable gardens and fruit and nut trees;
- (3) Athletic fields;
- (4) Golf course play areas;
- (5) Cemeteries;
- (6) Nurseries; and
- (7) Temporary establishment irrigation.

#### Section 23-635.4 Alternative Compliance

- (A) An applicant may submit a proposal that varies from the strict application of the requirements of this Section (also known as "alternative compliance") in order to accommodate unique site features or characteristics, utilize innovative design, prevent extraordinary hardship, or to promote the overriding public interest or general public welfare. Diminished value of property or inconvenience is not an extraordinary hardship.
- (B) An applicant seeking authorization for alternative compliance shall have the burden of demonstrating to the City the reasons why the strict application of the requirements of this Section should not apply.
- (C) Requests for alternative compliance shall be submitted as part of the irrigation system approval process.
- (D) The City may approve an alternative compliance plan upon finding that the alternative compliance plan fulfills the purpose and intent of this Section at least as well as a plan that strictly adheres to the requirements of this Section.
- (E) The City may require a site inspection and corresponding site inspection fee for systems which are installed according to a department-approved alternative compliance plan.

(Ord. No. 2022-52, § 1, 1-03-23)

# § 23-636. Florida Water Star Certification Effect

Effective: Tuesday, January 03, 2023

Florida Water Star is a water conservation certification program for new and existing homes and commercial developments that meet specific water-efficiency criteria for indoor fixtures and appliances, landscape design and irrigation systems. Residential and commercial properties obtaining the Florida Water Star Certification will exceed conservation requirements imposed by this Section.

Upon receipt of certification from the Florida Water Star program that a residential or commercial property has obtained the Florida Water Star Certification, the City will issue the certificate of occupancy.

(Ord. No. 2022-52, § 1, 1-03-23)

# § 23-637. Enforcement

Effective: Tuesday, January 03, 2023

Violation of any provision of this article shall be subject to penalties as provided for by this Code or by local law and compliance with this article may be enforced by any remedy available to the City at law or equity.

(Ord. No. 2022-52, § 1, 1-03-23)

# **Division 5. Historic Preservation**

# § 23-651. Purpose and intent, findings of fact.

The purpose and intent of this division is to protect the historic resources of the city through establishing standards for the creation of local historic districts, for nominating properties to the National Register of Historic Places, and for the issuance of certificates of appropriateness for work undertaken in the locally adopted historic district(s).

# Findings of fact:

- a. There are located within the city districts, sites, buildings, structures, objects and areas, both public and private, which are reminders of past eras, events and persons important in local, state or national history, or which provide significant examples of architectural styles of the past, or which are unique and irreplaceable assets to the city and its neighborhoods, or which provide for this and future generations examples of the physical surroundings in which past generations lived.
- b. In recognition of these assets, the historic preservation element of the comprehensive plan was enacted and includes a policy to consider a historic preservation ordinance.
- c. A study entitled "Historic Properties Survey of Lake Wales, Florida" was completed by Historic Property Associates, Inc. of St. Augustine Florida in 1988 to catalogue historical buildings in the downtown business district and in those areas that were closely tied historically or stylistically with the downtown.
- d. Through the dedicated efforts of local groups and individuals, the value of a district and several sites, buildings, structures, objects and areas, both public and private, have been recognized by their inclusion in the National Register of Historic Places, the state inventory maintained by the division of archives.
- e. The recognition, protection, enhancement and use of such resources has a public purpose, being essential to the health, safety, morals and economic, educational, cultural and general welfare of the public, since these efforts result in the enhancement of property values, the stabilization of neighborhoods and areas of the city, the increase of economic benefits to the city and its inhabitants, the promotion of local interest, the enrichment of human life in its educational and cultural dimensions, serving spiritual as well as material needs, and the fostering of civic pride in the beauty and noble accomplishments of the past.
- f. It is the policy of the city to encourage beautification and general improvement of and cleanliness within the city by requiring the installation of appropriate landscaping which will enhance the community's ecological, environmental and aesthetic qualities and which will preserve the value of the property.

g. The city commission desires to take advantage of all available state and federal laws and programs that may assist in the development of the city.

(Ord. No. 2008-11, § 7, 5-20-08)

# § 23-652. Criteria for historic designations.

Criteria in this section shall be used to review National Register nominations and for establishing historic districts as zoning overlay districts under this chapter.

Sec. 23-652.1. National Register nominations. The nomination of properties to the National Register of Historic Places shall be reviewed by the city using criteria established by the federal government in 36 C.F.R. 60.4, as amended.

Sec. 23-652.2. Historic overlay districts. This section sets forth criteria for the use of the city in deciding to establish a new historic district or to approve a request for the establishment of such a district or expansion of an existing district.

The proposed district must be a geographically compact area including a concentration of structures and/or sites documented to meet one (1) or more of the following criteria:

- a. Listed on the National Register of Historic Places;
- b. Eligible for listing on the National Register of Historic Places;
- c. At least forty (40) percent of the structures are fifty (50) years of age or older and satisfy any one (1) of the following criteria:
  - 1. Associated with a significant local, state, or national event;
  - 2. Identified with a person or persons who significantly contributed to the development of the city, state, or nation;
  - 3. Identified as the work of a master builder, designer, or architect whose individual work has influenced the development of the city, state, or nation;
  - 4. Recognized as valuable for the quality of its architecture and retains sufficient elements showing its architectural significance;
  - 5. has distinguishing characteristics of an architectural style valuable for the study of a period, method of construction, or use of indigenous materials;
  - 6. Embodies distinguishing characteristics or architectural style or elements of design, detailing, materials or craftsmanship that render it architecturally significant or valuable for the study of a period, type, method of construction or use of indigenous materials;
  - 7. Is a recognizable part of a geographically definable area possessing a significant concentration or continuity of sites, buildings, objects, or structures united in past events or aesthetically by plan or physical development;
  - 8. Is a recognizable part of an established and geographically definable neighborhood, united in culture, architectural style or physical plan and development;
  - 9. Associated with a singular location that is unique or possesses singular physical characteristics that make it an established or familiar visual feature;
  - 10. Demonstrates a likelihood of yielding significant information in terms of archaeology, history, or prehistory.

(Ord. No. 2008-11, § 7, 5-20-08)

# § 23-653. Certificates of appropriateness.

Effective: Wednesday, December 02, 2020

A certificate of appropriateness is required for work within an adopted historic district if the work meets the criteria set forth in section 23-227. A certificate of appropriateness may be issued by the historic board through the process set forth in that section.

This section sets forth the standards for issuance of a certificate of appropriateness.

Sec. 23-653.1. General review criteria. The decision on all certificates of appropriateness, except those for demolition or relocation, shall be guided by the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. The historic board may also adopt guidelines specific to a historic district and shall be guided by the following visual compatibility standards:

- a. Height. Height shall be visually compatible with that of adjacent buildings.
- b. *Proportion of building*. The width of building, structure or object to the height of the front elevation shall be visually compatible to buildings and places to which it is visually related.
- c. *Proportion of openings within the facility.* The relationship of the width of the windows in a building, structure or object shall be visually compatible with buildings and places to which the building, structure or object is visually related.
- d. Rhythm of solids to voids in front facades. The relationship of solids to voids in the front facade of a building, structure or object shall be visually compatible with buildings and places to which it is visually related.
- e. Rhythm of buildings, structures, objects or parking lots on streets. The relationship of the buildings, structures, objects or parking lots to open space between it and adjoining buildings and places shall be visually compatible to the buildings and places to which it is visually related.
- f. *Rhythm of entrance and porch projection*. The relationship of entrances and projections to sidewalks of a building, structure, object, or parking lot shall be visually compatible to the buildings and places to which it is visually related.
- g. Relationship of materials, texture, and color. The relationship of materials, texture, and color of a parking lot or of the facade of a building, structure or object shall be visually compatible with the predominant materials used in the buildings to which it is visually related.
- h. *Roof shapes*. The roof shape of the building, structure or object shall be visually compatible with the buildings to which it is visually related.
- i. Walls of continuity. Appurtenances of a building, structure, object, or parking lot such as walls, fences, and landscape masses shall, if necessary, form cohesive walls of enclosure along a street, to ensure visual compatibility if the building, structure, object, or parking lot to the building and places to which it is visually related.
- j. Scale of building. The size of the building, structure, object, or parking lot; the building mass of the building, structure, object, or parking lot in relation to open space; and the windows, door openings, porches and balconies shall be visually compatible with the buildings and places to which it is visually related.
- k. *Directional expression of front elevation*. A building, structure, object, or parking lot shall be visually compatible with the buildings and places to which it is visually related in its directional character.
- Sec. 23-65[3].2. Relocation. In addition to the guidelines provided in subsection 23-652.3., concerning demolition, issuance of certificates of appropriateness for relocations shall be guided by the following factors:
  - a. The historic character and aesthetic interest the building, structure, or object contributes to its present setting;
  - b. Whether there are definite plans for the area to be vacated and what the effect of those plans on the character of the surrounding areas will be;
  - c. Whether the building, structure, or object can be moved without significant damage to its physical integrity; and
  - d. Whether the proposed relocation area is compatible with the historical and architectural character of the building, structure, or object.
- Sec. 23-65[3].3. Demolition. A decision by the historic board on whether to delay (See section 23-227.) the demolition of a building, structure, or object shall be guided by criteria in this section.
  - a. The historic or architectural significance of the building, structure, or object;
  - b. The importance of the building, structure, or object to the ambience of a district;

- c. The difficulty or the impossibility of reproducing such a building, structure or object because of its design, texture, material, detail, or unique location;
- d. Whether the building, structure, or object is one of the last remaining examples of its kind in the neighborhood, the county or the region;
- e. Whether there are definite plans for reuse of the property if the proposed demolition is carried out, and what the effect of those plans on the character of the surrounding area would be;
- f. Whether reasonable measures can be taken to save the building, structure or object from collapse; and
- g. Whether the building, structure or object is capable of earning reasonable economic return on its value.

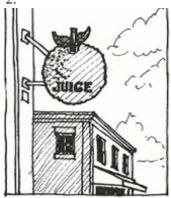
23-653.4. Signs

#### BACKGROUND:

Signage coordination with an entire building creates a composition that allows the character of the building to express itself. The result is a building front that has a stronger image than the sign or the building alone.

#### **GUIDELINES:**

1. Position signs to fit within architectural features of the facade. Signage should be subordinate to the building design and should not obscure architectural detail. Use signage to emphasize architectural elements e.g. entry, transom.

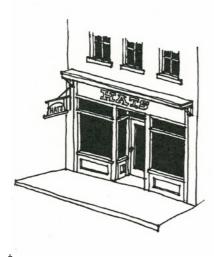


CONSIDER USING SYMBOLS

#### CONSIDER USING SYMBOLS AS SIGNS



INTEGRATE SIGNS WITH ARCHITECTURAL ELEMENTS



- 3. Align signs on an individual building and where possible coordinate size, color and type style.
- 4. Keep the number of signs to a minimum. Consolidate information with directories. Signs should not overpower the facade. Elements should relate to others in the block. Lettering should be comfortable within the edges of the sign and should be of simple, readable typestyles and properly proportioned. Signs must comply with all other applicable provisions of the Lake Wales Zoning, Land Use, and Development Regulations.
  - 5. Use sign materials compatible with building, facade materials. Signage materials should be durable enough to withstand years of use. Recommended materials include brass plates; carved or painted wood; applied wood and metal letterings; and etched, sandblasted or gilded glass. Unacceptable materials include internally lit thermoformed plastic letters and signs, imitation wood grain materials, fluorescent colored paints or plastic.
  - 6. Design lighting and mounting hardware as an integral part of the sign. Lighting and mounting should be coordinated with architectural elements of the building.

(Ord. No. 2008-11, § 7, 5-20-08; Ord. No. 2020-30, § 1, 12-02-20)

# **Article VII. Impacts Of Development On Public Facilities**

#### **Division 1. Concurrency**

#### § 23-701. Purpose and intent; definitions

Effective: Tuesday, January 19, 2016

- (a) This division establishes a "concurrency management system" to evaluate development applications to ensure that adequate capacity in required public facilities is or will be available to serve the proposed development at the time it is required. In accordance with F.S. § 163.180, public facilities subject to the concurrency management system are: sanitary sewer, potable water, solid waste, roads, public schools, recreation and open space, and drainage. The demand on a public facility is calculated through the use of the level of service (LOS) standard for that facility or service adopted by the city in the Lake Wales Comprehensive Plan and set forth in Table 23-705
- (b) It is the intent of the city commission that no development permits or orders may be issued that will cause a public facility or service to operate below the adopted level of service standard. Development orders may, however, be conditioned such that public facility improvements or capacity will be in place "concurrent" or at the time the facility or service is needed by the proposed development. Consistent with Florida law, public facilities to serve the new development shall be in place no later than the issuance by the city of a certificate of occupancy (CO) or its functional equivalent.
- (c) The concurrency management system is intended to serve the long term interests of the citizens of Lake Wales by implementing a managed growth perspective that monitors the capacity of important public facilities and services in order to prevent the degradation of adopted levels of service. The system does not, however, serve as a guarantee to any person or property owner that a particular level of service or amount of capacity currently exists or will exist in the future on a particular public facility at any given point in time.
- (d) The following definitions apply to concurrency management rules and regulations:

Building permit: For purposes of the concurrency management system, a permit may authorize the construction of a new building, expansion of floor area, or an increase in the number of dwelling units contained in an existing building, or a change in use.

*Capacity:* The availability of a public service or facility to accommodate users, expressed in an appropriate unit of measure, such as gallons per day or average daily trips.

Capacity, available: Capacity that can be reserved or committed to future users for a specific public facility.

Capacity, committed: The amount of capacity that has been committed to accommodate existing developments, developments which have been issued a final development approval, committed development, and vested developments.

Capacity, reserved: Capacity that has been removed from the available capacity pool and allocated to a particular property for a set period of time.

*Certificate of occupancy:* A document issued by the building official allowing the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in compliance with all the applicable municipal codes and ordinances.

Concurrency facilities: Public facilities and services for which a level of service must be met concurrent with the impacts of development or an acceptable deadline as mandated in the City of Lake Wales Comprehensive Plan pursuant to F.S. Ch. 163, shall include: Sanitary Sewer, Potable Water, solid Waste, Roads, Public Schools, Recreation & open Space, and Drainage.

Concurrency management monitoring system: The data collection, processing and analysis performed by city staff to determine available capacity for concurrency facilities. Data utilized shall be the most current reliable information available to the city.

Concurrency management system (CMS): The procedure and process that the city uses to ensure that no development order or building permit is issued by the city unless the necessary concurrency facilities are available or are assured to be available consistent with the city's comprehensive plan. The procedure and process is also intended to ensure that sufficient capacity for concurrency facilities are available to meet and maintain adopted levels of service. As part of the CMS, the city shall operate and maintain a concurrency management monitoring system.

Concurrency review: An evaluation by the planning and development director and staff based on adopted level of service standards to ensure that public facilities and services needed to support development are available concurrent with the impacts of such development, as defined in this CMS. If such facilities are not available, the developer of a proposed development shall bear the cost of providing public services and facilities at the level of service defined by the comprehensive plan and concurrent with the impacts of a proposed development.

Concurrency status report: A status report prepared by the city identifying available concurrency facility capacity. The status report shall be produced, modified and adjusted from time-to-time as a result of the reservation of capacity or other act that alters the availability of concurrency facility capacity.

Design capacity: The potential or suitability for holding, storing or accommodating the demands upon a concurrency facility.

Development agreement: An agreement between the city and another party associated with the development of land or the provision of public infrastructure, which may include development agreements defined pursuant to F.S. § 63.3220, or as may be associated with development orders issued pursuant to F.S. § 380.01.

Level of service (LOS): An indicator of the operational efficiency of service provided by a concurrency facility.

Level of service standard: The adopted volume of demand required for each concurrency facility to achieve acceptable operational efficiency.

*Vested:* Development shall be deemed "vested" and not subject to requirements of concurrency management if development circumstances meet criteria for common law or statutory vesting, as defined below. All "non-vested" development or development orders are subject to all requirements of this CMS.

Vested rights, common law: A right not created by statute or the provisions of the City of Lake Wales Comprehensive Plan which would authorize the development of real property or the continued development of real property notwithstanding the provisions of the city's comprehensive plan. The city may find such vesting to exist whenever the applicant proves by a preponderance of evidence that the real property owner, acting in good faith upon some act or omission of the city has made a substantial change in the position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right to develop or to continue the development of the real property. The assignment of the particular zoning classification or the assignment of a particular land use designation to parcel of real property does not guarantee or vest any specific development rights to any person or entity as to said real property.

Vested rights, statutory: A statutory right to develop or to continue the development of real property pursuant to the provisions of F.S. § 163.3187(8) or its successor provisions. Such vesting may be found to exist if a valid and unexpired final development approval was issued by the city prior to the March 15, 2005, if construction has commenced on the subject development and the development is in the process of being completed or further development is continuing in good faith. Statutory vesting does not occur unless all material requirements, conditions, limitations and regulations of the development approval have been met and are being maintained.

(Ord. No. 2005-27, § 1, 7-5-05; Ord. No. 2008-05, § 1, 2-19-08; Ord. No. 2016-01, § 8, 01-19-16)

# § 23-702. Components of concurrency management system

- (a) The concurrency management system (CMS) has three (3) components:
  - 1. Inventory of public facilities and capacities. City staff must maintain an inventory of existing public facilities for which level of service (LOS) standards have been adopted and for which concurrency is to be determined. The inventory includes: The existing condition and total capacity for each facility, the reservations of capacity that have been granted for proposed development and an estimate of when the capacity will be utilized as development progresses, and the remaining available capacity in the facility.
  - 2. Concurrency review of proposed developments. Each development application must be reviewed to determine if adequate capacity is or will be available to serve the proposed development.
  - 3. Schedule of improvements to public facilities. A program must be conducted by the city to implement improvements to public facilities to correct deficiencies or expand capacity to adequately serve existing and new development. The program will include capital projects in the city's capital facilities budget and improvements required of new development.
- (b) The city manager will provide an annual concurrency status report to the city commission. The initial report will be presented no later than the second regularly scheduled meeting in June, and subsequent reports will be presented at the second meeting in January. The report will include in the reserved and committed capacity inventory, as applicable, all developments for which permits and approvals were issued prior to March 15, 2005, provided they meet the vesting requirements for reservations of capacity or certificates of concurrency.

(Ord. No. 2005-27, § 1, 7-5-2005)

#### § 23-703. Inventory of public facilities and concurrency status report.

The annual concurrency status report to the city commission on the inventory of public facilities must include:

- (a) The status of the city's public facilities in relation to the adopted levels of service;
- (b) A tally of capacity reservations and commitments granted during the year;
- (c) An analysis of when reserved and committed capacity will be utilized as development progresses;
- (d) Available capacity in each facility; and
- (e) An evaluation of improvements completed or planned to maintain adopted levels of service.

(Ord. No. 2005-27, § 1, 7-5-2005)

#### § 23-704. Concurrency review.

Sec. 23-704.1 Applicability. A concurrency review to determine compliance with this section is required for all development and land uses in the City of Lake Wales unless specifically exempted herein. Verification of compliance with this section is required prior to the issuance of a site development permit pursuant to section 23-217, a building permit, or a certificate of use pursuant to section 23-213 and prior to approval of services for land uses outside of the city limits. Developments with permits or approvals issued prior to March 15, 2005 shall be vested for reservations of capacity or certificates of concurrency as provided in subsection 23-704.4.c. and d.

Sec. 23-704.2 Burden of proof. The applicant shall bear the burden of showing compliance with the adopted levels of service and meeting the concurrency test. The administrative official will direct the applicant to the appropriate staff to assist in the preparation of the necessary documentation and information.

Sec. 23-704.3 Exemptions.

- a. *De minimus development*. Developments or activities listed below are considered *de minimus*, having insignificant or no impact upon public facilities with adopted level of service (LOS) standards, and are exempt from concurrency review.
  - 1. Construction of and addition to single-family and two-family dwellings on platted lots;
  - 2. The addition of an accessory apartment or guest house to a residential or nonresidential property;
  - 3. Construction of accessory structures on single-family and two-family properties if permitted under section 23-521, including swimming pools, garages, pole barns, satellite dishes, greenhouses, screen enclosures, and fences; and
  - 4. Construction of and modifications to nonresidential structures with less than one thousand five hundred (1,500) square feet of floor area.
- b. The following activities shall be exempt from the concurrency review if the administrative official issues a finding that they will have no significant impact upon public facilities with adopted level of service (LOS) standards:
  - 1. Changes in existing use of property or existing structures when the new use does not increase any impact on public facilities over the existing use. No change in use will be considered exempt when the prior use has been discontinued for two (2) years or more, in which case the use shall be considered a new use. For changes in the use of property when the new use increases the impact on public facilities, the existing intensity shall be exempt and any increase over the existing intensity shall not be exempt;
  - 2. Replacement of an existing dwelling unit when no additional units are created;
  - 3. Replacement of a building or structure with a new building or structure of the same use when no additional impact on public facilities is created over the pre-existing building or structure being replaced;
  - 4. Any development orders determined by the administrative official to have no impact public facilities.
- c. Applicants for development permits who claim vesting of rights under this section shall meet a three-part test established under Florida case law for determining vested development rights. All three (3) of the following must be met in order to be vested for development:
  - A. good faith reliance on an act or omission of the city;
  - B. substantial expenditures or obligations subsequent to reliance on an act or omission of the city; and
  - C. highly inequitable to deny development (i.e., private hardship outweighs the public hardship).

(Ord. No. 2007-14, § 2, 6-5-07)

Sec. 704.4 Concurrency review process.

a. Development impact data. The applicant for approval of a preliminary subdivision plat pursuant to section 23-223, a preliminary planned development project plan pursuant to section 23-224, a major or minor site plan pursuant to section 23-222, a site development permit pursuant to section 23-217, a building permit for a new structure or expansion of a structure, a change of use pursuant to section 23-212 or 23-213, or any application for services shall submit required development impact data on the proposed development at the time of application. Submission of development impact data is also required for the establishment of new land uses or changes in land use (see section 23-213) regardless of whether construction is proposed on the property. Development impact data required:

- 1 . Sanitary sewer: For residential developments, projected sanitary sewer flow of the proposed development, based upon the projected number of residents and the LOS Standard provided in section 23-706. For nonresidential development, projected volume of sewer flow. Additional information on the characteristics of the proposed sanitary sewer flow may also be required by the director of public works to assess impacts to the wastewater treatment plant.
- 2 . *Potable water.* For residential developments, projected potable water demand of the proposed development, based upon the projected number of residents and the LOS standard provided in section 23-706. For nonresidential developments, projected daily water usage.
- 3. Solid waste. Projected solid waste to be generated by the proposed development, based upon the LOS standard established by Polk County for its landfill facilities. For nonresidential developments, projected daily solid waste generation. A certificate of solid waste concurrency from Polk County is required prior to the issuance of a site development permit.
- 4. Roads. Preliminary traffic generation information, including estimated number of trips and estimated impact upon roadways adjacent to the proposed development or use shall be provided with applications for preliminary subdivision plats, preliminary planned development project plans, major and minor site plans and changes of use. Local and minor collector roads shall be considered project-level facilities, to be provided by the developer. A certificate of transportation concurrency or an exemption from Polk County is required prior to the issuance of a site development permit or certificate of use for any project or change of use impacting county or state roadways.
- 5. Recreation and open space. (Residential developments only.) The number of residents projected in residential subdivisions, planned development projects and multi-family developments or buildings shall be submitted. Also required is a calculation of the acreage of parks required to serve the projected population, based on the LOS standards per one thousand (1,000) people: .25 acres of mini-parks, 1.5 acres of neighborhood parks, two (2) acres of community parks, and 3.75 acres of total parks. Mini-parks and neighborhood parks are considered project-level facilities, to be provided by the developer. Plans submitted for a site development permit shall show all open space and parks in the development as required by the city as a condition of approval of a preliminary subdivision plat, preliminary planned development project plan, or site plan for multi-family development.
- 6. *Drainage*. Information as required for applications for preliminary subdivision plats, preliminary planned development project plans, and site plans shall suffice for review of drainage concurrency. Drainage is considered a project-level facility, to be provided by the developer. A copy of the storm water management permit or exemption letter from the Southwest Florida Water Management District is required prior to the issuance of a site development permit (section 23-217).
- 7. *Public schools*. School concurrency requirements shall apply to all developments with residential units if a major or minor site plan, subdivision plat or planned development project plan is required for the development under this chapter. Preliminary projections of students to be generated by the development shall be provided with an application for a preliminary subdivision plat, preliminary planned development project plan, or major or minor site plan. A finding by the administrative official that school concurrency requirements are satisfied is required prior to the issuance of a site development permit, building permit, or certificate of use for any project or change of use impacting public schools, unless specifically exempted under this chapter.
- b. *Impact assessment*. The administrative official shall review the impact data for the proposed development in consultation with the director of public works, the development review committee, and Polk County departments, as applicable. The "inventory of public facilities and capacities" maintained by the city as required under section 23-703 shall be the basis for determining available capacities. The administrative official shall make a report on each application stating the findings of the concurrency review, including information or findings provided by Polk County in regard to roadway impacts, solid waste capacity, or other matters under the county's jurisdiction. The report may include recommendations on addressing concurrency deficiencies, including developer contributions. The report shall be used by the permitting authority, (the administrative official, the building official, the director of public works, the planning board, and/or the city commission, as applicable), in deciding upon the application.
- c. Reservation of capacity. A reservation of capacity shall be granted with a site development permit, a building permit, or certificate of use only upon a finding of adequate capacity in all facilities requiring concurrency review and satisfaction of the requirements of section 23-731, as applicable.

- 1. Building permit or certificate of use. A building permit or certificate of use shall be granted only if capacity in all required facilities is found to be adequate for a proposed new use or change of use requiring an increase in service capacity. For potable water and wastewater, a reservation of capacity shall not be granted without payment of applicable impact fees per Article VII, division 4. Such reservation shall expire with the building permit if the project is not completed, and in cases where a building permit is not required, it shall expire six (6) months from the date of its issuance if the use for which the certificate was issued is not established.
- 2. Preliminary plans. A preliminary site plan, subdivision plat or planned development project plan shall be approved only upon a finding that there will be sufficient capacity available for the project at the time it is required or that measures to correct any deficiency have been identified and agreed to by the city in writing. Capacity for a development with an approved and unexpired preliminary plan or plat shall be used in calculating available capacity during the review of other preliminary plans. However, except as otherwise provided in this chapter, no reservation of capacity shall be granted with approval of a preliminary plan or plat, and approval of preliminary plans does not guarantee that capacity will be available at the site development permit stage of project review.
- 3. Site development permit. A site development permit under section 23-217 shall be issued only upon a finding of adequate capacity in required facilities and approval by the city of a utility services agreement if required under section 23-731. If exempted under that section, a project shall be granted a reservation of potable water and wastewater treatment capacity only upon payment of applicable impact fees per article VII, division 4.

(Ord. No. 2005-27, § 1, 7-5-05; Ord. No. 2006-46, § 1, 12-5-06; Ord. No. 2007-14, § 2, 6-5-07; Ord. No. 2008-05, §§ 2, 3, 2-19-08; Ord. No. 2011-23, § 1, 10-4-11)

# § 23-705. Level of service standards.

Effective: Tuesday, October 04, 2022

The demand on each public facility is calculated through the use of the level of service (LOS) standard for that facility or service adopted by the city in the Lake Wales Comprehensive Plan and set forth below:

TABLE 23-705 LEVEL OF SERVICE STANDARDS

FACILITY	LEVEL OF SERVICE				
l	Maximum Daily Flow—Average Daily Flow plus 13 percent				
	Average Daily Flow—100 gallons per capita per day (gpcd)				
	Effluent Quality—Meet or exceed EPA and DEP standards				
Potable water	Average Daily Demand—122 gallons per capita per day (gpcd)				
	Maximum Daily Demand—Average Daily Demand times 1.43				
	Storage Capacity—One-half Average Daily Demand				
	Pressure—20 p.s.i. minimum				
Solid waste	e 7.3 pounds per person per day				
Roads	Principal Arterials—LOS E				
	Minor Arterials & Collectors—LOS E				
	Other Roadways—LOS E				
	Florida Intrastate Highway System Roadways—LOS D				
Recreation and open space	Mini-Parks—.25 acres per 1,000 population				
	Neighborhood Parks—1.5 acres per 1,000 population				
	Community Parks—2 acres per 1,000 population				
	Aggregate—3.75 acres per 1,000 population				
Drainage	EXISTING DEVELOPMENT: See Comprehensive Plan, Capital Improvement Element, Objective 2, Policy 2.01 for Flood Protection and Water Quality LOS for all drainage basins.				
	NEW DEVELOPMENT:				
	Streets and Roads—Pavement at or above FEMA 100 year flood plain;				
	Drainage Structures—Ability to transmit the 100-year return period storm with maximum velocity of 5 feet per second;				
	Storm Sewers (inlets, manholes, storm sewer lines)—Designed to handle the 3-year return period storm;				
	Water Quality—Meet state water quality design and performance standards established in 17-25.025 F.A.C. with treatment of first inch of runoff to meet standards required by 17-302.500 F.A.C. Applies to any stormwater drainage system which collects and transmits stormwater to a disposal location, regardless of size of the system;				

	All development must comply with existing SWFWMD and FDEP regulations regarding management and storage of surface water							
Public Schools	PERCENT OF PERMANENT FLORIDA INVENTORY OF SCHOOL HOUSES (FISH) CAPACITY, BY SCHOOL YEAR							
	2008-09	2009-10	2010-11	2011-12	2012-13			
	Elementary Schools							
	122%	122%	115%	100%	100%			
	Middle Schools							
	113%	113%	110%	100%	100%			
	High Schools							
	110%	110%	105%	100%	100%			
	Magnet and School of Choice:  100% of enrollment quota as established by the School Board or court ordered agreements and as adjusted by the School Board annually.  Other: K-8, 6th grade centers, 9th grade centers, 6-12 100% of permanent DOE FISH capacity							
	Special Facilities: Including alternative education or special programmatic facilities that are designed to serve a specific population on a countywide basis or for temporary need and are not zoned to any specific area. Therefore, they are not used for concurrency determinations.							
	Conversion Charter Schools: As set by contract.							

(Ord. No. 2005-27, § 1, 7-5-05; Ord. No. 2008-05, § 4, 2-19-08; Ord. No. 2022-45, § 1, 10-04-22)

# § 23-706. Application of level of service standards.

The applicant shall provide the planning and development department with the information required to apply the adopted level of service standard as cited below. The demand on concurrency facilities generated by the applicant's development will be determined as cited below. Population densities will be calculated at an average of 2.4 per residential unit for all residential development.

- 1. *Sanitary sewer*. The demand for sanitary sewer capacity will be determined by multiplying the total number of persons served times the level of service standard (one hundred (100) gallons per capita per day). For nonresidential development, capacity will be determined by projected volume of daily sewer flow.
- 2. *Potable water.* The demand for potable water capacity will be determined by multiplying the total number of persons served times the level of service standard (one hundred twenty-two (122) gallons per capita per day). For nonresidential development, capacity will be determined by projected volume of daily water usage.
- 3 . Solid waste. The demand for solid waste collection and disposal capacity will be determined by multiplying the total number of persons served by the level of service standard established by Polk County for its landfill facilities. For nonresidential developments, capacity will be determined by projected daily solid waste generation. Certification from Polk County for solid waste concurrency constitutes such evidence.
- 4. *Roads*. The applicant will provide evidence demonstrating that the proposed project meets the LOS established in the Transportation Element of the City's Comprehensive Plan. Certification from Polk County for roadway concurrency constitutes such evidence.
- 5. Drainage. The applicant will provide evidence demonstrating that the proposed project meets the LOS established in the Drainage Element of the City's Comprehensive Plan. Issuance of a permit or exemption from the Southwest Florida Water Management District for drainage facilities shall constitute such evidence.
- 6. Recreation and open space. The demand for recreation and open space capacity will be determined by multiplying the total number of persons served times the level of service standard for Community Parks (two (2) acres per one thousand (1,000) population).
- 7. *Public schools*. The demand for public school capacity shall be based upon the number of units proposed and the student generation ratios approved for use by the Polk County School Board.

(Ord. No. 2005-27, § 1, 7-5-05; Ord. No. 2008-05, § 5, 2-19-08)

# § 23-707. Determination of available capacity.

For purposes of the CMS, the available capacity of a facility will be determined by adding the cumulative total supply for each public facility component as cited in Step 1 and subtracting cumulative total demand for each component as cited in Step 2.

Step 1: Add the indicators of available facility capacity:

- 1. Capacity of existing facility. The total capacity of existing facilities operating at the required level of service; and
- 2. Capacity of committed potable water, sewer, solid waste and drainage. The total capacity of committed new facilities, if any, that will become available on or before the date a certificate of occupancy is issued for the development.

Step 2: Subtract the committed capacity:

- 1. Existing demand based on existing development. The demand for services or facilities created by existing development as provided by the city.
- 2. Demand to be generated by vested development, valid capacity reservations, and valid certificates of concurrency. The demand for the service or facility created by the anticipated completion of other vested and/or approved developments.

(Ord. No. 2005-27, § 1, 7-5-2005)

#### § 23-708. Criteria for concurrency.

A certificate of concurrency will not be granted for a proposed development unless the city finds that adequate capacity for concurrency facilities exists at or above the adopted level of service in order to accommodate the impacts of the proposed development, or that improvements necessary to bring concurrency facilities up to their adopted level of service will be in place concurrent with the impacts of the development.

- a. *Minimum criteria*. The following minimum criteria must be used to determine if a required public facility or service is available to support proposed development.
  - 1. Sanitary sewer, potable water and drainage.
    - A. The necessary facilities are in place at the time a development permit is issued; or
    - B. A development permit is issued subject to the condition that the necessary facilities will be in place when the impacts of the development occur; or
    - C. The necessary facilities are under construction at the time the permit is issued; or
    - D. The necessary facilities and services are guaranteed in an enforceable development agreement that includes the provisions of Rules 9J-5.005(2)(a)1—3. An enforceable development agreement may include but is not limited to development agreements pursuant to F.S. § 163.3220 or an agreement or development order issued pursuant to F.S. ch. 380. The agreement must guarantee that the necessary facilities and services will be in place when the impacts of the development occur.
  - 2. Solid waste. The criteria of paragraph 1. shall apply, and, in addition, the applicant must provide the city with a notarized letter from Polk County certifying that the proposed development's solid waste generation can be accommodated at the county's landfill. A certificate of occupancy will not be issued unless all facility improvements necessary to accommodate the impacts of the development are in place.
  - 3. *Roads*. The criteria of paragraph 1. shall apply, and, in addition, for projects impacting county and state roadways, the applicant must provide the city with a certificate of transportation concurrency or an exemption from Polk County and a copy of a proportionate fair-share agreement, if applicable. Transportation concurrency for city roadways may be satisfied by a transportation proportionate fair-share agreement executed pursuant to section 23-709
  - 4. *Parks and recreation*. The criteria of paragraph 1. shall apply, or alternatively, the following shall be met:

- A. At the time the development permit is issued, the necessary facilities and services are the subject of a binding executed contract that provides for the commencement of the actual construction of the required facilities or the provision of services within one (1) year of the issuance of the development permit; or
- B. The necessary facilities and services are guaranteed in an enforceable development agreement that requires the commencement of actual construction of the facilities or the provision of the services within one (1) year of the issuance of the applicable development permit. An enforceable development agreement may include but is not limited to development agreements pursuant to F.S. § 163.3220 or an agreement or development order issued pursuant to F.S. ch. 380.
- 5. *Public schools*. School concurrency decisions should support and not be in conflict with growth management policies of the comprehensive plan and shall be based upon the school board's concurrency review findings and recommendations and interlocal agreement.
  - A. Concurrency approval shall be granted by the administrative official only where:
    - i. The school board's findings indicate adequate school facilities for each level of school will be in place or under construction within three (3) years of the issuance of the subdivision plat or site plan for each level of school.
    - ii. Adequate school facilities are available in the relevant school concurrency service area (CSA) or adjacent CSA where impacts of development can be shifted to that area; or
    - iii. The developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by the actual development of the property subject to the final plat or site plan.
    - iv. The identified deficiency is mitigated by available capacity in a start-up charter school.
  - B. In the event that there is not sufficient capacity in the affected concurrency service area based on the adopted level of service standard to address the impacts of a proposed development, and the availability standard for school concurrency cannot be met, one (1) of the following shall apply:
    - i. The project shall provide capacity enhancement(s) sufficient to meet its impact through mitigation approved by the school board and consistent with the city's school facilities element of the comprehensive plan; or
    - ii. The project shall be delayed to a date when the level of service can be ensured through capital enhancement(s) of planned capacity increases; or
    - iii. A condition of approval of the subdivision or site plan is imposed to phase the project's impact on a schedule ensuring that capacity enhancement and level of service can be ensured; or
    - iv. The project shall not be approved.
  - C. If the impact of the project will not occur until years two (2) or three (3) of the school board's financially feasible five-year program of work, then any relevant programmed improvements in those years shall be considered available capacity for the project and factored into the level of service analysis. If the impact of the project will not be felt until years four (4) or five (5) of the five-year program of work, then any relevant programmed improvements shall not be considered available capacity for the project unless funding of the improvement is ensured through school board funding to accelerate the project, through proportionate share mitigation or some other means.

#### b. Additional requirements.

1. Solid waste. Commercial and industrial developments that are potential hazardous waste generators shall provide a description and estimate of tonnage of solid waste to be generated for which the development will be responsible for coordinating with Polk County for disposal of such waste. The applicant will provide the city with a notarized letter from Polk County certifying that the proposed development's hazardous waste generation can be accommodated at the county's landfill. A certificate of occupancy will not be issued unless all improvements necessary to accommodate the impacts of the development are in place.

2 . Recreation. Commercial and industrial developments are not assessed as having an impact on recreational facilities. However, the city may require the provision of recreational facilities as part of planned unit developments. Prior to the issuance of a building permit, all facility improvements necessary to accommodate the impacts of the entire development must be approved and a schedule established for their implementation such that all improvements will be completed prior to the issuance of the last certificate of occupancy.

(Ord. No. 2005-27, § 1, 7-5-05; Ord. No. 2006-46, § 2, 12-5-06; Ord. No. 2008-05, § 6, 2-19-08)

# § 23-709. Transportation proportionate fair-share program.

A . Purpose and intent. The purpose of this section is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the Proportionate Fair-Share Program, as required by and in a manner consistent with F.S. § 163.3180(16).

#### B. Findings.

- 1. The commission finds and determines that transportation capacity is a commodity that has a value to both the public and private sectors and the city proportionate fair-share program:
  - a. Provides a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors;
  - b. Allows developers to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their proportionate fair-share of the cost of the transportation facility;
  - c. Contributes to the provision of adequate public facilities for future growth and promotes a strong commitment to comprehensive facilities planning, thereby reducing the potential for moratoria or unacceptable levels of traffic congestion;
  - d. Maximizes the use of public funds for adequate transportation facilities to serve future growth, and may, in certain circumstances, allow the City to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the Capital Improvements Element (CIE).
  - e. Is consistent with F.S. § 163.3180(16), and supports the Concurrency Management System (CMS) in the City Comprehensive Plan. (Policies 2.01 and 2.02 under Objective 2 of the CIE and Policy 1.01 and 1.02 under Objective 1 of the Transportation Element.)
- C. Applicability. The proportionate fair-share program shall apply to all developments in city that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the city CMS, including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determinations, pursuant to the requirements of subsection D. The proportionate fair-share program does not apply to developments of regional impact (DRI's) using proportionate fair-share under F.S. § 163.3180(12), or to developments exempted from concurrency as provided in article VII, div. 1, subsection 704.4(a)4 LWC. The proportionate fair-share program does not preclude applicants from funding transportation improvements pursuant to a development agreement to meet concurrency requirements.

If the project traffic for a proposed development will impact or create a deficient roadway segment or intersection that is maintained by another jurisdiction, then the permitting jurisdiction will coordinate with the maintaining jurisdiction regarding the need or applicability for proportionate fair-share mitigation of project traffic.

#### D. General requirements.

- 1. An applicant may choose to satisfy the transportation concurrency requirement of the city by making a proportionate fair-share contribution, pursuant to the following requirements:
  - a. The proposed development is consistent with the comprehensive plan and applicable land development regulations.
  - b. The five-year schedule of capital improvements in the city CIE or the long-term schedule of capital improvements for an adopted long-term CMS includes the construction phase of a transportation improvement(s) that, upon completion, will satisfy the requirements of the city transportation CMS.

2. The city may choose to allow applicant to satisfy transportation concurrency through the proportionate fair-share program by adding an improvement (construction phase) to the CIE or adopted long-term CMS that will satisfy the requirements of the city transportation CMS. For the purposes of the proportionate fair-share program, no capacity road project shall be added to the CIE unless any required alignment study or a project development and environmental (PD&E) study has been completed with an endorsed build alternative.

To implement this option, the city shall adopt, by resolution or ordinance, a commitment to add the improvement to the five-year schedule of capital improvements in the CIE or long-term schedule of capital improvements for an adopted long-term CMS no later that the next regularly schedules update. To qualify for consideration under this section, the proposed improvement must be reviewed by the appropriate city commission, and determined to be financially feasible pursuant to F.S. § 163.3180(16) (b)1, consistent with the comprehensive plan, and in compliance with the provisions of this ordinance. Any improvement project proposed to meet the developer's fair-share obligation must meet the design standards of the jurisdiction with maintenance responsibility for the subject transportation facility.

E. Memorandum of understanding on proportionate fair-share program. The city shall coordinate with the Florida Department of Transportation, Polk Transportation Organization, Central Florida Regional Planning Council and other local governments to implement the provisions of the proportionate fair-share program. Appropriate provisions for intergovernmental coordination will be detailed in a memorandum of understanding on the proportionate fair-share program (MOU), and city shall coordinate with the signatory parties to ensure that mitigation to impacted facilities is based on comprehensive and consistent transportation data.

#### F. Application process.

- 1. Upon notification of a lack of capacity to satisfy transportation concurrency, the applicant shall also be notified in writing of the opportunity to satisfy transportation concurrency through the proportionate fair-share program pursuant to the requirements in subsection D.
- 2. Prior to submitting an application for a proportionate fair-share agreement, a pre-application meeting shall be held to discuss eligibility, e.g., project status in CIE, application submittal requirements, potential mitigation options, and related issues. If the impacted facility is on the SIS, or any state transportation facility, then the FDOT will be notified and invited to participate in the pre-application meeting.
- 3. Eligible applicants shall submit an application to the city that includes an application fee of five thousand dollars (\$5,000.00) and the following:
  - a. Name, address and phone number of owner(s), developer and agent;
  - b. Property location, including parcel identification numbers;
  - c. Legal description and survey of property;
  - d. Project description, including type, intensity and amount of development;
  - e. Phasing schedule, if applicable;
  - f. Description of requested proportionate fair-share mitigation;
  - g. Copy of the project's traffic study or traffic impact analysis; and
  - h. Location map depicting the site and affected road network.
- 4. The city shall review the application and certify that the application is sufficient and complete within ten (10) business days. If an application is determined to be insufficient, incomplete or inconsistent with the general requirements of the proportionate fair-share program as indicated in subsection D., then the applicant will be notified in writing of the reasons for such deficiencies within ten (10) business days of submittal of application. If the applicant does not remedy such deficiencies within thirty (30) days of receipt of the written notification, then the application will be deemed abandoned. The commission may, in its discretion, grant an extension of time not to exceed sixty (60) days to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to effect a cure.
- 5. Pursuant to F.S. § 163.3180(16)(e), proposed proportionate fair-share mitigation for development impacts to facilities on the Strategic Intermodal System (SIS) require the concurrence of the FDOT. The applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.

- 6. When an application is deemed sufficient, complete, and eligible, the applicant shall be advised in writing and a proposed proportionate fair-share obligation and binding agreement will be prepared by the city and delivered to the appropriate parties for review, including a copy to the FDOT for any proposed proportionate fair-share mitigation on a SIS facility, or any state transportation facility, no later than sixty (60) days from the date at which the applicant received the notification of a sufficient application and no fewer that forty-five (45) working days prior to the commission meeting when the agreement will be considered.
- 7. The city shall notify the applicant regarding the date of the commission meeting when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the commission.
- G. Determining proportionate fair-share obligation.
  - 1. Proportionate fair-share mitigation for concurrency impacts may include, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities as provided in F.S. § 163.3180(16)(c).
  - 2. A development shall not be required to pay more than its proportionate fair-share. The fair market value of the proportionate fair-share mitigation for the impacted facilities shall not differ based on the form of mitigation as provided in F.S. § 163.3180(16)(c) (contributions of private funds, land or facility construction).
  - 3. The methodology used to calculate an applicant's proportionate fair-share obligation shall be as provided for in F.S. § 163.3180(12), as follows:

The cumulative number of peak hour, peak direction trips from the complete buildout of the proposed development, or buildout of the stage or phase being approved, that are assigned to the proportionate share program segment divided by the change in the peak hour maximum service volume (MSV) or the proportionate share program segment resulting from construction of the proportionate share program improvement, multiplied by the anticipated cost of the proportionate share project. In this context, cumulative does not include project rips from previously approved stages or phases of development.

This methodology is expressed by the following formula:

Proportionate Fair Share =  $\sigma[[(Development Trips;sub\sub;) / (SV Increase;sub\sub;)] \times Cost;sub\sub;]$ 

#### Where:

 $\sigma$  = Sum of all deficient links proposed for proportionate fair-share mitigation for a project;

Development Trips;sub\sub; = Those trips from the stage or phase of development under review that are assigned to roadway segment "i" and have triggered a deficiency per the concurrency management system (CMS);

SV Increase;sub\sub; = Service volume increase provided by the eligible improvement to roadway segment "i";

Cost;sub\sub; = Adjusted cost of the improvement to segment "i". Cost shall include the cost of all project phases (preliminary engineering or alignment study, design, rights-of-way acquisition and construction) in the years said phases will occur with all associated costs.

- 4. The cost of the proportionate fair-share project shall be determined by the maintaining jurisdiction.
- 5. The value of right-of-way dedications used for proportionate fair-share payment shall be subject to the approval of the maintaining jurisdiction. No value shall be assigned to right-of-way dedications required under ordinance or as a condition of development approval.
- H. Proportionate fair-share agreements.
  - 1. Upon execution of a proportionate fair-share agreement (agreement) and satisfying other concurrency requirements, an applicant shall receive a city certificate of concurrency approval for transportation. Should the applicant fail to apply for building permits within the timeframe provided for in the city concurrency certificate, then the project's concurrency vesting shall expire, and the applicant shall be required to reapply. Once a proportionate fair share payment for a project is made and other impact fees for the project are paid, no refunds shall be given. All payments, however, shall run with the land.

- 2. Payment of the proportionate fair-share contribution for a project and other road impact fees not subject to an impact fee credit shall be due and must be paid within sixty (60) days of the effective date of the proportionate fair-share agreement. The effective date shall be specified in the agreement and shall be the date the agreement is approved by the commission.
- 3. All developer improvements accepted as proportionate fair-share contributions must be completed within three (3) years of the issuance of the first building permit for the project which is the subject of the proportionate fair-share agreement and be accompanied by a security instrument that is sufficient to ensure the completion of all required improvements. It is the intent of this section that any required improvements be completed within three (3) years of the issuance of the first building permit for the project which is the subject of the proportionate fair-share agreement.
- 4. Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must be completed prior to the effective date of the proportionate fair-share agreement.
- 5. Any requested change to a development project subsequent to issuance of a development order shall be subject to additional proportionate fair-share contributions to the extent the change would generate additional traffic that would require mitigation.
- 6. Applicants may submit a letter to withdraw from the proportionate fair-share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the city will be nonrefundable.
- I. Appropriation of fair-share revenues.
  - 1. Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the city CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the local government having jurisdiction over the relevant transportation facility subject to the proportionate fair-share agreement, and with the concurrence of the local government issuing the development order, proportionate fair-share revenues may be used for operational improvements prior to construction of the capacity project from which the proportionate fair-share revenues were derived. These operational improvements shall be consistent with, and sustainable through, the construction of the capacity project. Proportionate fair-share revenues may also be used as the fifty (50) percent local match for funding under the FDOT TRIP.
  - 2. In the event a scheduled facility improvements is removed from the CIE, then the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor or sector that would mitigate the impacts of development.

(Ord. No. 2006-46, § 3, 12-5-2006)

### **Division 2. Development Agreements**

# § 23-731. Utility capacity queue agreement.

Sec. 23-731.1. Findings, purpose and intent. The city commission has determined that, during times of increased demand for and rapid utilization of remaining water, wastewater, and reclaimed water capacity, additional capacity should not be sold without ensuring that the existing facilities are not oversold, leaving the city unable to meet the capacity demands sold. The city commission is committed to developing new facilities, but is unable to do so without firm commitments for the new capacity and orderly reservation of capacity for developers. Given the uncertainty of developer commitments, the city commission finds that capacity reservations must be irrevocable after the developer has contracted for services, but will allow transfer of capacity without a profit. The city commission finds that it is in the interests of city citizens and the developers interested in developing within the city, to develop a "queue" for all new requests for additional treatment plant capacity.

Sec. 23-731.2. Capacity reservations determine queue.

- a. All capacity reserved paid in advance; queue position established. All future requests for contracts for water, wastewater, and reclaimed water service by developers owning or controlling property within the city shall require the developer to make deposit payment based on ten (10) percent of the present capacity fees for the capacity necessary for that property, and be placed in the city's utility capacity queue, prior to any reservation of capacity in existing or future utility facilities. Application for development approval, including application for approval of a conceptual plan, preliminary site plan, preliminary subdivision plat, or preliminary planned development project plan shall constitute a request for contract for utility service.
  - 1. Upon application for development approval, the developer shall execute a short-form agreement ("Utility Capacity Queue Agreement") for the sole purpose of placing the developer in the capacity queue for any future capacity to be constructed or otherwise made available at new or existing facilities, until such time as a utility services agreement can be negotiated between the parties. No capacity shall be promised to the developer under the capacity queue agreement in exchange for the partial capacity fee payment, but only a position in the queue to facilitate future agreements for reservation of capacity, as well as the planning, design, or construction of new capacity, if necessary. Once the queue agreement is executed and the partial capacity fee is delivered with the agreement to the city, the city shall clock in the agreement and capacity fee to establish the developer's position in the queue. The city's signature is not required for the queue position. The development shall remain in the capacity queue until such time as the city executes a utility services agreement with the developer to reserve the utility treatment plant capacity.
  - 2. The city shall establish a utility capacity queue based on date of approval for all developments or development phases for which a preliminary site plan, preliminary subdivision plat, or preliminary planned development plan was approved prior to May 1, 2007 but for which a site development permit has not been granted. The capacity queued for the development shall be that which was approved with the development with the preliminary plan or plat, and a deposit of capacity fees shall not be required.
- b. Capacity queue position converted to reservation of capacity. Once the utility facilities for which the developers are queued are identified or completed by the city, or the city manager determines that the facilities shall be completed before the capacity is needed by the developers, developers in the queue may be offered utility services agreements for their capacity needs, depending on the availability of capacity.
- c. Abandonment of capacity by failure to execute utility services agreement. In the event that a developer chooses not to execute a utility services agreement or is unable to resolve contractual issues with the city in the city's utility services agreement within thirty (30) days of being provided a draft of said agreement, the developer shall have abandoned its capacity reservation offer. The city manager may extend the termination date hereunder for no more than one (1) additional fifteen-day period, without commission approval, if the city manager, in his or her sole discretion, determines that the developer is negotiating in good faith, but has still been reasonably unable to resolve its issues with the draft utility services agreement. Those developments for which a utility services agreement has not been executed within the required time period shall remain in the queue with their positions based upon their queue agreement dates. Those developments that do not have a queue agreement and are in the queue based upon a plan approval (see section 23-731.2.a.2) shall be removed from the queue. Upon notification by a developer to remove a development from the queue, the city shall refund the partial utility capacity fees made with the queue agreement less any city costs.
- d. Capacity queue position may be transferred, but not for a profit. The developer's position in a capacity queue can be transferred only as part of a sale of the land for which the capacity is sought; however, such capacity cannot be sold or transferred for more than the amount paid by the developer.
- e. *Ties for capacity queue take same place*. In the event that more than one developer executed and paid for their requested capacity within twenty-four (24) hours of another developer, the queue position shall be deemed a "tie," and both (or all) shall be given the same place in the queue. Bond placement shall not be considered for the tie.
- f. *Exceptions*. The following are exceptions to the requirement that all developments requesting new capacity shall first enter into a queue agreement:
  - 1. Units constructed on lots platted or otherwise legally in existence prior to the date of passage of this Ordinance.
  - 2. Non-residential developments to be served by capacity set aside for economic development.

(Ord. No. 2008-13, § 1, 5-6-08)

Sec. 23-731.3. Existing agreements for capacity reservation not in queue. This Ordinance is not intended to modify any existing agreements committing the city to provide capacity at the present utility facilities, except for the addition of Minimum Revenue Fees for Capacity.

Sec. 23-731.4. Form of utility capacity queue agreement.

NOTE: THE FOLLOWING AGREEMENT MAY BE MODIFIED FROM TIME TO TIME BY RESOLUTION.

UTILITY C	APACITY QUEUE AGREEME	ENT.		
THIS AGR	EEMENT is made and entered	into this day of	//	
20	by and between	, a Florida	, its approved successors	and
assigns, col	lectively referred to hereinafter	as "DEVELOPER", whose	e business address is	
and CITY	OF LAKE WALES, FLORIDA	A, whose business address is	s 201 W. Central Avenue, Lake V	Vale
Florida, 338	853, (hereinafter referred to as "G	CITY").		

- 1 . Purpose and Intent. This Agreement is intended to provide the developer with a position in the (WATER/WASTEWATER/RECLAIMEDWATER) Capacity Queue. Such position is temporary, subject to timely execution and compliance with a utility services agreement submitted to DEVELOPER by CITY as provided by Ordinance 2007-14.
- 2. The DEVELOPER hereby wishes to be placed in the \_\_\_\_\_ capacity Queue for a total of \_\_\_\_\_ (single-family, multi-family, ERUs) for property DEVELOPER owns or controls within the city Limits (described in Exhibit "A") at the position shown in the Attachment "B" hereto. Nevertheless, DEVELOPER agrees that final position in the queue is based on final execution of this Agreement, up front deposit payment based on 10% of the capacity fees for the capacity sought to be included in the Queue, and compliance with City Code, including Ordinance 2007-14.
- 3. The Parties agree that this temporary agreement and Developer's position the Queue will be terminated if the parties cannot agree on terms of a utility service agreement within thirty (30) days of the CITY'S proposing a draft of said agreement to DEVELOPER.

DEVELOPER	CITY OF LAKE WALES, FL.	
By:		
	Mayor/Commissioner	
Printed		
Its:	Attest: City Clerk	

(Ord. No. 2007-14, § 3, 6-5-07)

## **Division 3. Development Exactions And Dedications**

# § 23-751. Dedication of sites for recreational uses or fee in lieu.

- a. Where an evaluation under the concurrency management system (See article VII, div. 1) indicates that additional usable recreation land and facilities are needed to maintain the adopted level of service standard, the developer shall dedicate land of suitable size, topography and general character to the city or pay a fee that is equal to the fair market value of the land otherwise required to be dedicated. The required acreage or fee shall be determined by the administrative official based on the development impact data submitted in connection with the proposed development.
- b. Where dedication of recreation land is not required to maintain the adopted level of service, the city may refuse to accept such land, or establish reasonable conditions for acceptance. Proposed recreational uses must be consistent with the Future Land Use Map of the Lake Wales Comprehensive Plan. Other conditions may include, but are not limited to, the following:
  - 1. Land must be readily accessible and usable for recreational purposes.
  - 2. Land must be fully or partially developed for recreational use at time of acceptance.
  - 3. The facility would meet a specific recreational need of the city (i.e., picnic areas, boat launch facilities).

# § 23-752. Dedication of right-of-way.

Right-of-way required to serve all development shall be dedicated to the City of Lake Wales in accordance with the requirements of section 23-303. Where subdivisions are bordered by public right-of-way, additional right-of-way shall be dedicated so as to meet minimum widths specified in the comprehensive plan. Where dedicated right-of-way is extended to an adjoining property or street, there shall be no reserved strips affording private control of future access. The city may require public reserved strips where such reservations promote the public health and safety and implement the comprehensive plan. Where right-of-way has been dedicated independent of any requirement of these land development regulations or the Comprehensive Plan, the city may refuse to accept such right-of-way, or establish such conditions for acceptance as the city commission determines to be reasonable.

## § 23-753. Dedication of utility easements.

Easements for public utilities shall be dedicated to the city as required in conjunction with approvals subdivision plats, planned development projects, site plans, and site development permits.

## § 23-754. Conveyance of land, streets or facilities to an owners association.

Where common land, private streets or facilities are not to be dedicated to the city but are to be conveyed to an owners association, the following standards shall apply:

- a. The organization or legal entity established for the purpose of owning and maintaining common land, private streets or facilities shall be created by covenants running with the land. The documents creating such an association shall be reviewed and approved by the city attorney prior to issuance of the final development order.
- b. No such organization shall be dissolved nor shall it dispose of any common land, private streets or facilities by sale or otherwise except to an organization conceived and organized to own and maintain such property. The organization may offer to dedicate all such land, streets and facilities to the city. The city may make acceptance subject to improvements which shall be made before the land, streets or facilities are transferred. If the city agrees to accept the land, streets or facilities, the organization may be disbanded, but not before the improvements are made and the property is transferred.

# **Division 4. Public Facilities Impact Fees**

#### § 23-761. Definitions.

Effective: Tuesday, August 16, 2022

When used in this division, the following words, terms or phrases shall have the meanings ascribed to them in this section unless the context clearly indicates otherwise:

Affordable housing shall mean a dwelling unit which is offered for sale or rent to low-income persons or very low-income persons and which monthly rent or monthly mortgage payments, including taxes and insurance, do not exceed thirty (30) percent of that amount which represents the percentage of the median adjusted gross income for low-income persons and very low-income persons.

Alternative impact fee shall mean any alternative fee calculated by an applicant and approved by the city manager or city commission pursuant to section 23-765.

*Encumbered* shall mean monies committed by contract or purchase order in a manner that obligates the city to expend the encumbered amount upon delivery or completion of goods, services or real property provided by a vendor, supplier, contractor or owner.

Fees shall mean, collectively, the impact fees imposed pursuant to this division.

Impact fee shall mean, collectively, the fees imposed pursuant to this division.

*Impact fee study* shall mean the study adopted pursuant to section 23-763, as amended and supplemented pursuant to section 23-779.

*Infill lot* shall mean any single vacant lot located in a predominately built-up area served by city utilities, which is bounded on two (2) or more sides by existing development. In addition, any lot that contains an existing building which will be removed and replaced with a new building shall also be considered an infill lot.

Mixed use construction shall mean construction in which more than one (1) impact fee land use category is contemplated, with each category consisting of a separate and identifiable enterprise not subordinate to or dependent on other enterprises within the construction.

Mobility plan shall mean a plan of multimodal projects that serve as the basis for development of a mobility plan and incorporated in the study adopted pursuant to section 23-763, as amended and supplemented pursuant to section 23-779, or as adopted in the Comprehensive Plan.

Owner shall mean the person holding legal title to the real property upon which public facilities impact construction is to occur.

*Person* shall mean an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

Public facilities shall mean those facilities identified in this division for which impact fees are imposed.

*Public facilities impact construction* shall mean land development which changes the use of land in a manner which increases the impact upon the public facilities for which impact fees are imposed under this division.

Residential shall mean apartments, condominiums, mobile homes or single-family detached houses.

*Site-related improvement* shall mean any improvement constructed on the development site which is required to connect a building or structure with a city capital facility.

(Ord. No. 2008-08, § 1, 3-4-08; Ord. No. 2022-38, § 1, 8-16-22)

## § 23-762. Legislative findings and intent.

- a. Both existing development and development resulting from growth, as contemplated by the comprehensive plan, will require improvements, and additions to public facilities to accommodate and maintain the leve and quality of service adopted by the city.
- b. Future growth represented by public facilities impact construction should contribute its fair share to the cost of improvements and additions to public facilities that are required to accommodate the use of such facilities by growth.
- c. The required improvements and additions to the public facilities needed to accommodate existing development at the adopted and quality level of service shall be financed by revenue sources other than impact fees.
- d. Implementation of an impact fee structure to require future public facilities impact construction to contribute its fair share of the cost of improvements and additions to public facilities is an integral and vital element of the management of growth.
- e. Public facilities planning is an evolving process and the level and quality of service adopted by the city for such public facilities constitutes a balancing of anticipated need and the corresponding cost to implement such standard, based upon present knowledge and judgment. Therefore, in recognition of changing growth patterns, the needs of the community and the dynamics of public facilities planning, it is the intent of the commission that the level and quality of service and the cost of the various public facilities be reviewed and adjusted periodically, pursuant to section 23-779, to insure that the impact fees imposed pursuant to this division are equitable and lawful based on the impact of growth upon these public facilities.
- f. This ordinance shall not be construed to permit the collection of impact fees from public facilities impact construction in excess of the amount reasonably anticipated to offset the need for and demand on those public facilities generated by such impact construction.

g. This division is intended to be consistent with the principles for allocating a fair share of the cost of new public facilities to new users as established by the Florida Supreme Court in the case of Contractor and Builders Association of Pinellas County vs. City of Dunedin, 329 So. 2nd 314 (FL 1976) and to meet the requirements of the "Florida Impact Fee Act," F.S. ch. 163.31801, particularly the requirement that impact fees are to be based on "the most recent and localized data."

(Ord. No. 2012-03, § 1, 2-7-12; Ord. No. 2022-38, § 1, 8-16-22)

# § 23-763. Adoption of studies and Schedules.

Effective: Tuesday, August 16, 2022

- a. The commission hereby adopts and incorporates by reference the study entitled "Development Impact Fees—City of Lake Wales, Florida" prepared by Raftelis and dated September 2, 2020 particularly the assumptions, conclusions and findings in such study as to the allocation of anticipated costs of capital improvements and additions to the capital facilities between those costs required to accommodate existing development and those costs required by growth. The impact fee schedule shall be as set forth in said study on "Figure 2A—Proposed Impact Fees in North and South Service Areas."
- b. The commission hereby adopts and incorporates by reference the study entitled "The City of Lake Wales Mobility Plan and Multimodal Transportation Impact Fee Technical Report" prepared by NUE Urban Concepts, LLC and dated July 2022. This adoption includes, but is not limited to, the following: the multimodal projects included in the mobility plan, the basis of the assumptions, conclusions, and findings in such study as to the basis of the multimodal transportation impact fee, the methodology for calculating the mobility fee, the person miles of capacity assigned to multimodal projects and the person travel demand assigned to various use categories. The study presents the technical analysis and detailed methodology supporting the City of Lake Wales Mobility Fees consistent with the multimodal projects included in the 2045 City of Lake Wales Mobility Plan. The 2045 City of Lake Wales Mobility Plan consist of a Complete Streets Plan, a Streetscape and Street Trees Plan, and a Transit Circulator Plan, tables identifying specific multimodal projects reflected on the plans, and multimodal projects consisting of services and programs not reflected on the plans, such as traffic calming and mobility equity programs. The multimodal transportation impact fee schedule shall be as set forth in said study entitled City of Lake Wales Mobility Plan and Multimodal Transportation Impact Fee Technical Report. The Technical Report shall be maintained and made available by the City upon request.

(Ord. No. 2006-04, § 1, 2-21-2006; Ord. No. 2012-03, § 2, 2-7-12; Ord. No. 2020-22, § 1, 9-22-20; Ord. No. 2022-38, § 1, 8-16-22)

### § 23-764. Payment of fees.

- a. Except as otherwise provided in this article, prior to the issuance of a building permit for a public facilities impact construction, an applicant shall pay the appropriate impact fees as established by this division.
- b. The obligation for payment of the impact fees shall run with the land.
- c. In the event that a building permit issued for a public facilities impact construction expires prior to completion of the public facilities impact construction for which it was issued, the applicant may within ninety (90) days of the expiration of the building permit apply for a refund of the impact fees. Failure to timely apply for a refund of the impact fees shall waive any right to a refund.
  - 1. The application for a refund shall be filed with the administrative official and shall contain the following:
    - A. The name and address of the applicant;
  - B. The location of the property which was the subject of the building permit;
  - C. The date the impact fee was paid;
  - D. A copy of the receipt of payment for the impact fees; and
  - E. The date the building permit was issued and the date of expiration.
  - 2. After verifying that the building permit has expired and the public facilities impact construction has not been completed, the administrative official shall refund the impact fees paid for such public facilities impact construction.

- 3. A building permit which is subsequently issued for a public facilities impact construction on the same property which was the subject of a refund shall pay all impact fees as established by this division.
- d. In the event that the city issues separate building permits for a building or part of a building within a public facilities impact construction which by design contemplates phased occupancy, the city and the applicant may enter into an agreement for the phased payment of the impact fees applicable to that portion of the public facilities impact construction represented by such building, provided, however, that all impact fees due shall be paid prior to the issuance of the final building permit for the building.
- e. The payment of all impact fees shall be in addition to other fees, charges or assessments imposed by the city for the issuance of a building permit.
- f. Prior to the issuance of a building permit, the applicant of a public facilities impact construction may enter into a fee agreement with the city providing for the payment of the impact fees at a time other than as provided in this division. Such an agreement shall require the applicant to post an irrevocable letter of credit payable by a financial institution, acceptable to the city, to ensure payment of the fees at a time other than prior to issuance of the building permit.
  - 1. The irrevocable letter of credit shall contain no conditions upon the obligation of the issuer for the payment of the principal amount and any interest due thereon.
  - 2. Except as otherwise approved by the city commission, no deferral of the payment of impact fees shall extend for a period greater than one (1) year from the date of the building permit, provided that the city manager may approve an additional period of six (6) months upon good cause shown, and subject to the submission of a new application. Any requests for a six-month extension must be made in writing at least thirty (30) days prior to the expiration date of the irrevocable letter of credit.
  - 3. Notwithstanding that the applicant may obtain a deferral to a date certain, all impact fees shall be paid at either the date to which the payment has been deferred or the issuance of a certificate of occupancy for the public facilities impact construction, whichever occurs first except as otherwise approved by the city commission.

(Ord. No. 2007-14, § 4, 6-5-07)

#### § 23-765. Alternative impact fee calculation.

- a. In the event an applicant believes that the impact to the public facilities necessitated by a public facilities impact construction is less than the fees established by this division, such applicant may, prior to issuance of a building permit for such public facilities impact construction, submit a calculation of an alternative impact fee to the city manager pursuant to the provisions of this section. The city manager shall review the calculations and make a determination within ten (10) business days of submittal as to whether such calculation complies with the requirements of this section.
- b. The alternative impact fee calculations shall be based on data, information or assumptions contained in this division, the impact fee study or independent sources, provided that:
  - 1. The independent source is a generally accepted standard source of planning information and cost impact analysis performed pursuant to a generally accepted methodology of planning and cost impact analysis which is consistent with the impact fee studies;
  - 2. The independent source is a local study supported by a data base adequate for the conclusions contained in such study performed pursuant to a generally accepted methodology of planning and cost impact analysis which is consistent with the impact fee studies; or
  - 3. The independent source is based upon recent available data from the Trip Generation Report by the Institute of Transportation Engineers (ITE) for the land use category in question.
- c. If a previously approved public facilities impact construction project submitted, during its approval process, an alternative impact fee study substantially consistent with the criteria required by this section, and if such study is determined by the city manager to be current, the impact upon the public facilities as determined by such previously approved public facilities impact construction shall be presumed to be as described in the prior study. There shall be a rebuttable presumption that an alternative impact fee study conducted more than twelve (12) months earlier is invalid.

- d. If the city manager determines that the data, information and assumptions utilized by the applicant to calculate the alternative impact fees comply with the requirements of this section, the alternative fees shall be paid in lieu of the fees established by this division.
- e. If the city manager determines that the data, information and assumptions utilized by the applicant to calculate the alternative impact fees do not comply with the requirements of this section, then the city shall provide to the applicant by certified mail, return receipt requested, written notification of the rejection of the alternative fees and the reason therefor. The applicant shall have fifteen (15) calendar days from receipt of the written notification of rejection to request a hearing pursuant to section 23-772

(Ord. No. 2006-04, § 1, 2-21-2006; Ord. No. 2022-38, § 1, 8-16-22)

# § 23-766. Alternative collection of fees.

Effective: Tuesday, August 16, 2022

In the event that impact fees are not paid prior to the issuance of a building permit for the affected public facilities impact construction, the city shall proceed to collect the impact fees as follows:

- a. The city shall serve, by certified mail, return receipt requested, a notice of impact fees upon the applicant at the address appearing on the most recent records maintained by the property appraiser of the county. Service of the notice of impact fees shall be deemed notice of the impact fees due and service shall be deemed effective on the date the return receipt indicates the notice was received by either the applicant or the owner or the agent of either by execution of the return receipt, whichever occurs first. The notice of impact fees shall contain the legal description of the property upon which the public facilities impact construction occurred and shall advise the applicant and the owner as follows:
  - 1. The amount due and the general purpose for which impact fees were imposed;
  - 2. That a hearing pursuant to section 23-772 may be requested within fifteen (15) calendar days from the date of receipt of the notice of impact fees, by making application to the city manager;
  - 3. That the impact fees shall be deemed delinquent if not paid and received by the city within sixty (60) calendar days of the date the notice of impact fees is received, excluding the date of receipt, or if hearing is not requested pursuant to section 23-772, and, upon becoming delinquent, shall be subject to the imposition of a delinquent fee and interest on the unpaid amount until paid; and
  - 4. That in the event the fees become delinquent, a lien against the property for which the building permit was secured shall be recorded in the official records of the county.
- b. The impact fees shall be delinquent if, within sixty (60) calendar days from the date of receipt of the notice of impact fees by either applicant or owner, neither the impact fees have been paid and received by the city, nor a hearing requested pursuant to section 23-772. In the event a hearing is requested pursuant to section 23-772, the impact fees shall become delinquent if not paid within thirty (30) calendar days from the date the commission determines the amount of impact fees due upon the conclusion of such hearing. Said time periods shall be calculated on a calendar day basis, including Saturdays, Sundays and legal holidays, but excluding the date of the earliest receipt of said impact fee statement or the date of the commission's decision, in the event of an appeal. In the event the thirtieth day prior to becoming delinquent falls on a Saturday, Sunday or legal holiday, then the fees shall become delinquent at 5:00 p.m. of the next business day. Upon becoming delinquent, a delinquency fee equal to ten (10) percent of the total impact fees imposed shall be assessed. Such total impact fees, plus delinquency fee, shall bear interest at the statutory rate for final judgments calculated on a calendar day basis, until paid.
- c. Should the impact fees become delinquent as set forth in paragraph b., the city shall serve, by certified mail, return receipt requested, a notice of lien upon the delinquent applicant and upon the delinquent owner at the address appearing on the most recent records maintained by the property appraiser of the county. The notice of lien shall notify the delinquent applicant and the delinquent owner that due to their failure to pay the fees, the city shall file a claim of lien with the clerk of the circuit court.
- d. Upon the mailing of the notice of lien, the city clerk shall file a claim of lien with the clerk of the circuit court for recording in the official records of the county. The claim of lien shall contain the legal description of the property upon which the public facilities impact construction occurred, the amount of the delinquent impact fee and the date of its imposition. Once recorded, the claim of lien shall constitute a lien against the property described therein.

- e. After the expiration of one (1) year from the date of recording of the claim of lien, as provided herein, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted, conducted and enforced in conformity with the procedures for the foreclosure of municipal special assessment liens, as set forth in F.S. ch. 173, and any amendments thereto, which provisions are hereby incorporated herein in their entirety to the same extent as if such provisions were set forth herein verbatim.
- f. The liens for delinquent fees imposed hereunder shall remain liens coequal with the liens of all state, county, district and municipal taxes, superior in dignity to all other filed liens and claims, until paid as provided herein.
- g. The collection and enforcement procedures set forth in this section shall be cumulative with, supplemental to, and in addition to all other applicable procedures provided in any other ordinances or administrative regulations of the city or any applicable law or administrative regulation of the State of Florida, and any amendments thereto. Failure of the city to follow the procedure set forth in this section shall not constitute a waiver of its rights to proceed under any other ordinances or administrative regulations of the city or any applicable law or administrative regulation of the State of Florida.

(Ord. No. 2006-04, § 1, 2-21-2006; Ord. No. 2022-38, § 1, 8-16-22)

## § 23-767. Exemptions.

Effective: Tuesday, August 16, 2022

The following shall be exempted from payment of impact fees:

- a. Alterations, expansions or replacement of an existing dwelling unit which do not increase the number of families for which such dwelling unit is arranged, designed or intended to accommodate for the purpose of providing living quarters.
- b. The alteration or expansion of an accessory building or structure which will not create additional dwelling units or will not increase the usable square footage space associated with the principal building on the land.
- c. The replacement of a dwelling unit or building with a new dwelling unit or building of the same size and use and which will not increase the square footage associated therewith; provided that the replacement of a dwelling unit or building which has been destroyed or otherwise rendered uninhabitable must be replaced within five (5) years of the date it was destroyed or rendered uninhabitable in order to be exempted from the payment of impact fees.
- d. Municipal buildings.
- e. Affordable housing in accordance with section 23-771
- f. Special districts. Any person seeking an exemption under the provisions of this section must submit an application to the administrative official with application for a building permit for the proposed construction or for a change of use. The application shall be made on a form provided by the city, and a legal description of the property shall be required. The city manager shall approve the exemption if it meets the criteria for the special district in which it is located.
- g. Community Redevelopment Area. The construction, alteration or expansion of a non-residential structure within a community development area designated by the city's community redevelopment plan shall be exempt from the payment of police and fire impact fees. This exemption shall not extend to the payment of water and sewer impact fees which are payable in accordance with section 23-764. This exemption shall also not extend to construction, alteration or expansion on non-residential structures on property formerly known as the Cooperative Fruit Property and located on the east side of U.S. Highway 27.
- h. National Historic Register District. The construction, alteration or expansion of any structure within a district designated on the National Historic Register shall be exempt from the payment of police, fire and parks and recreation impact fees provided such construction, alteration or expansion is determined by the historic district regulatory board to be consistent with the goals of historic preservation. This exemption shall not extend to the payment of water and sewer impact fees which are payable in accordance with section 23-764

- i. Core Improvement Area. The construction, alteration or expansion or change in the use of any structure within the "core improvement area" shall be exempt from the payment of impact fees except those for water and sewer, which are payable in accordance with section 23-764. The exemption includes Polk County impact fees per an agreement executed November 20, 2007 between the Polk County Board of County Commissioners and the City of Lake Wales.
- j. The construction, alteration, or expansion of any structure within a district designated on the National Historic Register shall be exempt from the payment of police, fire and parks and recreation impact fees provided such construction, alteration or expansion is determined by the historic preservation board to be consistent with the goals of historic preservation. This exemption shall not extend to the payment of water and sewer impact fees which are payable in accordance with section 23-764.

(Ord. No. 2006-04, § 1, 2-21-06; Ord. No. 2008-29, § 3, 9-2-08; Ord. No. 2020-22, § 3, 9-22-20; Ord. No. 2022-38, § 1, 8-16-22)

## § 23-768. Change of size or use.

Effective: Tuesday, August 16, 2022

- a. Fees shall be imposed and calculated for the alteration, expansion or replacement of a building or dwelling unit or the construction of an accessory building if the alteration, expansion or replacement of the building or dwelling unit or the construction of an accessory building results in a land use determined to:
  - 1. increase the number of dwelling units;
  - 2. increase the usable square footage; or
  - 3. change the land use so as to constitute a different fee land use category.
- b. The impact fees imposed under the applicable impact fee rate shall be calculated as follows:
  - 1. If the impact fees are calculated on land use and not square footage, the impact fees imposed shall be the impact fees due under the applicable impact fee rate for the impact fee land use category resulting from the alteration, expansion or replacement, less the impact fee that would be imposed under the applicable impact fee rate for the impact fee land use category prior to the alteration, expansion or replacement. In determining the impact fee which would have been imposed for the land use category prior to the alteration, expansion or replacement, the use of land during the previous three (3) years which provided the highest impact upon the public facilities shall be utilized.
  - 2. In the event the square footage of an office building or retail building, as defined herein, is increased, the impact fee rate for the increased square footage represented by public facilities impact construction shall be at the impact fee rate applicable to public facilities impact construction with square footage equal to the existing square footage, plus the contemplated increased square footage. However, the impact fee shall be calculated only upon the increased square footage.

(Ord. No. 2006-04, § 1, 2-21-06; Ord. No. 2022-38, § 1, 8-16-22)

### § 23-769. Vested rights.

- a. Any public facilities impact construction for which a building permit meeting all appropriate requirements for issuance was applied prior to June 20, 1995, shall be exempt from the provisions of this division. The owner of such public facilities impact construction is entitled to a vested rights exemption.
- b. In the event that a building permit for a public facilities impact construction applied for prior to June 20, 1995 expires or is revoked, then such public facilities impact construction shall not be entitled to a vested rights exemption for any subsequently issued building permit for such public facilities impact construction.
- c. Any written agreement entered into prior to June 20, 1995 between an owner and the city which establishes, restricts or prohibits the imposition of impact fees by the city, shall be binding upon the city and shall not be subject to the provisions of this division, provided, that if such written agreement is amended to increase the amount of public facilities impact construction permitted on the property, then such additional public facilities impact construction shall be required to pay the impact fees as provided by the division.

(Ord. No. 2006-04, § 1, 2-21-06)

## § 23-770. Developer contribution credit.

- a. The city may grant a credit against the impact fees imposed herein for the donation of land or equipment, or the construction of public facilities made pursuant to a development agreement approved in accordance with division 2 of this article. Such donation or construction shall not be site-related improvements and shall be subject to the approval of the city commission.
- b. Prior to the issuance of a building permit the applicant shall submit to the administrative official a proposed plan and estimates of costs for contributions to the public facilities. The proposed plan and estimates shall include:
  - 1. A legal description of any land proposed to be donated and a written appraisal prepared in conformity with paragraph c.4.A. below;
  - 2. A list of the contemplated public facilities improvements, apparatus or equipment sought to be donated;
  - 3. An estimate of proposed construction costs certified by a professional architect or engineer;
  - 4. A written statement of the actual cost for any equipment or apparatus sought to be donated; and
  - 5. A proposed time schedule for completion of the proposed plan.
- c. The administrative official shall review the proposed plan and determine:
  - 1. If such proposed plan is in conformity with contemplated improvements and additions to the public facilities;
  - 2. If the proposed donation of land or equipment or proposed construction by the applicant is consistent with the public interest; and
  - 3. If the proposed time schedule is consistent with the city's capital improvement program for the public facilities.
  - 4. The amount of developer contribution credit based upon the following standards of valuation:
    - A. The value of donated land shall be based upon a written appraisal of fair market value by a qualified and professional appraiser based upon comparable sales of similar property between related parties in the bargaining transaction;
    - B. The cost of construction of public facilities shall be based upon the lowest of three (3) bids to perform construction in conformity with all construction standards of the city; and
    - C. The value of apparatus and equipment shall be based on the actual cost.
- d. Upon presentation of the plan to the city commission and approval of a development agreement pursuant to division 2 of this article, a revised impact fee statement shall be issued to the applicant reflecting the amount of impact fees due following the granting of the credit.
- e. Any applicant shall have a right of review pursuant to section 23-772 of the valuation by the administrative official of the developer contribution credit. However, there shall be no right of review as to the determination of the city commission to accept or reject the proposed plan of donation or construction.
- f. No credit shall be granted for the donation of land or equipment or for the construction of public facilities unless such donation or construction would be an authorized expenditure for the particular impact fee.
- g. The credit granted for the donation of land or equipment for the construction of public facilities by an applicant shall only be applied as a credit against the impact fee which provides the funds for the specific capital facility.

(Ord. No. 2006-04, § 1, 2-21-06; Ord. No. 2012-03, § 3, 2-7-12)

### § 23-771. Affordable housing.

- a. The city shall exempt from the payment of fees imposed pursuant to this division any public facilities impact construction consisting of a single dwelling unit or duplex built on an infill lot within the city which will either: (1) be sold or rented for an amount which qualifies as affordable housing; (2) be funded in whole or in part by monies received pursuant to tax grant or subsidy from the United States, State of Florida, Polk County or City of Lake Wales, the use of which is specifically restricted to provide for the construction of affordable housing. For the purposes of this section, the term "infill lot" is defined as any single vacant lot located in a predominately built-up area served by city utilities, which is bounded on two (2) or more sides by existing development. In addition, any lot that contains an existing building which will be removed and replaced with a new building shall also be considered an infill lot.
- b. Any person seeking an affordable housing exemption for new dwelling unit shall file with the city manager an application for exemption prior to receiving a building permit for unit. The application for exemption shall contain the following:
  - 1. The name and address of the owner;
  - 2. The legal description of the property upon which the unit(s) shall be constructed;
  - 3. The proposed selling price if the unit(s) will be offered for sale or the proposed rental price if unit(s) will be offered for rent;
  - 4. The number of bedrooms which the dwelling unit(s) will contain; and
  - 5. Evidence that the unit(s) is funded by a governmental affordable housing program, if applicable, including any terms, restrictions and conditions as to its use, if applicable;
  - 6. Copy of the impact fee exemption application or approved exemption from the Polk County Manager, if applicable.
  - 7. Evidence that the unit(s) shall be occupied by low-income or very-low income persons;
- c. If the unit(s) meets the requirements for an affordable housing exemption, then the city manager shall issue an impact fee exemption. The impact fee exemption shall be presented in lieu of payment of the public facilities impact fees.
- d. For a residential unit to receive an affordable housing exemption, the monthly rent or mortgage payment, including taxes and insurance, shall not exceed thirty (30) percent of the monthly income of a low-income household in Lake Wales, and such restriction must continue for a period of at least seven (7) years from the issuance of the building permit. For properties proposed for sale, such restriction shall be contained either within the deed for the property, within the terms, restrictions and conditions of the direct government grant or subsidy, or within the terms of a development agreement entered into pursuant to the Florida Local Government Development Agreement Act. For units proposed for rental, such restriction shall be contained in any lease or rental agreement between the owner and renter, and a notarized affidavit by the owner attesting that the rental fee meets the current restricted amount and that a copy of the affidavit has been given to the renter(s) shall be provided to the city no later than October 30 of each year. Any violation of the reporting requirements or the restriction on rental amount shall result in a requirement for payment by the owner of all impact fees waived under this section.
- e. In determining the total monthly rental charge for the purpose of determining eligibility for an impact fee exemption, all payments which are required to be made by a tenant as a condition of residing at such dwelling unit shall be included.
- f. An applicant who has been denied an impact fee exemption may request a review hearing on such decision pursuant to section 23-772

(Ord. No. 2006-04, § 1, 2-21-06; Ord. No. 2008-08, § 1, 3-4-08; Ord. No. 2022-38, § 1, 8-16-22)

### § 23-772. Review hearings.

- a. An applicant or owner who is required to pay fees pursuant to this division, shall have the right to request a review hearing.
- b. Such hearing shall be limited to the review of the following:
  - 1. The application of the appropriate impact fees pursuant to this division.

- 2. The failure to grant or the granting of insufficient alternative impact fees pursuant to section 23-766
- 3. The granting of insufficient credits for the donation of land or equipment or construction of public facilities pursuant to section 23-770
- 4. The failure to grant an affordable housing exemption pursuant to section 23-771
- c. Except as otherwise provided in this division, such hearing shall be requested by the applicant or owner within fifteen (15) days, including Saturdays, Sundays and legal holidays, of the date of first receipt of the following, whichever is applicable:
  - 1. the impact fee statement;
  - 2. the notice of impact fees;
  - 3. the notification of the determination of any alternative fee;
  - 4. the notification of decision on the application for credit for the donation of land and equipment, or construction credit; or
  - 5. the notification of the denial of an affordable housing exemption.
- d. Failure to request a hearing within the time provided shall be deemed a waiver of any right for consideration of administrative relief.
- e. The request for hearing shall be filed with the city manager and shall contain the following:
  - 1. The name and address of the applicant or owner;
  - 2. The address of the property in question;
  - 3. If issued, the date the building permit was issued;
  - 4. A brief description of the nature of the construction being undertaken pursuant to the building permit;
  - 5. If paid, the date the fees were paid; and
  - 6. A statement of the reasons why the applicant or owner is requesting the hearing.
- f. Upon receipt of such request, the administrative official shall schedule a hearing before the commission at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the applicant or owner written notice of the time and place of the hearing. Such hearing shall be held within forty-five (45) days of the date the request for hearing was filed.
- g. Such hearing shall be before the commission and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedure and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.
- h. Any applicant or owner who requests a hearing pursuant to this section and desires issuance of the building permit, or if a building permit has been issued without the payment of all impact fees, shall either pay all applicable impact fees or provide the city with an irrevocable letter of credit drawn on a financial institution acceptable to the city in the amount of the applicable impact fees. The payment or the providing of the irrevocable letter of credit shall be made prior to or at the time the request for hearing is filed. Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights.
- i. An applicant or owner may request a hearing under this section without paying the applicable impact fees, but no building permit shall be issued until all impact fees are paid in the amount initially calculated or the amount determined upon completion of the review provided for in this section.

(Ord. No. 2022-38, § 1, 8-16-22)

### § 23-773. Refunds of impact fees.

- a. Fees collected pursuant to this division shall be returned to the then current owner of the property on behalf of which such fees were paid if such fees have not been expended or encumbered prior to the end of the fiscal year immediately following the eighth anniversary of the date upon which such fees were paid.
- b. Refunds shall be made only in accordance with the following procedures:

- 1. The then current owner shall petition the commission for the refund prior to the end of the fiscal year following the end of the fiscal year in which occurs the date of the eighth anniversary of the payment of impact fees.
- 2. The petition for refund shall be submitted to the city manager and shall contain:
  - A. A notarized sworn statement that the petitioner is the then current owner of the property on behalf of which the fees were paid;
  - B. A copy of the dated receipt issued for payment of such fees, or such other record as would indicate payment of such fees;
  - C. A certified copy of the latest recorded deed; and
  - D. A copy of the most recent ad valorem tax bill.
- c. Within three (3) months from the date of receipt of a petition for refund, the city manager will advise the petitioner and the city commission of the status of the fees requested for refund, and if such fees have not been spent or encumbered within the applicable time period, then it shall be returned to the petitioner with any interest which may have been earned on such impact fees. For the purpose of this section, fees collected shall be deemed to be spent or encumbered on the basis of the first fee in shall be the first fee out.

(Ord. No. 2022-38, § 1, 8-16-22)

# § 23-774. Water system impact fees.

- a. *Findings applicable to water system impact fees.* In addition to the findings contained in section 23-762, the commission hereby specifically ascertains, determines and declares as follows:
  - 1. The water systems are designed and intended to provide water services for all persons within the city's utility service area and are exclusively provided by the city; therefore, the water system impact fee shall be imposed throughout the Lake Wales Utility Service Area as that area is defined by interlocal agreement between the city and the county and the tri-city agreement between the city and the cities of Winter Haven and Dundee, as they may be amended from time to time. Said agreements are on file in the official records of the city and are incorporated herein by reference.
  - 2. The improvements and additions to the water system funded by the water system impact fee provide a benefit to all water system impact construction in excess of the impact fee.
  - 3. The existing water system and other improvements and additions contemplated by the commission and funded by revenues other than impact fees, shall eliminate any deficiency between the existing water system and the adopted level of service and shall be sufficient for the needs of the existing population of the utility service area. Therefore, the revenues derived from the water system impact fee shall be utilized only for the improvements and additions to the water system which are necessitated by water system impact construction.
- b. Imposition of water system impact fees. All water system impact construction occurring within the city, shall pay the impact fees as established within Schedule "B", which is attached hereto and incorporated by reference.
- c. Establishment of water system impact fee trust account. The commission hereby establishes a separate trust account for the water system impact fees, to be designated as the "Water System Impact Fee Trust Account," which shall be maintained separate and apart from all other accounts of the city. All such impact fees shall be deposited into such trust fund immediately upon receipt.
- d. *Use of water system impact fees.* The monies deposited into the Water System Impact Fee Trust Account shall be used solely for the purpose of constructing or improving the city's water system, including, but not limited to:
  - 1. Design and construction plan preparation;
  - 2. Permitting;
  - 3. Land acquisition, including any costs of acquisition or condemnation;
  - 4. Construction and design of water system facilities;
  - 5. Design and construction of new drainage facilities required by the construction of water system facilities;

- 6. Relocating utilities required by the construction of water system facilities;
- 7. Landscaping;
- 8. Construction management and inspection;
- 9. Surveying, soils and material testing;
- 10. Acquisition of vehicles utilized in providing water service and the apparatus or equipment necessary to provide such service;
- 11. Repayment of monies transferred or borrowed from any budgetary fund of the city which were used to fund any of the construction, acquisition or improvements herein defined;
- 12. Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the city to provide funds to construct or acquire contemplated water system improvements, subsequent to the adoption of this division.
- e. Restrictions on use of water system impact fees. Funds on deposit in the water system impact fee trust account shall not be used for any expenditure that would be classified as an administrative, maintenance, repair, or other operating expense.
- f. *Investment of water system impact fees*. Any funds on deposit which are not immediately necessary for expenditure may be invested by the city. All income derived from such investments shall be deposited in the water system impact fee trust account and used as provided herein.

(Ord. No. 2006-04, § 1, 2-21-2006)

## § 23-775. Wastewater system impact fees.

- a. *Findings applicable to wastewater system impact fees.* In addition to the findings contained in section 23-762, the commission hereby specifically ascertains, determines and declares as follows:
  - 1. The wastewater systems are designed and intended to provide wastewater services for all persons within the city's utility service area and are exclusively provided by the city; therefore, the wastewater system impact fee shall be imposed throughout the Lake Wales Utility Service Area as that area is defined by interlocal agreement between the city and the county and the tri-city agreement between the city and the cities of Winter Haven and Dundee, as they may be amended from time to time. Said agreements are on file in the official records of the city and are incorporated herein by reference.
  - 2. The improvements and additions to the wastewater system funded by the wastewater system impact fee provide a benefit to all wastewater system impact construction in excess of the impact fee.
  - 3. The existing wastewater system and other improvements and additions contemplated by the commission and funded by revenues other than impact fees, shall eliminate any deficiency between the existing wastewater system and the adopted level of service and shall be sufficient for the needs of the existing population of the utility service area. Therefore, the revenues derived from the wastewater system impact fee shall be utilized only for the improvements and additions to the wastewater system which are necessitated by wastewater system impact construction.
- b. *Imposition of wastewater system impact fees*. All wastewater system impact construction occurring within the city, shall pay the impact fees as established within Schedule "B", which is attached hereto and incorporated by reference. Sewer impact fees paid on or before June 30, 2006 shall be discounted two hundred dollars (\$200.00) per unit from the fee established in Schedule "B".
- c. Establishment of wastewater system impact fee trust account. The commission hereby establishes a separate trust account for the wastewater system impact fees, to be designated as the "Wastewater System Impact Fee Trust Account," which shall be maintained separate and apart from all other accounts of the city. All such impact fees shall be deposited into such trust fund immediately upon receipt.
- d. Use of wastewater system impact fees. The monies deposited into the wastewater system impact fee trust account shall be used solely for the purpose of constructing or improving the city's wastewater system, including, but not limited to:
  - 1. Design and construction plan preparation;
  - 2. Permitting;
  - 3. Land acquisition, including any costs of acquisition or condemnation;

- 4. Construction and design of wastewater system facilities;
- 5. Design and construction of new drainage facilities required by the construction of wastewater system facilities;
- 6. Relocating utilities required by the construction of wastewater system facilities;
- 7. Landscaping;
- 8. Construction management and inspection;
- 9. Surveying, soils and material testing;
- 10. Acquisition of vehicles utilized in providing wastewater service and the apparatus or equipment necessary to provide such service;
- 11. Repayment of monies transferred or borrowed from any budgetary fund of the city which were used to fund any of the construction, acquisition or improvements herein defined;
- 12. Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the city to provide funds to construct or acquire contemplated wastewater system improvements, subsequent to the adoption of this division.
- e. Restrictions on use of wastewater system impact fees. Funds on deposit in the wastewater system impact fee trust account shall not be used for any expenditure that would be classified as an administrative, maintenance, repair, or other operating expense.
- f. *Investment of wastewater system impact fees*. Any funds on deposit which are not immediately necessary for expenditure may be invested by the city. All income derived from such investments shall be deposited in the wastewater system impact fee trust account and used as provided herein.

(Ord. No. 2006-04, § 1, 2-21-2006; Ord. No. 2006-22, § 1, 6-6-2006)

## § 23-776. Fire/rescue services impact fees.

- a. *Findings applicable to fire/rescue services impact fees*. In addition to the findings contained in section 23-762, the commission hereby specifically ascertains, determines and declares as follows:
  - 1. The fire/rescue services facilities of the city are designed and intended to provide for the safety and welfare of its residents.
  - 2. The providing of city fire services facilities is the exclusive responsibility of the city imposed pursuant to Florida Statutes.
  - 3. The improvements and additions to the fire/rescue services facilities of the city funded by the fire/rescue services impact fee provides a benefit to all property in excess of the impact fee. The commission expressly approves of the level of service for fire/rescue services as established in the impact fee study.
  - 4. The existing fire services facilities which have been funded by revenues other than impact fees have eliminated the deficiency between the existing fire facilities and the adopted standard of service.
- b. Imposition of fire/rescue services impact fees. All fire/rescue services impact construction occurring within the city, shall pay the impact fees as established within Schedule "B", which is attached hereto and incorporated by reference.
- c. Establishment of fire/rescue services impact fee trust account. The commission hereby establishes a separate trust account for the fire services impact fees, to be designated as the "Fire/Rescue Services Impact Fee Trust Account," which shall be maintained separate and apart from all other accounts of the city. All such impact fees shall be deposited into such trust fund immediately upon receipt.
- d. Use of fire/rescue services impact fees. The monies deposited into the fire/rescue services impact fee trust account shall be used solely for the purpose of constructing or improving the city's fire/rescue services, including, but not limited to:
  - 1. Design and construction plan preparation;
  - 2. Permitting;
  - 3. Land acquisition, including any costs of acquisition or condemnation;
  - 4. Construction and design of fire services facilities;

- 5. Design and construction of new drainage facilities required by the construction of fire services facilities;
- 6. Relocating utilities required by the construction of fire services facilities;
- 7. Landscaping;
- 8. Construction management and inspection;
- 9. Surveying, soils and material testing;
- 10. Acquisition of vehicles utilized in providing police services and the apparatus or equipment necessary to provide such service.
- 11. Repayment of monies transferred or borrowed from any budgetary fund of the city which were used to fund any of the construction, acquisition or improvements herein defined;
- 12. Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the city to provide funds to construct or acquire contemplated fire services improvements, subsequent to the adoption of this division.
- e. Restrictions on use of fire/rescue services impact fees. Funds on deposit in the fire/rescue services impact fee trust account shall not be used for any expenditure that would be classified as an administrative, maintenance, repair, or other operating expense.
- f. *Investment of fire/rescue services impact fees*. Any funds on deposit which are not immediately necessary for expenditure may be invested by the city. All income derived from such investments shall be deposited in the fire/rescue services impact fee trust account and used as provided herein.

(Ord. No. 2006-04, § 1, 2-21-2006; Ord. No. 2012-03, § 4, 2-7-12)

# § 23-777. Police services impact fees.

- a. *Findings applicable to police services impact fees.* In addition to the findings contained in section 23-762, the commission hereby specifically ascertains, determines and declares as follows:
  - 1. The police services facilities of the city are designed and intended to provide for the safety and welfare of its residents.
  - 2. The providing of city police services facilities is the exclusive responsibility of the city imposed pursuant to Florida Statutes.
  - 3. The improvements and additions to the police services facilities of the city funded by the police services impact fee provides a benefit to all property in excess of the impact fee. The commission expressly approves of the level of service for police services as established in the impact fee study.
  - 4. The existing police services facilities which have been funded by revenues other than impact fees have eliminated the deficiency between the existing police facilities and the adopted standard of service.
- b. Imposition of police services impact fees. All police services impact construction occurring within the city, shall pay the impact fees as established within Schedule "B", which is attached hereto and incorporated by reference.
- c. Establishment of police services impact fee trust account. The commission hereby establishes a separate trust account for the police services impact fees, to be designated as the "Police Services Impact Fee Trust Account," which shall be maintained separate and apart from all other accounts of the city. All such impact fees shall be deposited into such trust fund immediately upon receipt.
- d. *Use of police services impact fees.* The monies deposited into the police services impact fee trust account shall be used solely for the purpose of constructing or improving the city's police services, including, but not limited to:
  - 1. Design and construction plan preparation;
  - 2. Permitting;
  - 3. Land acquisition, including any costs of acquisition or condemnation;
  - 4. Construction and design of police services facilities;
  - 5. Design and construction of new drainage facilities required by the construction of police services facilities;

- 6. Relocating utilities required by the construction of police services facilities;
- 7. Landscaping;
- 8. Construction management and inspection;
- 9. Surveying, soils and material testing;
- 10. Acquisition of vehicles utilized in providing police services and the apparatus or equipment necessary to provide such service;
- 11. Repayment of monies transferred or borrowed from any budgetary fund of the city which were used to fund any of the construction, acquisition or improvements herein defined;
- 12. Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the city to provide funds to construct or acquire contemplated police services improvements, subsequent to the adoption of this division.
- e. Restrictions on use of police services impact fees. Funds on deposit in the police services impact fee trust account shall not be used for any expenditure that would be classified as an administrative, maintenance, repair, or other operating expense.
- f. *Investment of police services impact fees*. Any funds on deposit which are not immediately necessary for expenditure may be invested by the city. All income derived from such investments shall be deposited in the police services impact fee trust account and used as provided herein.

(Ord. No. 2006-04, § 1, 2-21-06; Ord. No. 2012-03, § 4, 2-7-12)

## § 23-778. Parks and recreation impact fees.

- a. *Findings applicable to parks and recreation impact fees.* In addition to the findings contained in section 23-762, the commission hereby specifically ascertains, determines and declares as follows:
  - 1. The parks and recreation facilities of the city are designed and intended to provide for the recreational needs of its residents.
  - 2. The providing of city parks and recreational facilities is the exclusive responsibility of the city imposed pursuant to Florida Statutes.
  - 3. The improvements and additions to the parks and recreational facilities of the city funded by the parks and recreation impact fee provides a benefit to all property in excess of the impact fee. The commission expressly approves of the level of service for parks and recreation services as established in the impact fee study.
  - 4. The existing parks and recreation services facilities which have been funded by revenues other than impact fees have eliminated the deficiency between the existing parks and recreation facilities and the adopted standard of service.
- b. Imposition of parks and recreation impact fees. All parks and recreation impact construction occurring within the city, shall pay the impact fees as established within Schedule "B", which is attached hereto and incorporated by reference.
- c. Establishment of parks and recreation impact fee trust account. The commission hereby establishes a separate trust account for the parks and recreation impact fees, to be designated as the "Parks and Recreation Impact Fee Trust Account," which shall be maintained separate and apart from all other accounts of the city. All such impact fees shall be deposited into such trust fund immediately upon receipt.
- d. *Use of parks and recreation impact fees*. The monies deposited into the parks and recreation impact fee trust account shall be used solely for the purpose of constructing or improving the city's parks and recreation facilities, including, but not limited to:
  - 1. Design and construction plan preparation;
  - 2. Permitting;
  - 3. Land acquisition, including any costs of acquisition or condemnation;
  - 4. Construction and design of parks and recreation facilities;

- 5. Design and construction of new drainage facilities required by the construction of parks and recreation facilities;
- 6. Relocating utilities required by the construction of parks and recreation facilities;
- 7. Landscaping;
- 8. Construction management and inspection;
- 9. Surveying, soils and material testing;
- 10. Acquisition of vehicles utilized in providing wastewater service and the apparatus or equipment necessary to provide such service;
- 11. Repayment of monies transferred or borrowed from any budgetary fund of the city which were used to fund any of the construction, acquisition or improvements herein defined;
- 12. Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the city to provide funds to construct or acquire contemplated parks and recreation improvements, subsequent to the adoption of this division.
- e. Restrictions on use of parks and recreation impact fees. Funds on deposit in the parks and recreation impact fee trust account shall not be used for any expenditure that would be classified as an administrative, maintenance, repair, or other operating expense.
- f. *Investment of parks and recreation impact fees*. Any funds on deposit which are not immediately necessary for expenditure may be invested by the city. All income derived from such investments shall be deposited in the parks and recreation impact fee trust account and used as provided herein.

(Ord. No. 2006-04, § 1, 2-21-06)

# § 23-779. Library impact fees.

- a. *Findings applicable to library impact fees.* In addition to the findings contained in section 23-762, the commission hereby specifically ascertains, determines and declares as follows:
  - 1. The library facilities of the city are designed and intended to provide for the library needs of its residents.
  - 2. The providing of city library facilities is the exclusive responsibility of the city imposed pursuant to Florida Statutes.
  - 3. The improvements and additions to the library facilities of the city funded by the library impact fee provides a benefit to all property in excess of the impact fee. The commission expressly approves of the level of service for library services as established in the Impact Fee Study.
  - 4. The existing library facility which has been funded by revenues other than impact fees has eliminated the deficiency between the existing library facility and the adopted standard of service.
- b. *Imposition of library impact fee.* All library impact construction occurring within the city, shall pay the impact fees as established within Schedule "B", which is attached hereto and incorporated by reference.
- c. Establishment of library impact fee trust account. The commission hereby establishes a separate trust account for the library impact fee, to be designated as the "Library Impact Fee Trust Account," which shall be maintained separate and apart from all other accounts of the city. All such impact fees shall be deposited into such trust fund immediately upon receipt.
- d. *Use of library impact fees.* The monies deposited into the Library Impact Fee Trust Account shall be used solely for the purpose of constructing or improving the city's library facilities, including, but not limited to:
  - 1. Design and construction of library facilities;
  - 2. Permitting;
  - 3. Land acquisition, including any costs of acquisition or condemnation;
  - 4. Design and construction of new drainage facilities and relocating or extending of utilities required by the construction of library facilities;
  - 5. Landscaping;
  - 6. Construction management and inspection;

- 7. Surveying, soils and material testing;
- 8. Acquisition of collection materials necessary to provide library service;
- 9. Repayment of monies transferred or borrowed from any budgetary fund of the city which were used to fund any of the construction, acquisition or improvements herein defined;
- 10. Payment of principal to repay any bonds or other indebtedness issued by the city to provide funds to acquire land, construct library facilities or acquire collection materials subsequent to the adoption of this division.
- e. Restrictions on use of library impact fees. Funds on deposit in the Library Impact Fee Trust Account shall not be used for any expenditure that would be classified as an administrative, maintenance, repair, or other operating expense.
- f. *Investment of library impact fees.* Any funds on deposit which are not immediately necessary for expenditure may be invested by the city. All income derived from such investments shall be deposited in the Library Impact Fee Trust Account and used as provided herein.

(Ord. No. 2006-04, § 1, 2-21-06; Ord. No. 2012-03, § 5, 2-7-12)

## § 23-780. Multimodal Transportation Impact Fees.

- a. Findings applicable to multimodal transportation impact fees. In addition to the findings contained in section 23-762, the commission hereby specifically ascertains, determines, and declares as follows:
  - 1. The multimodal projects identified in the mobility plan of the city are designed and intended to provide for the multimodal mobility needs of its residents, businesses, and visitors.
  - 2. The providing of multimodal projects is the responsibility of the city imposed pursuant to Florida Statutes. Development in the city also has a multimodal impact to county and state roads and the mobility plan identifies multimodal projects on city, county, and state roads.
  - 3. The multimodal transportation impact fees imposed by the division are intended to allow new development to mitigate its impact to the transportation system through payment of a mobility fee to the City.
  - 4. The multimodal projects of the city funded by the multimodal transportation impact fee provide a specific benefit to development activity that pay the multimodal transportation impact fee. The commission expressly approves of the quality of service standards for multimodal projects as established in the Mobility Plan.
  - 5. The existing multimodal projects which has been funded by revenues other than multimodal transportation impact has eliminated any deficiency between existing multimodal projects and quality of service standards.
- b. Imposition of multimodal transportation impact fee. All transportation impact construction occurring within the city, shall pay the multimodal transportation impact fees as established within Schedule "C", which is attached hereto and incorporated by reference.
- c. Establishment of multimodal transportation impact fee trust account. The commission hereby establishes a separate trust account for the multimodal transportation impact fee, to be designated as the "Multimodal Transportation Impact Fee Trust Account," which shall be maintained separate and apart from all other accounts of the city. All such multimodal transportation impact fees shall be deposited into such trust fund immediately upon receipt.
- d. Use of multimodal transportation impact fees. The monies deposited into the Multimodal Transportation Impact Fee Trust Account shall be used solely for the purpose of funding multimodal projects identified in the mobility plan, including, but not limited to:

- 1. Planning, design, and construction of multimodal projects;
- 2. Permitting and mitigation of environmental or wetland impacts;
- 3. Land acquisition, including any costs of acquisition, condemnation, or easements;
- 4. Design and construction of new drainage facilities and relocating or extending of utilities required by the construction of multimodal projects;
- 5. Landscaping;
- 6. Construction management and inspection;
- 7. Surveying, soils, and material testing;
- 8. Acquisition of collection materials necessary to provide multimodal transportation programs and services established in the mobility plan;
- 9. Repayment of monies transferred or borrowed from any budgetary fund of the city which were used to fund any of the construction, acquisition or improvements herein defined;
- 10. Payment of principal to repay any bonds or other indebtedness issued by the city to provide funds to acquire land, construct multimodal projects or provide mobility programs and services subsequent to the adoption of this division, to the extent such repayment is consistent with statutory requirements.
- e. Restrictions on use of multimodal transportation impact fees. Funds on deposit in the Multimodal Transportation Impact Fee Trust Account shall not be used for any expenditure that would be classified as an administrative, maintenance, repair, or other operating expense, unless otherwise provided for in the mobility plan to implement adopted quality of service standards.
- f. Investment of multimodal transportation impact fees. Any funds on deposit which are not immediately necessary for expenditure may be invested by the city. All income derived from such investments shall be deposited in the Multimodal Transportation Impact Fee Trust Account and used as provided herein.
- g. Expenditure of multimodal transportation impact fees outside the City. The multimodal transportation impact fees benefit districts established in the mobility plan and multimodal transportation impact fee study provide for the expenditure of multimodal transportation impact fees outside city limits but within the benefit district, for multimodal projects identified in the mobility plan. For any expenditure of multimodal transportation impact fees within the extra jurisdictional benefit district, the city manager or designee shall make a written finding of fact that the expenditure of fees within the extra jurisdictional benefit district is consistent with the mobility plan and provides a mobility benefit to the new development that paid the multimodal transportation impact fees.

(Ord. No. 2022-38, § 1, 8-16-22)

### § 23-781. Annual adjustment of impact fees.

Effective: Tuesday, August 16, 2022

Impact fees shall be automatically adjusted on October 1 of each year for annual change in the Consumer Price Index (CPI) for Construction Products (the "Construction Costs Index") through March as published by the U.S. Department of Labor, Bureau of Labor Statistics or the Florida Department of Transportation Construction Cost Inflation Factors. The adjustment shall be calculated by the finance director who shall revise the impact fee schedule and provide a copy of same to department heads as applicable. The revised impact fee schedules shall also be provided to the city clerk who shall attach it to the ordinance from which this section is derived in the official records of the city. Date of revision shall be clearly indicated on the revised schedule. This section shall serve as meeting the 90 day notice requirement for new fees as required by Florida Statute.

(Ord. No. 2006-04, § 1, 2-21-06; Ord. No. 2012-03, § 6, 2-7-12; Ord. No. 2020-22, § 2, 9-22-20; Ord. No. 2022-38, § 1, 8-16-22)

## § 23-782. Applicability of revised fees.

The impact fees established in this division shall apply to all development for which building permit applications are submitted to the city and to all changes of use of property within the city.

(Ord. No. 2006-04, § 1, 2-21-06; Ord. No. 2012-03, § 7, 2-7-12)

# § 23-783. Review of impact fees required.

a. The provisions of this division and the impact fee study and multimodal transportation impact fee study adopted herein shall be reviewed by the city commission initially in connection with its capital improvements element of its comprehensive plan as required by F.S. § 163.3177. Thereafter, the provisions of this division and each impact fee study adopted herein shall be reviewed at least every four (4) years and updated no longer than every five (5) years. five (5) years. The initial and each subsequent review shall consider new estimates of population per household, needs for service, and other socioeconomic data; changes in cost of construction, land acquisition, apparatus, equipment and related costs; review of the level and quality of service; and adjustments to the assumptions, conclusions or findings set forth in the impact fee studies adopted herein. The purpose of this requirement is to review and revise, if necessary, to ensure that the impact fees neither exceed nor fail to provide for the reasonably anticipated costs associated with the improvements necessary to offset the demand generated by the public facilities impact construction on the city's public facilities. In the event the review required by this section alters or changes the assumptions, conclusions and findings of the studies adopted by reference in this division, revises or changes the city's public facilities or alters or changes the amount of impact fees, the studies adopted by reference herein shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and this division shall be amended to adopt by reference such updated studies.

b. In conjunction with the initial and each subsequent review of the impact fee studies required in paragraph a. of this section, the city commission shall review the capital improvements element for the availability and adequacy of revenue sources to construct improvements and additions to the city's public facilities determined in the impact fee studies to be required to accommodate existing development.

(Ord. No. 2012-03, § 8, 2-7-12; Ord. No. 2022-38, § 1, 8-16-22)

#### § 23-784. Declaration of exclusion from Administrative Procedures Act.

Effective: Tuesday, August 16, 2022

Nothing contained in this division shall be construed or interpreted to include the city in the definition of "agency" contained in F.S. § 120.52, or to otherwise subject the city to the application of the Administrative Procedure Act, F.S. ch. 120. This declaration of intent and exclusion shall apply to all proceedings taken as a result of or pursuant to this division, including specifically, but not limited to, a review hearing under section 23-772.

(Ord. No. 2022-38, § 1, 8-16-22)

#### **Article VIII. Definitions**

## § 23-801. Rules for construction of language.

Effective: Wednesday, December 02, 2020

For the purpose of the administration and enforcement of this chapter, and unless otherwise stated herein, the following rules of construction shall apply to the text hereof.

- a. The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
- b. Words used in the present tense shall include the future; words used in the singular shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
- c. Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions or events connected by the conjunction "and," or," or "either...or," the conjunction shall be interpreted as follows:
  - 1. "And" indicates that all the connected items, conditions, provisions or events shall apply;
  - 2. "Or" indicates that the connected items, conditions, provisions or events may apply singularly or in any combination;
  - 3. "Either...or" indicates that the connected items, conditions, provisions or events shall apply singularly but not in combination.
- d. If no definition is provided, the Administrative Official may refer to "A Planners Dictionary", PAS Report Number 521/522, dated April 2004, edited by Michael Davidson and Fay Dolnick and published by the American Planning Association. The Administrative Official has the authority to determine and use the most appropriate definition.

(Ord. No. 2020-30, § 1, 12-02-20)

## § 23-802. Definitions.

Effective: Tuesday, October 04, 2022

- a. The words defined below are words which have special or limited meanings as used in this chapter and might not otherwise be clear. Words with self-evident meanings as used in this chapter are not defined here.
- b. Throughout this chapter, also referred to as this ordinance, the following words and phrases shall have the meanings indicated unless the text of the article or section in which used clearly indicates otherwise:

Access point. The point where vehicles enter a site. A curb-cut.

Accessory structure. See structure.

Addition (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

Adult entertainment establishment. An adult theater, an adult bookstore, an adult dancing establishment or any enterprise that involves the activities defined in Ordinance 93-09, Section 6, as adult entertainment activities and that are operated for commercial or pecuniary gain. ("Operated for pecuniary gain" shall not depend upon actual profit or loss and shall be presumed where the establishment has an occupational license.) An establishment with an adult entertainment license, or seeking to obtain such a license in accordance with Ordinance 93-09, is presumed to be an adult entertainment establishment.

Alley. See street.

Aircraft establishment. A property or building for the storage, sale, manufacturing, or maintenance of airplanes, helicopters, or other aircraft. See also airport or heliport.

Airport or heliport. A facility for the landing and take-off of aircraft and associated facilities, such as storage and repair facilities.

Accessory unit. See dwelling, accessory unit.

Accessory use. See use, accessory.

Amusement establishment:

Amusement establishment, indoor. A building or premises used for the provision of entertainment, or games, such as bowling alleys, and game rooms, but not including theaters or movie theaters. See also theater; theater, movie and cultural facilities.

Amusement establishment, outdoor. Any facility for the provision of entertainment, exercise, or games which is wholly or partially outside of a building, such as mini-golf courses, skate board parks, exercise courses, driving ranges, and tennis clubs. Under this chapter, facilities provided in public parks or approved as part of a residential subdivision or planned development project are not considered amusement establishments for the purposes of regulation.

*Annexation.* The incorporation of land into an existing community with a resulting change in the boundary of that community.

Appeal means a request for a review of the administrative official's interpretation of any provision of this section or a request for a variance.

Arboretum. A place where many kinds of trees and shrubs are grown for exhibition or study. Under this chapter, an arboretum is classified as a cultural facility.

Area of shallow flooding means a designated AO or VO Zone on a Community's Flood Insurance Rate Map (FIRM) with base flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of special flood hazard is the land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year.

Arterial road. See street.

Artisan production shall mean any production, including assembly and transformation of raw materials, to make unique custom goods through the use of hand tools or small scale equipment to include, but not limited to: microbreweries, microdistilleries, microwineries, artist studios and/or classes, coffee roasting/shops, confectionary production/shops, furniture making/upholstery, clothing and accessory production/repair/sales, custom cabinetry or woodwork, jewelry crafting, custom paper-making and printers, and specialty/cottage food production/preparation. All uses in this category shall be open to the public, have on-site retail and/or consumption components, and may have retail sales/distribution to a non-local destination. The majority of the use will be conducted inside a structure and outdoor storage will be minimal and screened.

Artisan production, large scale. On-site sales areas comprise no more than fifty (50) percent of all floor area; all uses are allowed in existing buildings not to exceed forty thousand  $(40,000)\pm$  square feet or in new construction not to exceed twenty thousand  $(20,000)\pm$  square feet.

# (1) For alcohol-related large scale production:

*Small brewery:* No more than thirty thousand (30,000) barrels per year of fermented malt beverages production with or without a tap or tasting room/bar/restaurant.

*Small distillery:* No more than thirty thousand (30,000) gallons per year production of spirituous beverages with or without a tasting room/bar/restaurant.

*Small winery:* No more than one hundred thousand (100,000) gallons per year of vinous beverages per year with or without a tasting room/bar/restaurant.

Artisan production, small scale. Production areas comprise no more than seventy-five (75) percent of gross floor space of the establishment; individual uses not to exceed ten thousand  $(10,000)\pm$  square feet of space and all uses are allowed in existing buildings no greater than twenty thousand  $(20,000)\pm$  square feet or in new construction not to exceed ten thousand  $(10,000)\pm$  square feet.

#### (1) For alcohol-related small scale production:

*Microbrewery:* No more than fifteen thousand (15,000) barrels per year of fermented malt beverages production with tap or tasting room/bar/restaurant.

*Microdistillery:* No more than fifteen thousand (15,000) gallons per year production of spirituous beverages with tasting room/bar/restaurant.

*Microwinery:* No more than sixty thousand (60,000) gallons per year of vinous beverages per year with tasting room/bar/restaurant.

Assembly or fabrication. The production of finished products from component parts. Assembly may include manufacturing, provided it is an incidental use. See also manufacturing.

#### Automotive uses:

Auto and truck rental. The display or storage of automobiles and/or trucks for rental.

Auto and truck repair. The fixing or maintenance of automobiles or trucks, including body work or painting.

Auto parking establishment. A premises or building which provides parking facilities for automobiles and/or vans for short periods of time, normally for a fee. A parking lot accessory to a residential or nonresidential building is not an auto parking establishment.

*Auto service station*. A gas station or retail business for the sale of fuels for automobiles and including as accessory uses the sale of merchandise related to automobiles and provision of services such as minor repairs to automobiles.

*Auto, truck, or motor cycle dealer.* Any premises or land area used for the display and sale or rental of new or used automobiles, trucks, or vans and including any repair service conducted as an accessory use. See also recreational vehicle, mobile home, or boat dealer.

*Car wash.* Any entity, whether operating on a permanent or temporary basis, and whether operating for profit or not, engaged in the washing, cleaning, detailing, polishing, or waxing of vehicles or equipment. Specifically excluded are special events approved pursuant to section 23-344.

Awning sign. See sign.

Building. See structure.

*Bank.* An establishment for the receiving, disbursement, lending, and keeping of money for customers. Investment offices, such as brokerage firms, are not classified as banks, but as offices.

Bank with drive-up window means a bank with a facility for customers to make transactions from their vehicles.

*Bar, wine and beer* means any establishment selling, providing or allowing the consumption of beer and/or wine on the premises.

Bar means any establishment with a principal or predominant use of selling, providing or allowing the consumption of alcoholic beverages on the premises.

*Base flood* means the flood having a one (1) percent chance of being equaled or exceeded in any given year (also called the "100-year flood" and the "regulatory flood").

Base flood elevation means the highest water-surface elevation associated with the base flood.

Basement means that portion of a building having its floor sub-grade (below ground level) on all sides.

*Bed and breakfast*. An owner-occupied private home which offers lodging for paying guests for a limited time and may serve breakfast to the guests.

Billboard. See billboard under sign.

*Boarding house.* A building, or portion of a building, in which four (4) or more sleeping rooms are provided for occupancy by non-transient persons with or without meals for compensation on a prearranged weekly or monthly basis. A boarding or rooming house may include living quarters containing independent cooking facilities designed for the resident manager only.

*Breakaway wall* means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system. "Breakaway wall" is used in this chapter with reference to flood damage prevention.

*Building*. Any structure which fully encloses space for occupancy by persons or for their activities. For the purposes of measuring required setbacks, a building shall include any portion of a structure with a roof, whether or not the structure is enclosed.

*Building coverage*. The gross land area covered by a building(s) including the total land coverage by roofs, steps, balconies, and unroofed porches, stoops, porticos, and patios, including accessory buildings, but not including swimming pools, recreation courts, driveways, or other paved areas. See also lot coverage under lot and impervious.

*Building height.* The vertical distance measured from the established mean grade at the front of a building line to the highest point of the building.

*Building line*. A line drawn parallel to the front lot line and tangent to the nearest part of the principal building and extending from side lot line to side lot line.

*Building permit.* A document required by and issued by the city authorizing construction, repair, or alteration of a structure in accordance with the State Building Code.

Building setback. The line, established by this chapter, beyond which a building or structure shall not extend.

*Elevated building* means a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), shear walls, or breakaway walls. This term is applicable in article VI, div. 1, development in flood prone areas.

Business complex. A shopping center, professional office center, industrial park, or other grouping of buildings or businesses. See also business complex sign under sign.

Capacity. The maximum demand that can be accommodated by a public facility or service at the adopted level of service standard. "Available" capacity shall mean the amount of a service ready or reserved for future use by new development.

Catering facility. See food businesses.

Certificate of appropriateness. A certificate of appropriateness is a written approval issued by the historic preservation regulatory board for work proposed on buildings or sites within an historic district designated under this chapter.

Certificate of use. A certificate required and issued pursuant to section 23-213 authorizing the use of a structure or premises.

Change of use shall mean any modification of an activity or function on a lot which alters the land use classification under section 23-421 or the definition of the use under section 23-802 or which triggers a requirement for modification of the site improvements or layout, including any increase in the number of required parking spaces. The addition of an accessory use shall also be deemed a change of use.

Changeable copy sign. See sign.

Church. See religious establishment.

Civic Building: A building designed specifically for a Civic Use. Civic uses are those that are open to the public at least some of the time, provides a focal point for community interaction and fosters citizen participation in civic activities including religious facilities, college or university facilities, exhibition halls or museums, schools, libraries, meeting halls, performance theaters, post office, fire house, public administration offices, or similar uses.

*Club*. A building used for offices meetings, and social events for members of an organization or for private groups, but not open to the general public on a regular basis. Facilities may include a kitchen and dining area. (See also definition of "fraternal or civic organizations" in chapter 5, Alcoholic Beverages.)

Collector road. See street.

Common open space. An area of a development, normally with landscaping and/or recreation facilities, provided and maintained by the owner or association of owners, for the use of residents or tenants of that development.

Comprehensive plan. The Lake Wales Comprehensive Plan adopted by Ordinance D99-10 on August 1, 2000 by the city commission pursuant to F.S. Ch. 163, Part II, and amendments to that plan if subsequently adopted.

Compatibility means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.

*Concurrency*. A finding that the required public facilities and services to maintain the adopted level of service standards are or will be available to serve a proposed development.

The concurrency management system is the set of procedures followed by the City of Lake Wales pursuant to the comprehensive plan and article VII, division 1 (section 23-701 et seq.) to ensure that facilities and services are available to new development at the time those services are required by that development and at the levels of service adopted in the comprehensive plan.

*Concurrency review* is the process of determining if there is or will be adequate available capacity in required facilities to serve a proposed development at or above the adopted level of service standards.

A certificate of concurrency is the official document issued by the provider of a service upon a finding that there is or will be adequate capacity to provide a particular service or services to a proposed development at the adopted level of service standard at the time the service(s) is required.

Construction plans. Any plans for infrastructure and site improvements.

Construction support. Any use of a premises or building for the storage of materials and equipment used in building structures or installing appurtenances on other sites. Included in this category are enterprises engaged in plumbing, electrical, air conditioning and heating, roofing, farming supplies and businesses of a similar nature. Construction support is considered heavy or light. See definitions of heavy and light.

Convenience store. See store, convenience.

Coverage, building or lot. See building coverage under building. See also lot coverage under lot and impervious.

Cultural facilities. Establishments or institutions, whether for profit or non-profit, engaged in providing public access to the arts and sciences. Cultural facilities include libraries, museums, theaters, arboreta, and botanical and zoological gardens. Under this chapter, art galleries are considered retail stores. (See store, retail.)

*Curb cut.* An opening along a street for access to a site by vehicles, such as a driveway or entrance to a parking area whether or not an actual curb exists; an access point.

Day care. An establishment which provides care for children or adults for periods not to exceed twenty-four (24) hours.

Day care home: A day care facility that meets the state requirements for a "day care home"; a "day care home" is usually located within a house and provides care for four (4) or fewer clients and after-school care for children as permitted under state requirements.

Day care center: A day care facility that meets the requirements of the State of Florida for a "day care center"; a "day care center" usually provides care for more than four (4) clients.

Deck. A platform constructed of wood or other materials usually created for recreational use.

*Demolition*. The complete removal or destruction of the whole or part of a building or structure when the same will not be relocated intact to a new site.

Density, residential. Dwelling units per gross acre. For the purposes of this chapter, maximum residential density is the number dwelling units per gross acre allowed on a parcel of land as limited by the property's classification on the Future Land Use Map (FLUM) and related policies in the Future Land Use Element of the City's Comprehensive Plan. Further limitations on maximum density are set by the zoning district regulations of this chapter.

*Development*. Any construction, reconstruction, or any use of real property which requires site plan approval, a site development permit, or entails a change of use.

Under article VI, div. 1, development in flood prone areas, development means any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of materials or equipment.

A *de minimus* development shall mean a project of such low intensity, density, or degree of change as to have an insignificant impact, if any, upon the required services and facilities for which the city has adopted level of service standards.

A development agreement shall mean any agreement entered into by an applicant for development approval pursuant to F.S. ch. 163 or F.S. ch. 380.

A development order is any order granting, denying, or granting with conditions an application for development approval made to the City of Lake Wales.

Development permit means any building permit issued pursuant to Chapter 7 of the City of Lake Wales' Code of Ordinances or any site development permit approved pursuant to this chapter, or any development order or an approved Florida Quality Development or amendment thereto issued pursuant to F.S. § 380.06 et seq.

*Infill development* means construction on vacant lots or parcels in a predominantly developed neighborhood or area.

Dimensional variance. See variance.

*Dormitory, fraternity house or sorority house.* Any residence for students, workers, or other groups of more than five (5) unrelated people. A dormitory may have common cooking facilities and living areas in addition to sleeping quarters, and may have an apartment for a resident manager.

*Drip line.* The area under the canopy of a tree the boundary of which extends to a vertical line running through the outermost portion of the tree crown extending to the ground.

*Drop-off space*. See parking space.

Dwelling unit. Quarters, including sleeping, kitchen, and bathroom facilities, for one (1) household. (See also household.)

Accessory dwelling unit means an apartment or guest house incidental to the principal structure on a lot.

Caretaker dwelling unit means an apartment or house incidental to the principal structure and use on a lot and used primarily by a person or persons responsible for the upkeep of the property.

Multi-family dwelling means a building providing quarters for three (3) or more households.

Single-family dwelling means a building providing quarters for one (1) household. For the purpose of this Chapter, a manufactured home, modular home, or shipping container shall not be considered a single-family dwelling.

Two-family dwelling means a building providing separate quarters for two (2) households.

*Easement.* A grant of one (1) or more of property rights by the property owner for access, drainage, location of utility lines or other purpose, to the public, a corporation, or another person or entity.

Educational facility. See school.

Elevated building. See building.

Family. A household. See also group home and group facility.

Farming, crop or nursery. The cultivation and harvesting of plants for use as commodities, such as food for humans or animals, or the raising of plants for replanting off-site. Under this chapter, farming does not include the raising or keeping of animals, but may include a farm stand as an accessory use.

*Fence.* Artificial and unroofed barrier or enclosing structure installed or constructed for the purpose of screening or enclosing property.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood boundary and floodway (FBFM) means the official map of the Lake Wales area on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

Flood insurance rate map (FIRM) means an official map of the Lake Wales area on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood insurance study (FIS) is the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FHBM (where applicable) and the water surface elevation of the base flood.

Floodplain means any land area susceptible to flooding.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

*Floor*, used in article VI, div. 1, development in flood prone areas, means the top surface of an enclosed area in a building (including basement), i.e. top of slab in concrete slab construction or top of wood flooring in wood frame construction. The terms does not include the floor of a garage used solely for parking vehicles.

*Floor area*. The total floor area of all stories including halls, stairways, elevator shafts, and other related uses, measured to outside faces of exterior walls.

Floor area ratio (FAR). Ratio of gross floor area of building(s) on a lot by the area of the lot. FAR applies to commercial, office, hotel/motel, industrial and institutional uses only. Maximum credit for lands below the 100-year flood elevation shall not exceed twenty-five (25) percent of the maximum floor area ratio allowed for site, but shall not exceed twenty-five (25) percent of the upland area above the 100-year flood elevation.

Food businesses. See also restaurants.

Catering facility. A retail establishment for the preparation of food for transport, sale, and consumption at another site.

Food processing. A facility where food is prepared and packaged for wholesale distribution.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. (See article VI, div. 1, development in flood prone areas.)

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities. (See article VI, div. 1, development in flood prone areas.)

Freight terminal. See public transportation terminal.

Frontage. See lot frontage.

Functional front or rear yard. See yard.

Funeral home. An establishment engaged in preparing the dead for burial, conducting funerals, and cremating the dead.

Gallery, art. A place or establishment for exhibiting or dealing in art works. Under this chapter, an art gallery is classified as a retail use.

*Garden, botanical* or *zoological*. A place where plants or animals are grown for exhibition or study. Under this chapter, a botanical or zoological garden is classified as a cultural facility.

Governing body. The city commission of the City of Lake Wales, Florida.

Government use and structure. Any land, building, structure, use or activity that is owned and operated by the city, county, state or federal government or legally empowered special governmental district and is necessary to the conduct of government, furnishing of public services, or of an institutional character and over which such governments exercise direct and complete control.

Ground sign. See sign.

*Group home.* A single-family house where living quarters and staff services are provided for six (6) or fewer individuals. For the purposes of this chapter, a group home is equivalent to a single-family dwelling.

*Group facility.* A dwelling unit where living quarters and staff services are provided for seven (7) or more individuals. For the purposes of this chapter, a group facility is classified as a multi-family dwelling.

*Guest house.* A detached accessory dwelling unit located on the same premises as the main residential building. See also accessory unit under dwelling.

*Hardship*. The exceptional hardship associated with the land that would result from a failure to grant the requested variance. A hardship must be unusual and peculiar to the property involved. Financial hardship alone is not considered exceptional. Inconvenience aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a building.

Health service establishment. An agency, office, clinic, or laboratory primarily engaged in providing medical services to individuals, including the offices of physicians, dentists, and other health practitioners, medical and dental laboratories, outpatient care facilities, blood banks, and medical supply services. An office with only one (1) physician, dentist, or other health practitioner is considered a medical office.

Heavy uses. Those uses which are hazardous although the maximum public and private safety precautions have been taken and the most stringent performance standards have been met or those uses whose premises do contain outdoor or open storage or aboveground tank storage of merchandise, products or materials or any outdoor or open storage of equipment, materials or other items utilized by such establishments in practicing their vocation or occupation, except for automobiles and delivery trucks.

Height, building. See building height under building.

Heliport. See airport or heliport.

Home-based business. Any occupation, professional activity, business, profession, or commercial activity conducted entirely within a dwelling unit and carried on by a member or members of the immediate family or household occupying the dwelling and up to a maximum of two (2) non-resident employees or independent contractors on-site at any time. A home-based business is clearly incidental and secondary to the use of the property for residential purposes and does not change the appearance or character of the dwelling. Home-based business includes: home occupation, telecommuting/telework, cottage food operations, and home-base cottage industry.

Hospital. A building or group of buildings having facilities for overnight care of one (1) or more human patients, providing services to in-patients and medical care to the sick and injured, and which may include as related facilities laboratories, out-patient services, training facilities, central service facilities, and staff facilities; provided, however, that any related facility shall be incidental and subordinate to principal hospital use and operation.

Animal hospital means a facility providing care for large animals and livestock.

Veterinarian or small animal hospital means a facility providing medical or surgical treatment for animals and short-term boarding as necessary for medical purposes.

*Hotel.* A building in which sleeping rooms or suites, with or without cooking facilities, are rented to the public, on a short-term basis, usually by the day or week, and in which services may be available as accessory uses, such as restaurants, gift shops, exercise facilities, laundries, and hair dressers. A hotel may have separate living quarters for a resident manager. A hotel has parking facilities, but parking spaces are not located immediately outside of individual rooms as in a motel. See also motel.

Household. A family or group of up to five (5) unrelated persons occupying living quarters as a single housekeeping unit.

*Impervious*. Incapable of being penetrated. In this chapter, "impervious surface" refers to areas where water cannot penetrate or infiltrate into the soil because the land is covered by structures, pavement, or other coverings which prevent water from reaching the soil. See also lot coverage under lot.

Infill. See lot, infill and development, infill.

*Intensity limitations*. Standards for development, particularly non-residential development, regulating the amount of development permitted on a parcel. For the purposes of this chapter, intensity limitations are those parameters set forth in the Lake Wales Comprehensive Plan for Future Land Use Map classifications to limit the size of buildings.

*Kennel*. Any building, lot, structure or premises where four (4) or more dogs and/or cats over six (6) months old are kept for any purpose, excluding pet shops and veterinary hospitals.

Laboratory. A non-medical research or testing facility. See also health service.

Landscaping service. A premises for storing materials, vehicles, and equipment for the installation and maintenance of grounds on other sites.

Laundromat. A self-service facility for the washing and/or drying of clothing and other personal items.

Laundry or dry cleaning plant. An establishments that washes or cleans clothing, linens, draperies, or other fabric and leather goods for other establishments and individual customers. A storefront used for the drop-off and pick-up of goods for transport to a laundry or dry cleaning plant is classified as a personal service.

Level of service (LOS). An indicator of the extent or degree of service provided by or proposed to be provided by a facility based on and related to the operational characteristics and capacity of a facility.

Level of service standards are units of measure for the provision or capacity of public facilities. Adopted level of service standards for sanitary sewer flow, potable water, solid waste, roads, recreation and open space, and drainage are established in Policy 2.01 of the Lake Wales Comprehensive Plan and listed in section 23-702 of this chapter.

*Library*. An institution in a building or room where a collection of books, periodicals, musical scores, electronic media, and other materials is kept for lending or reference. Under this chapter, a library is classified as a cultural facility.

Light uses. Those uses which are nonhazardous whose processing, fabricating, assembly or disassembly take place wholly within an enclosed building and whose premises do not contain any outdoor storage, open storage or aboveground tank storage of merchandise, products, materials, equipment or other items utilized by establishments that are visible from any travel way.

Line, building. See building line under building.

Live/Work Unit: A mixed-use residential unit that is allowed to house a flexible combination of limited commercial functions and the primary residential function. The commercial function may be anywhere in the unit.

Local road. See street.

Lodgings. See bed and breakfast, boarding house, dormitory, hotel, and motel.

Lot. A parcel of land created by subdivision or a parcel of land under one (1) ownership and occupied or intended to be occupied by one (1) principal building and its accessory buildings, and including the open spaces and yards required under this chapter.

Corner lot. A lot which abuts on two (2) or more intersecting streets at their intersection.

Double frontage lot. Any lot other than a corner lot which abuts on two (2) streets.

Infill lot. A vacant parcel of land in a predominantly developed area or neighborhood.

Lot area. The acreage or square footage within a lot.

Lot coverage. Lot coverage includes building coverage the total area of a lot occupied by structures (see complete definition under building), and impervious surface, the total area of a lot occupied by structures, including buildings, accessory structures, and pavement (see definition of impervious surface).

Lot frontage. The length of the front lot line.

Lot line. The boundary dividing a lot from a right-of-way, adjoining lot, or other adjoining tract of land.

Front lot line means any lot boundary along a public or private street, a railroad, or a right-of-way for a street or railroad, but not a boundary along an alley.

Rear lot line means any boundary opposite a front lot line. On a corner lot, the side opposite the shorter front lot line shall be the rear lot line. On a corner lot where the two (2) front lot lines are of equal length, the rear lot line shall be determined by the administrative official. On a corner lot with three (3) front lot lines, the remaining lot line shall be a rear lot line; on a non rectangular lot with more than one (1) lot line not abutting a street, one (1) of the remaining lot lines shall be determined by the administrative official to be a rear lot line.

Side lot line means any boundary not defined as a front or rear lot line.

Lot of record. A lot which is duly recorded in the office of the clerk of the circuit court or a parcel described by metes and bounds, the description of which has been so recorded on or before the effective date of these zoning regulations or of prior zoning and subdivision regulations governing the creation of lots.

Lot width at the building line. The distance between the side lot lines, measured at the front building line and parallel to the front lot line.

Lowest floor used in article VI, div. 1, development in flood prone areas means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the non-elevation design standards of this ordinance.

Manufactured Home (aka mobile home) shall mean a structure, transportable in one (1) or more sections, which, in the traveling mode, is twelve (12) body feet or more in width, and which is built on a metal frame and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein. If fabricated after June 15, 1976, each section bears a U.S. Department of Housing and Urban Development label certifying that it is built in compliance with the Federal Manufactured Home Construction and Safety Standards (§ 320.01, F.S. 1992 supplement)

Modular Home shall not mean a manufactured home (aka mobile home) but refers to a unit partially constructed off-site (such as trusses and wall sections) and assembled at the site as a standard home or building unit, meeting all the Southern Building Standard Code requirements. For the purposes of this Chapter, a modular home shall not be considered a single-family dwelling.

Modular home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more modular home lots for rent or sale.

Electric vehicle means any vehicle that operates, either partially or exclusively, on electrical energy.

Electric vehicle charging facility means a public or private parking space that is served by battery charging equipment for the purpose of charging electric vehicles.

Community Buildings means a place, structure, area, and/or other facility used for and providing religious, fraternal, social, and recreational programs. They are not operated for profit, and neither alcoholic beverages nor meals are normally dispensed or consumed. Also known as amenity centers, these facilities are typically located in manufactured & modular parks and subdivisions.

Community Centers means a building to be used as a place for place of meeting, recreation, or social activity. Community Centers are typically owned or operated by a government agency.

Shipping container means a container with strength suitable to withstand reuse as an article for the intermodal shipment and storage of goods.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Existing. A manufactured home park or subdivision is considered "existing" if the construction of facilities for servicing the lots on which the homes are to be affixed were complete (including at minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before 1988, the effective date of the first floodplain management regulations adopted by the City of Lake Wales. Such a park or subdivision is considered "new" if it was or is commenced after that date.

Expansion of an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction or streets, and either final site grading or the pouring of concrete pads.)

*Manufacturing*. A facility engaged in processing or fabricating and finishing products or components from raw materials or prepared parts. Manufacturing may include the assembly of products from components and the packaging of products. Manufacturing does not include processing of food or drinks. See also food processing under food businesses.

*Market value* means the building value, excluding the land as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of the building, or adjusted assessed values.

*Mean sea level* means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this chapter, the term is synonymous with national vertical datum (NGVD). (See article VI, div. 1, development in flood prone areas.)

*Medical marijuana dispensaries* - A property or building used exclusively for the storage, sale or dispensing of products by a Florida approved Dispensing Organization or Medical Marijuana Treatment Center (as those terms are defined by Florida Law).

Medical office. A facility for one (1) doctor, dentist, or other health practitioner. See also health service.

*Mining*. The extraction of minerals occurring naturally such as coal, ores, petroleum and natural gas. "Mining" also includes quarrying, well operation, crushing, screening, washing, flotation and similar preparation needed in conjunction with mining activities to render the material marketable.

*Mini storage*. An establishment with fully enclosed units, compartments, or lockers for storage of personal property, usually for a rental fee. An office for management and a caretaker's dwelling unit may be included, provided they are incidental to the use.

Mixed-use. See use.

Mobile Food Dispensing Vehicle - any conveyance, or any vehicle or structure mounted on a conveyance or designed to be pulled or pushed by a conveyance, where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises, called for or taken out by patrons, or prepared prior to being delivered to another location for consumption.

Mobile Food Vending – the practice of (1) selling or offering for sale of food and beverages from a Mobile Food Dispensing Vehicle, (2) managing or owning one or more Mobile Food Dispensing Vehicles, and/or (3) preparing food and beverage within a Mobile Food Dispensing Vehicle for sale to a patron.

Mobile Food Vending Permit – a permit granted by the City to a Mobile Food Vendor to conduct Mobile Food Vending from Mobile Food Dispensing Vehicles on certain zoned lands within the municipal limits of the City.

Mobile Food Vendor – any person or business engaged in (1) selling or offering for sale of food and beverages from a Mobile Food Dispensing Vehicle, (2) managing or owning one or more Mobile Food Dispensing Vehicles, and/or (3) preparing food and beverages within a Mobile Food Dispensing Vehicle for sale to a patron.

Mobile home. See manufactured home.

Monument sign. See sign.

Mortuary. See funeral home.

*Motel*. A building or group of buildings containing sleeping units, with or without cooking facilities, rented to the public on a short-term basis, usually by the day or week, and which may have a restaurant, swimming and other recreation facilities, laundry facilities, and other services as accessory uses. A motel may also have living quarters for a resident manager. A motel, unlike a hotel, is usually under three (3) stories in height, and has parking spaces located in front of or near each unit. See also hotel.

Movie theater. See theater, movie.

*Museum.* An institution, building, or room, for preserving and exhibiting artistic, historical, scientific, or other objects. Under this chapter, a museum is classified as a cultural facility.

National Geodetic Vertical Datum (NGVD) as used in article VI, div. 1, development in flood prone areas means a vertical control as corrected in 1929 and used as a reference for establishing varying elevations within the floodplain. See also mean sea level.

*Nonconforming structure* or *use*. See structure and use.

Nursery, plant. See farming, crop and nursery. See also garden, botanical.

*Nursing care home.* An institution, building, residence, or private home providing nursing or personal care on a long-term basis for four (4) or more elderly or disabled persons, but not primarily for the acutely ill.

Office. A room or group of rooms used for conducting the affairs of a business, profession, service, industry or agency, whether for profit or not and whether public or private, but not including a bank. An office may be a principal or accessory use.

*Medical office* means a doctor's office with only one (1) practitioner. For the purposes of this chapter a doctor's office with more than one (1) practitioner is classified as a health services establishment.

Off-street parking facility. See auto parking establishment.

Outdoor display or sale. The placement of goods for any purpose and for any period of time outside of store or other business whether or not in a fenced, roofed, or screened area.

Outdoor seating area. An area intended and approved for use by customers outside of an establishment such as a restaurant, whether the area is located on public or private property. The term includes areas for people to gather whether or not actual seating is provided.

*Outparcel*. A lot which is created by division, by subdivision or sale of a larger parcel, or any area in a shopping center or other integrated development which is intended for independent ownership, lease, and/or development.

Park. An open area devoted to recreation, whether passive or active, with landscaping.

Active recreation is activity such as tennis and basketball.

Passive recreation is activity such as picnicking, walking, biking, or the enjoyment of outdoor areas.

A *linear park* is a long, narrow recreation area, usually providing a pedestrian or bike path in a landscaped corridor, often along a roadway.

A *neighborhood park* is a recreation area designed to serve a small residential area with both passive and active recreation opportunities.

A *mini-park* is a small, usually passive, recreation area designed to provide green space and rest stops along pedestrian walkways and streets.

*Parking space.* An area specifically designated and improved on a lot or in a garage for parking or storage of a vehicle.

*Drop-off space*. A temporary parking space designated for picking up or dropping off clients or patrons at facilities or businesses such as hotels and day care centers.

Patio. A level area stabilized by paving stones or other material usually created for recreational use.

Personal service establishment. See service, personal.

Plat, subdivision. See subdivision.

Political sign. See sign.

*Principal structure(s)*. See structure.

Principal use. See use, principal. See also use, accessory.

*Public facilities and offices.* A building or premises used by a city, county, state or federal government or legally empowered special government district, for conducting government business and providing public services. Public facilities include offices, recreation facilities, yards and depots for maintenance equipment and vehicles, utility plants, and other enterprises normally conducted by public agencies.

Public transportation terminal. An establishment primarily engaged in passenger transportation by railway, highway, water or air, or furnishing services related to transportation, normally for a fee or charge, including maintenance facilities, and freight transportation.

Reader board sign. See changeable copy or reader board sign under sign.

Recreational vehicle, mobile home, or boat dealer. An establishment selling or renting travel trailers, recreational vehicles, mobile homes, or boats.

Recreational vehicle as used in article VI, div. 1, development in flood prone areas means a vehicle that is: built on a single chassis, four hundred (400) square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

*Religious establishment*. A church; a building occupied by a religious organization and used primarily for worship and related activities. A religious establishment may include living quarters for officials of the organization.

Residential property. A premises used primarily as a dwelling or dwellings.

*Restaurant*. Any establishment that sells prepared food and drink for consumption on or off-premises. Under this chapter, stores that sell prepared food incidental to groceries or other goods are not considered restaurants.

*Drive-up restaurant*. Any establishment where prepared food and drink are sold from a window to patrons in vehicles.

Eat-in restaurant. An establishment where prepared food and drink are sold and consumed on premises and where there are seats at counters or tables to accommodate at least twenty (20) patrons at one (1) time.

Outdoor cafe. Any establishment where tables or seats are provided outside for the sale of and consumption of food and drink.

*Take-out restaurant*. An establishment where food and drink are sold for primarily for consumption off-premises or where there are twenty (20) or fewer seats for patrons at counters or tables.

Resubdivision. See subdivision.

Retaining wall. Any structure or materials designed to resist the lateral displacement of soil or other material and having an exposed face oriented toward property lines (facing outward) and having a total height of greater than seven (7) feet measured from the bottom of the footing to the highest point of the wall, or having an exposed face exceeding three (3) vertical feet at any point. The height of walls-in-series and terraced walls with outward orientation shall be the total of all segments in determining whether the definition of a retaining wall is met.

Retention area. A parcel or area of land set aside to receive and store storm water from a development.

A dry retention area is one that is designed or expected to have standing water only for short periods of time after a rain.

Right angle sign. See sign.

*Right-of-way*. Land legally dedicated to or owned by a governmental entity for the purpose of transportation or utility use.

Road. See street.

*Roofline.* On a sloping roof, the roofline is the principal ridge line or the highest line common to one (1) or more principal slopes of the roof; on a flat roof, the roofline is the highest continuous line of the roof or parapet, whichever is higher.

Sandwich board. See sign.

School. (See also day care center.)

School, athletic or music. A school providing instruction in musical instruments, voice, dance, martial arts, athletic skills or other physical or musical activities.

*School, post-secondary.* A facility, whether in one (1) or more buildings or in a portion of a building, providing education for students who have completed secondary education or the equivalent or conferring bachelors or other degrees.

*School, primary* or *secondary*. A facility for pre-school, elementary or high school education, whether public or private.

*School, training.* A facility providing education or instruction in a specialized skill or field, such as business skills or graphic arts, or providing tutoring or coaching for examinations, but not including athletic or music schools.

*Service, personal.* An establishment which provides for the needs of customers, whether individuals or businesses, and their possessions. Personal service establishments include beauty and barber shops, dry cleaning pick-up services, printing shops, frame shops, photo shops, health clubs, spas, and appliance repair shops, but not laundromats.

Setback, building. See building setback under building.

*Shooting range, indoor.* An indoor facility where firearms are discharged at targets and is fully enclosed of masonry construction that is sound proof.

Shopping center. See center, shopping.

*Sign*. Any device, structure, fixture, painting, or visual image using words, graphics, symbols, numbers, or letters, designed and used for the purpose of communicating a message or attracting attention. To "place" a sign shall mean construct, erect, post, paint, sculpt, project or otherwise display.

*A-frame sidewalk sign* means a portable sign which has no legs or solid base and which is supported on two (2) display boards hinged at the top.

Awning sign. A sign on a shelter supported entirely from the exterior wall of a building and composed of non-rigid materials except for the supporting framework.

Business complex sign. A ground sign identifying a shopping center, professional office center, industrial park or other grouping of buildings or businesses.

Changeable copy sign or reader board sign shall mean any sign designed so that the display can be altered periodically whether by electronic or mechanical means.

Commercial message means a sign, wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service or other commercial activity or to an institution or other non-residential activity or use. For the purposes of sign regulation, the following are not considered commercial activities: proposed sale, rental or lease of the real estate where the message is displayed, the incidental and occasional sale of personal property on site, residential yard sales held in compliance with the provisions of this chapter, and construction/renovation on site.

*Ground sign.* Any sign which is supported by masonry, wood, metal or similar structure uprights or braces and is permanently installed in or on the ground on a permanent base.

Internally lit sign. A sign capable of having or designed to have lighting installed inside its structure. Examples of internally lit signs are "cabinet signs" and channel letters. For the purposes of this chapter, a sign shall be considered an internally lit sign whether or not a lighting mechanism is installed or whether or not the owner intends to install such mechanism.

Legible pertains to a message on a sign and means that the message can be comprehended by a person with eyesight adequate to obtain a Florida driver's license standing in the public way or other location from which legibility is to be determined. Where such facts are material, it shall be presumed that the observation takes place in daylight hours, and that the person making the observation is standing and is between five (5) feet two (2) inches and six (6) feet tall.

*Monument sign.* A ground sign mounted on a solid base which extends the full width of the sign. For definitions of other types of signs, see Table 23-545.

*Portable sign* means a sign not permanently installed under the provisions of this Code. Examples of portable signs are: signs on prongs or posts pushed into the ground; A-frame and unanchored pedestal signs; signs mounted on top of vehicles or trailers; vehicles parked whether legally or illegally so as to serve as a sign.

*Right-angle sign*. Any sign which is affixed to any building, wall or structure and which extends more than twelve (12) inches horizontally from the building wall and projects from the wall at an angle of ninety (90) degrees.

Wall sign. A sign affixed to or painted on the wall of a building, mounted parallel to the wall and projecting not more than twelve (12) inches, not extending above the roof line or facade, and not interrupting the building's architectural features.

Window sign. A sign painted, etched or otherwise affixed to a window.

*Site plan.* A plan drawn to scale, showing existing and proposed features and structures on a parcel of land. Under this chapter, requirements for a "site plan" are addressed in section 23-222.

*Sleeping room.* A single room rented for living purposes but without cooking facilities or other amenities for separate and independent housekeeping. A sleeping room shall not be construed to mean a dwelling or sleeping unit.

*Special exception permit.* Authorization pursuant to article IV, div. III (section 23-431 et seq.) to undertake a use designated as a "special exception use" per section 23-421.

Special exception use. A use which is essential to, or would promote, the public health, safety or welfare in one (1) or more districts, but which would impair the integrity and character of the district in which it is located, or in adjoining districts unless restrictions or conditions on location, size, extent and character of performance are imposed in addition to those imposed in this ordinance.

Start of construction refers to substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within one hundred eighty (180) days of the permit date.

The actual start of construction means the first placement of permanent construction of a building (including manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main building.

For substantial improvements, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

### Store:

*Store, convenience.* A retail establishment, including grocery, drug, and liquor stores, that sells food, drinks, toiletries, alcohol, or sundries for consumption off-premises.

Store, retail. An enterprise engaged in the retail sale or rental of merchandise, but not including convenience stores.

Story. That part of a building contained between any floor and the floor or roof next above.

*Street.* A public road, including highways and local roads, and private platted roads, but not including alleys or easements and rights-of-way used or intended solely for utilities such as gas and electric lines.

Alley is specifically excluded from the definition of street and means a way providing secondary access to properties. An alley shall not be construed under this chapter to provide required frontage or adequate access to a property for development.

*Cul-de-sac* means a local street with only one (1) outlet, usually with a turnaround at the end opposite its connection with other streets.

*Street classification* means the categorization of roads by function and characteristics; a hierarchy of streets by function. See section 23-303.1 for the classification of streets in Lake Wales classes of streets:

Arterial means a highway or street which provides a direct, relatively high-speed route for large volumes of traffic for long, local trips and provides access to major regional highways. The Lake Wales Comprehensive Plan defines an arterial as "A route that is relatively continuous, of high traffic volume, of long average trip length, of high operating speed, and of high mobility importance. A part of a rural network of continuous routes serving substantial statewide travel by connecting urbanized areas of linking counties and towns providing intrastate and intracounty service."

*Collector* means a street which conducts moderate volumes of traffic between local streets and arterials and also provides access to abutting properties.

*Major collectors* provide connections between minor collectors or local streets and arterials. The Lake Wales Comprehensive Plan defines an arterial as "A route that is relatively continuous, of high traffic volume, of long average trip length, of high operating speed, and of high mobility importance. A part of a rural network of continuous routes serving substantial statewide travel by connecting urbanized areas of linking counties and towns providing intrastate and intracounty service."

*Minor collectors* provide connections between local streets and major collectors or arterials. The Lake Wales Comprehensive Plan defines a minor collector as "A route that collects traffic from local roads and brings all developed areas within a reasonable distance of a major collector road."

Local streets provide connections between individual properties and collectors or arterials. The Lake Wales Comprehensive Plan defines a local street as "A route that has the function of providing accessibility to individual parcels of property in residential areas. Local streets carry light volumes of traffic and should be designed to discourage through traffic and encourage low vehicular speeds."

Street, private means a road not dedicated for public use; a private street may be owned by a developer, homeowners' association, or other non-governmental entity.

Street, public means a road dedicated to a governmental entity (e.g. state, city) for use by the general public.

Structure. Anything constructed, installed, or erected, whether or not portable, the use of which requires its location on a parcel of land. It includes a movable structure while it is located on land that can be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently. Structure also includes fences, billboards, swimming pools, poles, pipelines, transmission lines, tracks, and advertising signs. For the purposes of article VI, div. 1, development in flood prone areas, structure means a walled and roofed building, including gas or liquid storage tanks and manufactured homes, that are principally above ground.

Accessory structure means a building or appurtenance incidental and subordinate to the principal buildings and located on the same lot as the principal building or on an adjacent lot under the same ownership. Where a building is attached to the principal building, it shall be considered a part thereof, and not an accessory building. Examples of accessory structures are: detached garages, storage sheds, swimming pools.

*Non-conforming structure.* A structure that is not in compliance with the dimensional or other physical requirements of this chapter. A legally non-conforming structure is one that was permitted and built in accordance with previously effective requirements of the City of Lake Wales.

*Principal structure* means the largest or main building or buildings on a property. For example, on a residential property, the dwelling is the principal structure.

Subdivision. The division of a premises or tract of land, whether improved or unimproved, into three (3) or more contiguous lots or parcels of land for the purpose, whether immediate or future, of transfer of ownership if the establishment of a new street is necessary to provide access to the lots, parcels or tract of land; provided, however, that the division of land into lots or parcels of five (5) acres or more and which does not involve any change in street lines or public easements of any kind, shall not be deemed a subdivision within the meaning of this ordinance. Subdivision does include resubdivision and, when appropriate to the context of this ordinance, relates to the process of subdividing or to the land subdivided or proposed to be subdivided.

*Resubdivision*. A change in a map of an approved or recorded subdivision plat if such change affects any street layout on such map or area reserved thereon for public use or any lot line, or if it affects any map or plan legally recorded prior to the adoption of any regulations controlling subdivisions.

Subdivision plat. A map or delineated representation of the subdivision of lands, being a complete, exact representation of the subdivision and other information in compliance with the requirement of all applicable statutes and of local ordinances and may include the terms replat, or revised plat. In whatever tense used: To plat shall mean to divide or subdivide land into lots, blocks, tracts, sites, streets, rights-of-way, easements, or other divisions, however designated.

Subordinate. The term "subordinate" is used in reference to accessory uses and structures to mean smaller in size, importance, and scope. Generally, unless otherwise limited in this ordinance, "subordinate" shall mean less than twenty-five (25) percent of the size, importance, or scope of the principal use and less than fifty (50) percent of the size of the principal structure on the premises.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. The administrative official may require verification of the market value in making a determination of substantial improvement or substantial damage.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, taking place within a calendar year, the cumulative cost of which equals or exceeds fifty (50) percent of the "market value" of the structure before the "start of construction" of the improvement or, in the case of repairs, before the damage occurred. The administrative official may require verification of the "market value" in making a determination of "substantial improvement" or "substantial damage." The term "substantial improvement" also includes structures that have incurred "substantial damage" or "repetitive loss" regardless of the actual repair work performed. This term does not, however, include any repair or improvement of a structure to correct violations of state or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official prior to the application for, permit for improvement and which are the minimum necessary to assure safe living conditions.

Single-Family Attached Dwelling Unit: one-unit structure which has one (1) or more walls extending from ground to roof separating it from adjoining structures. In townhomes or twin homes each house is a separate, attached structure if the dividing or common wall goes from the ground to the roof.

Solar Power Generation Facility. A type of electrical power generation facility that utilizes a collection of ground mounted solar panels to produce electricity for offsite use. These facilities are a principal use of a property and include directly associated transmission lines required to connect the solar power generation facility to an existing transmission network or rights-of-way. A solar power generation facility can also be known as a solar power plant, solar farm, or solar generation station.

*Theater.* A facility used for the presentation of plays, concerts, and other entertainment. Under this chapter, a theater is classified as a cultural facility.

*Theater, movie.* A facility used for showing films, normally for a fee. Under this chapter, an indoor theater is wholly enclosed in a building; an outdoor theater is wholly or partially outside of any building.

*Topography*. The configuration of a surface area including its elevations and the position of its natural manmade features.

Travel trailer. See recreational vehicle.

*Travel trailer park.* A tract of land prepared and approved according to the procedures of this chapter to accommodate travel trailers.

*Use.* Use broadly refers to the activities or functions which take place on any land or premises and also refers to the structures located thereon and designed for those activities. See also change of use.

Accessory use means a activity or enterprise customarily incidental and subordinate to the principal use of a property. Examples of accessory uses are: retail shops in hotels, snack bars in an office building.

*Mixed use* refers to a building or development where there are both residential and nonresidential uses. A business or institutional use with an accessory apartment shall not be considered a mixed-use.

*Non-conforming use* means a use of land not permitted under this chapter in the zoning district in which it is located. A legally non-conforming use means a use of land permitted and established in accordance with previously effective requirements of the City of Lake Wales.

Principal use means the main activity conducted on a premises. "mixed use," "accessory use," and "principal use."

*Variance* is a grant of relief from the requirements of this ordinance, which permits construction in a manner otherwise prohibited by this section and which is based on a finding that specific enforcement of the provisions of this section would result in a hardship.

*Dimensional variance* means authorization pursuant to section 23-244 to depart from specific dimensional requirements of this chapter, including setbacks and lot widths.

Vehicle, commercial.

- (1) Any truck or tractor utilizing an axle designed to bear weight in excess of four thousand (4,000) pounds (a two (2) ton axle); and
- (2) Any trailer, a vehicle with or without motive power, designed for carrying persons or property and for being drawn by a motor vehicle.

Veterinarian or small animal hospital. See hospital.

*Waiver*. Approval granted under specific provisions of this chapter to deviate from a dimensional or other design requirement.

Wall sign. See sign.

Warehouse. A facility for the storage or wholesale distribution of materials. See also mini-storage.

*Yard.* The open space surrounding the principal building on any lot, unoccupied and unobstructed by a portion of that building from the ground to the sky, except where specifically permitted by this ordinance. Yards are further defined as follows:

A. *Front yard*. That portion of the yard extending the full width of the lot and measured between the front lot line and a parallel line tangent to the nearest part of the principal building, which line shall be designated as the front yard line. The required front yard is the area between a front lot line and the front building setback line required in the zoning district. The front setback is the distance between the front lot line and the nearest part of the principal building.

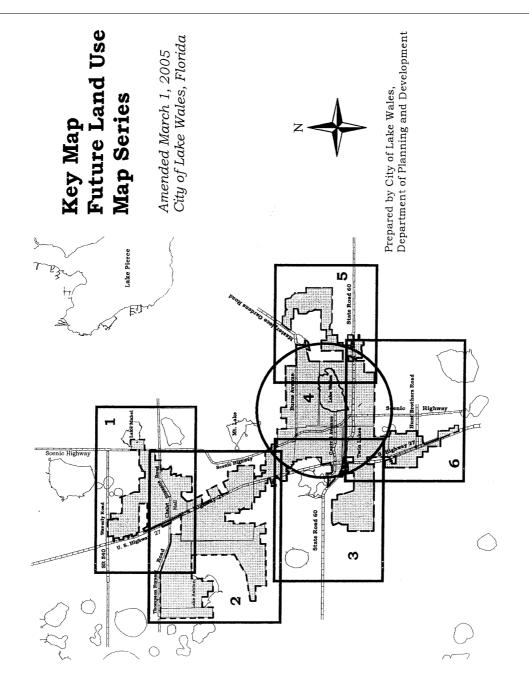
B. Rear yard. That portion of the yard extending the full width of the lot and measured between the rear lot line and parallel line tangent to the nearest part of the principal building. The required rear yard is the area between a rear lot line and the rear building setback line required in the zoning district. The rear setback is the distance between the rear lot line and the nearest part of the principal building.

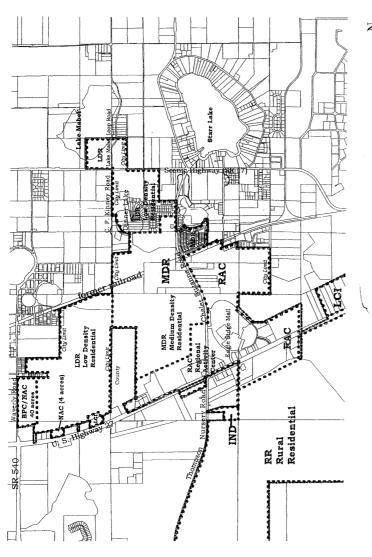
C. Side yard. That portion of the yard extending from the front yard to the rear yard and measured between the side lot lines and parallel lines tangent to the nearest part of the principal building. The required side yard is the area between a side yard lot line and the side building setback line required in the zoning district. The side setback is the distance between the side lot line and the nearest part of the principal building.

Yard, functional. A functional front yard is that portion of the lot used or intended to be used as a front yard, that is, the portion of the yard where the driveway intersects the street and where access is gained to the main entrance to the house. A functional rear yard is that portion of the lot used or intended to be used as a rear yard, although the yard may be technically defined under this chapter as a "front yard" by virtue of its having a front lot line.

Yard sale means the offering of several items for purchase on a residential property at the same time, regardless of whether the items are displayed or whether they are displayed outdoors or indoors. The simultaneous offering of up to two (2) items owned by the resident does not constitute a yard sale, provided the offering of items is incidental and occasional, not habitual or recurring. The term "yard sale" includes similar sales such as "garage," "estate," "lawn" sales.

Zoning board. The Planning and Zoning Board of the City of Lake Wales.

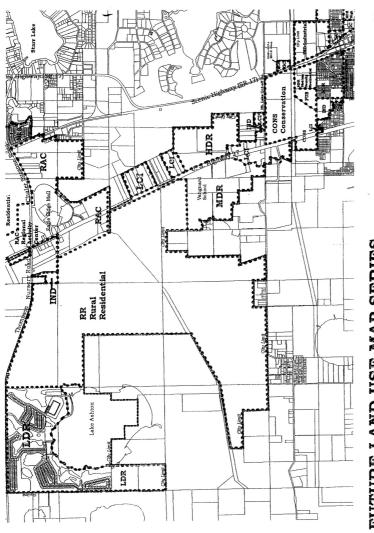




FUTURE LAND USE MAP SERIES Map 1 - Chalet Suzanne Road and U. S. Highway 27

Amended March 1, 2005 City of Lake Wales, Florida

Map prepared by City of Lake Wales Department of Planning and Development

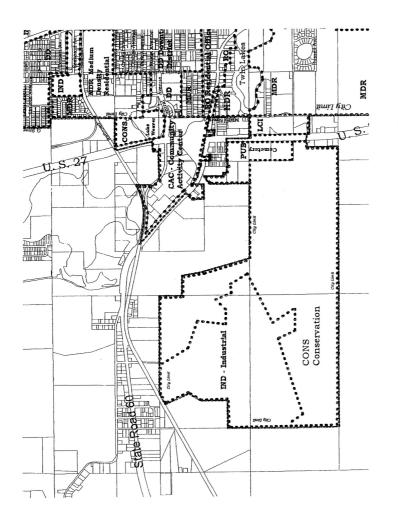


FUTURE LAND USE MAP SERIES

Map 2 - Lake Ashton and U.S. Highway 27, South
of Chalet Suzanne/Thompson Nursery Road

Map prepared by City of Lake Wales Department of Planning and Development

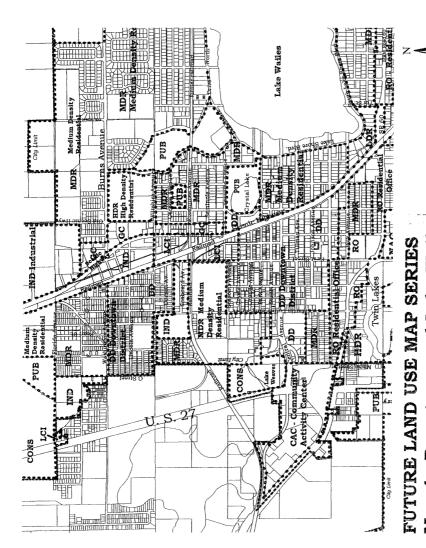
Amended Warch 1, 2005 City of Lake Wales, Florida



### Map prepared by City of Lake Wales Department of Planning and Development

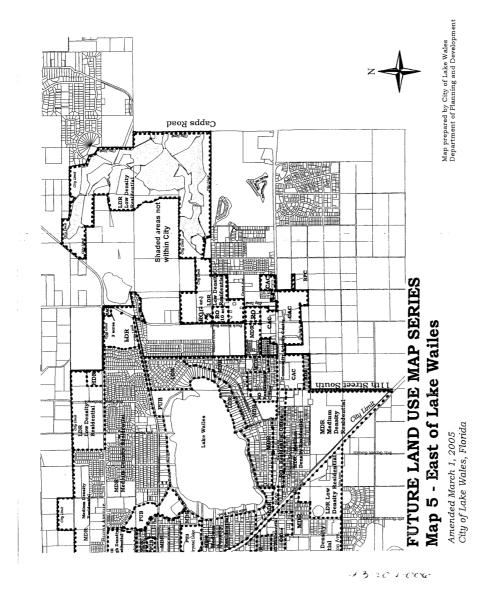
### FUTURE LAND USE MAP SERIES Map 3 - U. S. Highway 27 and State Road 60

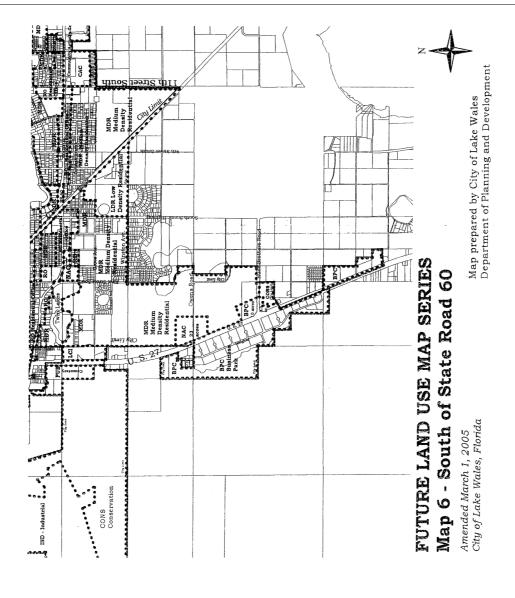
Amended March 1, 2005 City of Lake Wales, Florida

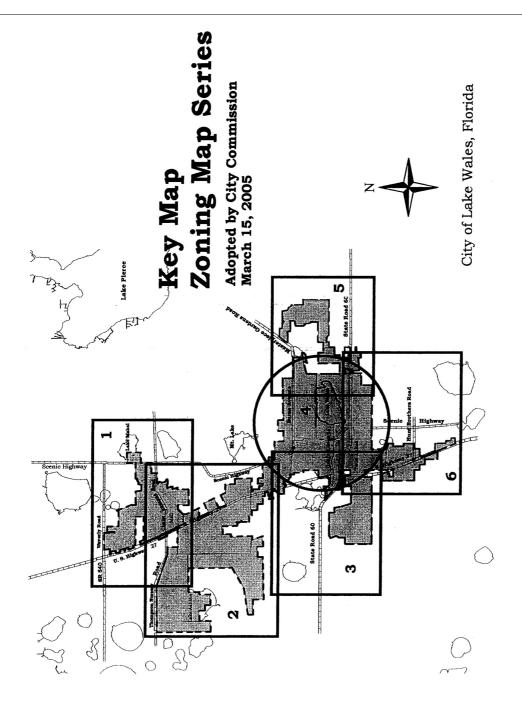


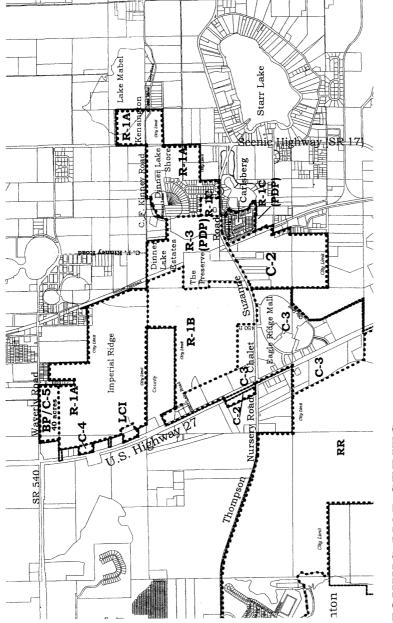
Map 4 - Downtown and Lake Wailes
Amended March 1, 2005
City of Lake Wales, Florida

Map prepared by City of Lake Wales Department of Planning and Development



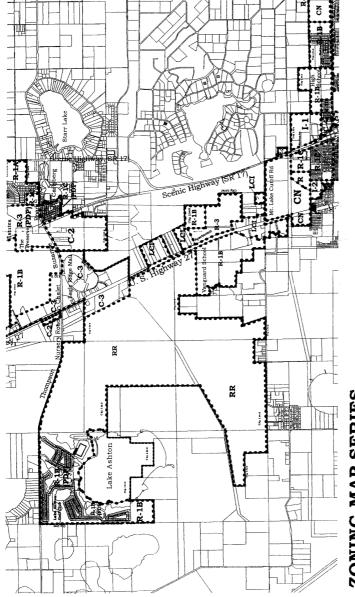






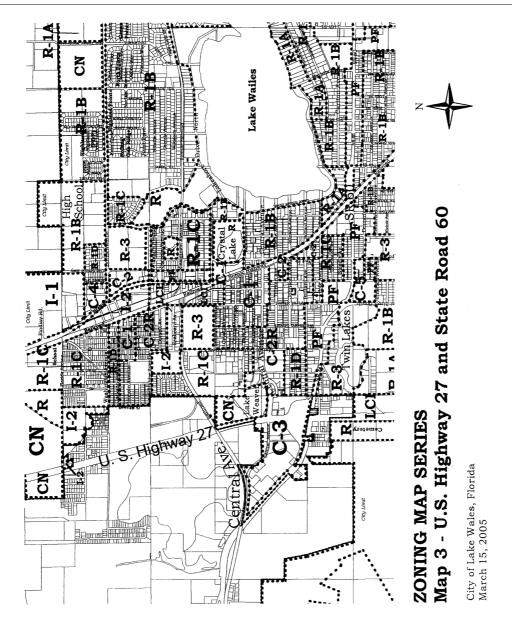
## ZONING MAP SERIES Map 1 - Chalet Suzanne Rd. and U.S. Highway 27

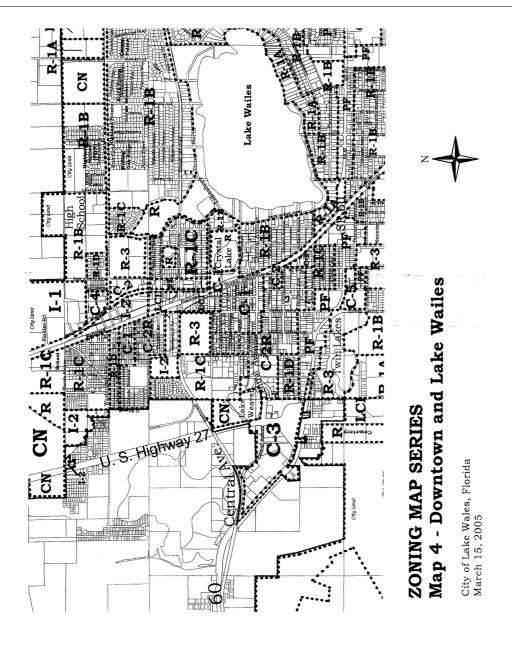
City of Lake Wales, Florida March 15, 2005

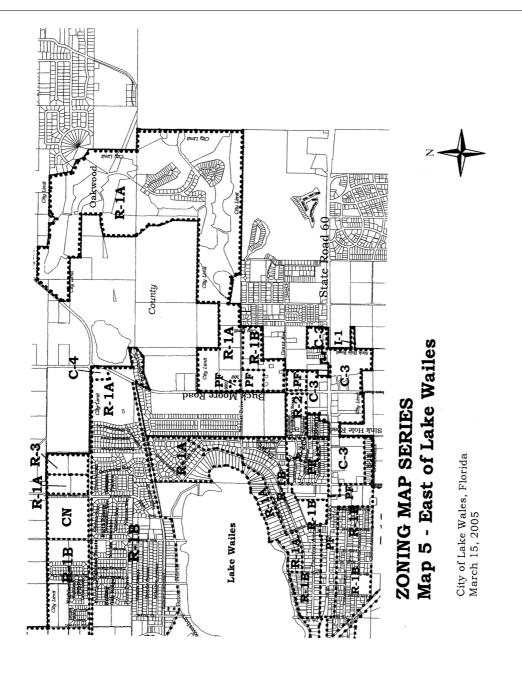


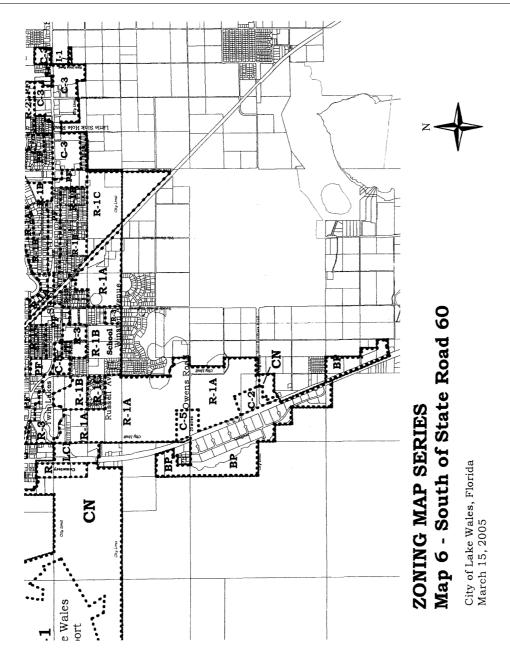
# ZONING MAP SERIES Map 2 - Lake Ashton and U.S. Highway 27 South of Chalet Suzanne and Thompson Nursery Rd.

City of Lake Wales, Florida March 15, 2005









 $\begin{array}{l} (\mathrm{Ord.\ No.\ 2007-02,\ \S\ 25,\ 3-6-2007;\ Ord.\ No.\ 2008-04,\ \S\ 15,\ 2-19-08;\ Ord.\ No.\ 2008-11,\ \S\ 8,\ 5-20-08;\ Ord.\ No.\ 2008-45,\ \S\ 24,\ 12-16-08;\ Ord.\ No.\ 2009-14,\ \S\ 3,\ 10-20-09;\ Ord.\ No.\ 2011-04,\ \S\ 4,\ 3-1-11;\ Ord.\ No.\ 2012-02,\ \S\ 2,\ 2-21-12;\ Ord.\ No.\ 2013-05,\ \S\ 7,\ 6-18-13;\ Ord.\ No.\ 2015-04,\ \S\ 14,\ 7-7-15;\ Ord.\ No.\ 2017-05,\ \S\ 3,\ 4-18-17;\ Ord.\ No.\ 2017-19,\ \S\ 2,\ 10-17-17;\ Ord.\ No.\ 2020-06,\ \S\ 3,\ 6-2-20;\ Ord.\ No.\ 2020-30,\ \S\ 1,\ 12-02-20;\ Ord.\ No.\ 2021-20,\ \S\ 1,\ 9-10-21;\ Ord.\ No.\ 2021-25,\ \S\ 1,\ 11-02-21;\ Ord.\ No.\ 2022-30,\ \S\ 1,\ 08-02-22;\ Ord.\ No.\ 2022-36,\ \S\ 1,\ 08-02-22;\ Ord.\ No.\ 2022-37,\ \S\ 1,\ 09-07-22;\ Ord.\ No.\ 2022-45,\ \S\ 1,\ 10-04-22) \end{array}$