

Article IV

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ARTICLE IV. REVIEW AUTHORITY AND PROCEDURES**DIVISION 1. REVIEW BOARDS AND COMMITTEES****Section 30-4.1. Development review board.**

- A. Establishment. The development review board is hereby created as a citizen board to review and approve or deny development plans submitted for its review pursuant to the provisions of this article. The airport authority shall act in the capacity of the development review board for development plans for the Gainesville Regional Airport in accordance with an approved airport layout plan.
- B. Membership.
1. The board shall have seven members appointed by the city commission. Any interested citizen may be appointed to the board, but special consideration shall be given to the following:
 - a. An architect or landscape architect.
 - b. A civil engineer.
 - c. A person engaged in real estate sales or development.
 - d. A professional with experience in natural or environmental sciences.
 - e. An urban planner; and
 - f. A citizen at large.
 2. The initial appointment, residency requirement, length of term, number of terms, probationary period, officers and general procedures shall be as prescribed for the city plan board.
- C. Functions, powers and duties.
1. The board shall review and act upon applications for development plan approval pursuant to this article.
 2. The board may make recommendations to the city plan board on land development regulations either upon referral of the city plan board or upon its own initiation.
 3. The board has the authority to approve, approve with conditions or deny variances and modifications from the requirements of this Chapter as provided for in **Division 11 of this article**.
 4. Unless otherwise specified in the Code of Ordinances, the board shall have the power and duty to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official of the city in the enforcement of the land development code or building chapters. The board shall not have the power or duty to hear and decide appeals from any order, requirement, decision, or determination when such are made as part of, or are inherent in, a **chapter 2, article V, division 8, notice of violation, or division 6, civil citation**, issued by a code enforcement officer or sworn law enforcement officer, unless otherwise provided in this Code of Ordinances. This shall not preclude hearing and deciding requests for special exceptions or variances, which may include matters also at issue in a notice of violation or civil citation.
 5. The board shall perform such additional duties as may, by ordinance, be delegated to it and which shall pertain to the above assigned powers.
- D. **Rehearings**^[LD11].

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1. Request for rehearing. A request for rehearing of any matter decided by the development review board may only be submitted by the original petitioner or agent, the city manager or designee, the city commission, or an affected person, who presented oral or written testimony or evidence at the initial hearing. The request must be filed with the secretary of the board on a form provided by the secretary within **ten days** of the date the decision is made by the board. The request will be considered at the next scheduled meeting of the board at least **15 days** after the request is filed.
 2. Basis of request for rehearing. A request for rehearing shall only be granted if at least three members of the board find that the requester has demonstrated by competent substantial evidence that the board overlooked or failed to correctly interpret evidence presented at the initial hearing.
 3. Procedure for scheduling rehearing. If the request for rehearing is granted by the board, the board shall hold the rehearing at its next regularly scheduled meeting, or at a special meeting convened by the board for that purpose at least **15 days** after the request is granted. Notice of the rehearing shall be sent to all owners of property within 300 feet of the premises involved in the rehearing.
- E. Implementation of board's decision. Any permit, authorization or other development order issued based on the board's decision prior to the end of the period for filing an appeal pursuant to **Division 12 of this article** is considered conditional. Any action taken during the appeal period is taken at the sole risk of the property owner, who may be required to undo any work done if the decision of the board is overturned either by a rehearing of the board, an appeal to the city commission, or in an appeal to a court of competent jurisdiction.
- F. Fees for petitions. Fees shall be paid to the city and such payment shall be made at the time of filing petitions with the planning and development services department in accordance with the schedule set out in Appendix A.

Section 30-4.2. City plan board.**A. Membership.**

1. The city plan board shall have seven regular members, representing a cross section of the city, appointed by the city commission. Regular members of the city plan board shall be and remain bona fide residents of the city. If at any time any member of the city plan board fails to be and remain a resident of the city the person is no longer allowed to serve on the board.
2. The city plan board shall have an additional member (hereinafter, the "school board representative") that represents and is appointed by the School Board of Alachua County. The duties of the school board representative are limited to attending city plan board meetings at which the city plan board considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the proposed plan amendment or rezoning. The school board representative shall be a non-voting member.
3. Each member shall be appointed to a three-year term commencing on November 1 of the year appointed, except that, initially, two regular members shall be appointed for terms of one year, three regular members shall be appointed for terms of two years, and two regular members shall be appointed for terms of three years. No person may serve more than two consecutive three-year terms. However, they may be reappointed one year after the expiration of the second term of service.
4. When a regular member position becomes vacant before the end of the term, the city commission shall appoint a substitute member to fill the vacancy for the duration of the vacated term. When the school board representative position becomes vacant before the end of the term, the School Board of Alachua County shall appoint a substitute member to fill the vacancy for the duration of the vacated term. A member whose term expires may continue to serve until a successor is appointed and qualified.
5. Probationary period for regular members.

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- a. New appointees to the city plan board shall complete a 60-day probationary period prior to commencement of the term of office. During this period appointees meet the same attendance requirements as other board members, but shall not have the power to vote or be counted for the purpose of constituting a quorum.
 - b. Any appointee who fails to successfully complete the probationary period, except as provided below, shall be automatically disqualified for membership on the city plan board, upon the filing with the clerk of the commission of appropriate proof that the appointee has failed to successfully complete the probationary period.
 - c. Exception. The city commission may waive the required probationary period for any appointee to the city plan board upon good cause shown and entered in the record of the minutes of the city commission.
- B. Officers.
1. The members of the city plan board shall annually elect a chair and vice-chair from among the regular members and may create and fill other offices as the board deems needed.
 2. The city plan board shall create whatever subcommittees it deems needed to carry out the purposes of the board.
 3. The chair of the board shall annually appoint the membership of each subcommittee from the regular members of the board. The school board representative is eligible for subcommittee membership, and the chair of the board may appoint the school board representative to any given subcommittee.
 4. The city manager shall appoint a city employee to serve as secretary to the board, recorder and custodian of all board records.
- C. Compensation of members; funding; absenteeism; legal counsel.
1. Neither regular members nor the school board representative shall be compensated, but may be paid for travel and other expenses incurred on board business under procedures prescribed in advance by the city commission.
 2. The city commission shall appropriate funds to permit the city plan board to perform its prescribed functions.
 3. Absenteeism by regular board members shall be governed by **section 2-247**.
 4. The city attorney shall provide legal counsel to advise and represent the board as necessary.
- D. Rules of procedure. The city plan board shall adopt rules of procedure to carry out its purposes. All rules must conform to this article, the Code of Ordinances and state law.
1. The city plan board shall conduct hearings in accordance with Division 4 of this article.
 2. The city plan board shall meet at least once each calendar month, unless cancelled by the board or its chair, and more often at the call of the chair or the city commission.
 3. The city plan board shall keep minutes of its proceedings, indicating the attendance of each member, and the decision on every question.
 4. The board shall adopt rules setting the number of members needed to establish a quorum.
 5. Each decision of the board must be approved by a majority vote of the regular members present at a meeting in which a quorum is in attendance and voting.
- E. Decisions of the board. The city plan board has final decision authority in granting special use permits, in accordance with **Division 7**, and making determinations for nonpresumptive vested rights and concurrency, in

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accordance with **Article III**. All other final actions of the board are advisory to the city commission. Advisory actions of the board shall not obligate the city.

F. Functions, powers and duties.

1. The board shall keep constantly informed of and in touch with the physical changes of the city and its surrounding environs and recommend to the city commission such changes and revisions in the comprehensive plan and future land use map as necessary; and is authorized to gather information and make recommendations to the commission of all facts bearing upon the needs of the city with regard to recreation grounds and the development of parks and boulevards, the extension and opening of streets and avenues or other public ways or places and all other city plans and improvements; and to make recommendations to the commission for improvements and changes in building ordinances, traffic ordinances and fire limit ordinances.
2. The planning and development services department shall provide staff to the board. The board, through the planning and development services department, may request information from any city department or official.
3. The board shall monitor and oversee the operation, effectiveness and status of this Code of Ordinances as it relates to land development and recommend amendments to the city commission that are consistent with the comprehensive plan.
4. The city commission may ask the board for advice about specific land use issues and policies.
5. The board shall keep the commission and the general public informed and advised on the land use policies of the city.
6. The board shall conduct public hearings to gather information necessary for the drafting, establishment, amendment and maintenance of the various elements of the comprehensive plan and provisions of this chapter.
7. The board may make or obtain special studies on the location, condition and adequacy of specific facilities of the city, including housing, commercial and industrial facilities, parks, playgrounds, recreational facilities, schools, public buildings, public and private utilities, transportation and parking.
8. The board shall review redevelopment plans prepared under F.S. Ch. 163, Pt. III.
9. The board shall consider all requests for comprehensive plan and zoning changes and shall make a recommendation to the city commission.
10. The city plan board shall review all zoning applications for planned developments and development plans as provided herein.
11. The city plan board shall review all applications for special use permits and development plans as provided herein.
12. Master flood control maps. The city plan board shall review any amendment to the master flood control planning map, and provide its recommendation to the city commission.
13. The city plan board shall hear appeals of any decision of the planning and development services director with regard to presumptive vested rights.
14. The city plan board shall hear appeals of any decision of the planning and development services director with regard to determination of concurrency.
15. The city plan board shall hear and make recommendations to the city commission on any changes to the adopted airport master plan.
16. The board shall perform other lawfully assigned duties.

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[LD12].

[LD13].

[LD14].

Section 30-4.3. Historic preservation board.

- A. Creation. There is hereby created and established a historic preservation board.
- B. Duties and authority. It shall be the responsibility of the board to:
1. Update the official inventory of cultural resources and submit to the city commission recommendations and documentation concerning such updating.
 2. Develop programs to stimulate public interest in urban neighborhood conservation, to participate in the adaptation of existing codes, ordinances, procedures and programs to reflect urban neighborhood conservation policies and goals.
 3. Explore funding and grant sources and advise property owners concerning which might be available for the identification, protection, enhancement, perpetuation and use of historic, architectural, archaeological and cultural resources.
 4. Cooperate with agencies of city, county, regional, state and federal governments in planning proposed and future projects to reflect the concerns and policies expressed in this article, and assist in the development of proposed and future land use plans.
 5. Advise property owners and local governmental agencies concerning the proper protection, maintenance, enhancement and preservation of cultural resources.
 6. Advise the city commission concerning the effects of local governmental actions on cultural resources.
 7. Conduct regular public meetings and call special meetings.
 8. Otherwise further the objectives and purposes defined in **Article IX, Division 6.**
 9. Submit to the city commission for its approval, rules and procedures to be used by the board for implementation of the powers and duties consistent with the provisions of this chapter.
 10. Report to the city commission concerning the board's activities at least once a year.
 11. Review and recommend sites, buildings, structures, objects, areas and districts, both public and private, for listing on the local register for historic places.
 12. Approve or deny petitions for certificates of appropriateness required under **Article IX, Division 6.**
 13. Notify the city manager who will take appropriate action when it appears that there has not been compliance with the requirements of **Article IX, Division 6.**
- C. Composition; terms; vacancies.
1. The board shall consist of nine (9) citizen members who shall be appointed by the city commission. All members of the board shall be residents of the city. One (1) member shall be a registered architect. The city commission shall, when possible, appoint a representative from each of the following areas of expertise:
 - a. History.
 - b. Real estate and/or real property appraisal and/or finance.
 - c. Urban planning and/or law.
 - d. Engineering and/or building construction.

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e. Landscape architecture.

The city commission shall appoint additional persons from other segments of the community to complete the board appointments.

2. After initial appointment, all appointments shall be made for a term of three (3) years. Members may be reappointed for consecutive terms, but service on the board may not exceed six (6) consecutive years. Reappointment may then occur after one (1) year of absence from the board.
 3. All members of the board shall be residents of the city.
 4. If a vacancy occurs, a new appointment shall be made by the city commission for the unexpired term.
- D. Officers. The board shall elect from its membership a chairperson and a vice-chairperson who shall serve for terms of one year and who shall be eligible for reelection. The chairperson shall preside over the board and shall have the right to vote. In the absence or disability of the chairperson, the vice-chairperson shall perform the duties of the chairperson. The director of the planning and development services department or designee shall serve (ex officio) as secretary of the board but shall have no vote. Additional staff will be supplied as available.
- E. Organization.
1. Regular meetings. The board shall hold regular meetings at least monthly.
 2. Quorum. No business shall be conducted by the board without the presence of a quorum of five (5) voting members.
 3. Voting on certificates of appropriateness. Approval or denial of petitions for certificates of appropriateness shall require the affirmative vote of at least four (4) voting members. If insufficient affirmative votes are obtained, a matter shall be tabled and placed on the agenda for the next following meeting. However, petitions for certificates of appropriateness shall be deemed automatically granted if not approved or denied within **forty-five (45) days** after the first meeting at which they were considered.
 4. Rules. The board shall adopt rules, as approved by the city commission, for the transaction of its business, which provide for the time and place of regular meetings and for the calling of special meetings. All meetings of the board shall be open to the public, and a public record shall be kept on the board's resolutions, proceedings and actions.
 5. Special meetings. The board shall hold special meetings called according to the rules and procedures adopted by the board. Notice in advance of the meeting shall be given to the clerk of the commission for dissemination to the news media.

Section 30-4.4. Development review coordinator.

- A. Establishment of position. The city manager or designee shall be the development review coordinator.
- B. Duties. The development review coordinator shall exercise the following duties:
1. Receive all applications for development plan approval.
 2. Schedule all applications for review before the technical review committee and development review board.
 3. Chair the technical review committee.
 4. Ensure that proper notice is given prior to all hearings on development applications.
 5. Ensure that all time limits are met.
 6. Monitor the progress of all development plan applications through the review process and be available to respond to the queries of interested persons.

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7. Schedule application cutoff dates.

Section 30-4.5. Technical review committee.

- A. Creation; chairperson. There is created a technical review committee to be chaired by the city manager or designee.
- B. Membership. The membership of the committee shall be composed of an employee appointed from each of the following city departments and government agencies:
 1. Planning and development services.
 2. Public works department.
 3. Fire/rescue department.
 4. Parks and recreation department.
 5. Gainesville Regional Utilities department.
 6. Representatives of other city, county, state, regional or federal departments and/or agencies as deemed appropriate.
- C. Functions, powers and duties.
 1. Meetings. The committee shall review development proposals as prescribed in this article. The development review coordinator may call additional meetings and may refer matters to the committee for review and comment.
 2. Recommendations. The committee shall make recommendations to the **development review board**, the city plan board or city commission, depending upon which is the decision-making entity.

Section 30-4.6. Heritage overlay district **board^[LD15].**

- A. Creation. There is hereby created the City of Gainesville heritage overlay district board to review regulated work items submitted for its review pursuant to the provisions of **section 30-5.31**. The board has no authority or duty other than that which is specifically described in this section and **section 30-5.31**.
- B. Members, officers, meetings and rules.
 1. The board shall consist of five members appointed by the city commission. At least three members shall reside in a heritage overlay district and, if more than one heritage overlay district exists, at least one member shall reside in each existing district; however, if it is not possible to meet the foregoing requirements in making appointments, the city commission may appoint any resident of the city to the board. If a member of the board ceases to be a resident of the city, that member shall be automatically disqualified, removed from the board and the city commission shall appoint a new member to fill the remainder of the unexpired term.
 2. The members of the board shall annually elect a chair and vice-chair from among its members. Three members must be present to establish a quorum. A majority of the quorum is required for approval. Petitions on the agenda, but not heard due to a lack of quorum, are continued to the next meeting one time. If the board fails to reach a quorum a second consecutive time, the petition is deemed approved.
 3. The board shall meet once each calendar month, as necessary to consider any petitions timely filed for that meeting. A meeting may be cancelled by the board or its chair as specified in the board rules of procedure.
 4. The board shall adopt rules of procedure for the conduct of its meetings, which shall be effective upon review and approval by the city commission.

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- C. Terms. Initially, three members will be appointed to two-year terms, and two members will be appointed to one-year terms; thereafter, all terms shall be two years. The board shall be subject to the requirements of **Chapter 2, Article V, Division 1** of the City Code of Ordinances.
- D. Meeting notice. Subsequent to receiving a complete petition (on the form provided by the city) for a regulated work item requiring board review and payment of the petition fee, city staff shall provide a notice sign to the applicant at least **13 days** prior to the meeting. The applicant shall post the sign on the subject property in a location visible from the public road right-of-way, at least **ten days** prior to the meeting. Additionally, written notice of the time and place of the meeting, and the location of the subject property, shall be sent by regular mail to the applicant and all property owners within the district at least **ten days** prior to the meeting.
- E. Powers and duties.
1. The board can approve, approve with conditions, deny or continue to a date certain a petition for a regulated work item. The board may continue a petition only once. At the second hearing on a continued petition, the board shall render a decision or the petition shall be deemed approved.
 2. At board meetings, the board deliberation and public comment shall be limited to whether or not the regulated work item is consistent with the district's regulations, as set forth in the ordinance for that district, including the design standards report.
 3. The board and each board meeting shall be staffed by city staff.
 4. The decision of the board on a petition shall be the final decision of the city.

Section 30-4.7. Reserved.

Section 30-4.8. Reserved.

Section 30-4.9. Reserved.

DIVISION 2. BUILDING PERMIT AND CERTIFICATE OF OCCUPANCY

Section 30-4.10. Building permit.

No building shall be constructed, reconstructed, altered or extended until a building permit has been issued indicating that the proposed use is in compliance with the provisions and regulations of this chapter; and there shall be no excavation, cut or fill of earth or debris, no curb shall be cut or access opened onto a public street, no land shall be used for purposes other than agricultural, no street graphics shall be erected, and no building shall be moved until any required permit therefor has been obtained in accordance with the provisions of this Code of Ordinances.

Section 30-4.11. Certificate of occupancy.

No land, water, building or any part thereof shall be used and no existing use of land, water or building shall be changed unless a certificate of occupancy has been issued for such land, water, building or part thereof.

Section 30-4.12. Certificate of concurrency

See **Article III**.

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DIVISION 3. DEVELOPMENT PLAN REVIEW PROCESS

Section 30-4.13. Purpose.

The purpose of this division is to promote harmonious, functional relationships among the various elements within any development such as the location of activities, vehicular and pedestrian circulation systems, and visual form, to ensure physical, social and economic compatibility with neighboring developments and conditions, as well as with the community at large, and to prevent detrimental impact to the natural environment on and off the site by providing for review and evaluation of development plans for all development. Development plan review is intended to permit maximum flexibility in reviewing each plan on its merits and encourage variety and innovation within the intent and purpose specified for each zoning district and the minimum requirements specified in the Code of Ordinances.

Section 30-4.14. Administration and enforcement generally.

This division sets forth the application and review procedures required for obtaining development orders and certain types of permits. The procedures for appeals and enforcement are generally addressed under **Division 12 of this Article**.

Section 30-4.15. Development order required prior to development activity.

Development activity may be undertaken only when the activity is authorized by a final development order and any required development permits are issued by the City. A final development order shall be issued only when all applicable procedures, inspections and reviews have been completed as provided in this Code.

Section 30-4.16. Exceptions to requirement for development review.

The following development activities do not require development review under this article:

- A. Signs. New signs and modifications or removal of existing signs that are authorized by a sign permit issued by the City.
- B. Removal of regulated trees. The removal of regulated trees that is authorized by a tree removal permit issued by the City and is not associated with a development plan.

Section 30-4.17. Effect of site development orders on successors and assigns

Site development orders are transferable. However, so long as the land or structure or any portion thereof covered under the site development order continues to be used for the purposes for which it was issued, then no person (including successors and assigns of the person who obtained the site development order) may make use of the land except in accordance with the conditions and requirements of the site development order. The provisions of the site development order run with and burden the real property to which it relates until release or amended in accordance with formal action of the City.

Section 30-4.18. Levels of development review and process.

For purposes of the development review process, all development shall require either rapid, minor, intermediate or major development review in accordance with the thresholds set forth in the table below. Development that includes components within different thresholds shall be reviewed as one submittal in accordance with the highest threshold that is triggered by the development.

Table IV - 1. Levels of development review

	RAPID¹	MINOR¹	INTERMEDIATE	MAJOR
Residential	New construction of	Developments of 3	Developments of 11	Developments of 100

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	RAPID¹	MINOR¹	INTERMEDIATE	MAJOR
	single-family dwellings or duplexes.	to 10 multiple-family dwelling units.	to 99 multiple-family dwelling units.	or more multiple-family dwelling units.
Non-Residential	New construction or expansions of up to 1,000 square feet of building area.	New construction or expansions of 1,001 and up to 10,000 square feet of building area.	New construction or expansions of 10,001 to 50,000 square feet of building area.	New construction or expansions over 50,001 square feet of building area.
Parking; other Impervious Areas; Construction Activity	Resurfacing or restriping of existing parking areas, or new parking areas that include less than 8 parking spaces. Impervious areas: less than 1000 square feet. Excavation, filling, or removal of up to 200 cubic yards of material for the purpose of development.	Parking areas that include 8-40 new parking spaces. Impervious areas: 1,000-20,000 square feet. Excavation, filling, or removal of more than 200 cubic yards of material for the purpose of development.	Parking areas that include 41-100 new parking spaces. Impervious areas: 20,001-50,000 square feet.	Parking areas that include more than 100 new parking spaces. Impervious areas: more than 50,000 square feet.

Notes to Table:

¹ Any development that otherwise meets the thresholds for rapid or minor review shall be automatically reviewed as an intermediate level review when the development:

- (1) includes one or more requests for a board modification; or
- (2) includes new commercial, office or industrial construction on property that directly abuts existing single-family zoning; or
- (3) impacts wetlands, surface waters, or other regulated natural or archeological resources.

Table IV - 2. Summary of development review process

	RAPID	MINOR	INTERMEDIATE AND MAJOR	MASTER PLAN
First Step Meeting	Not required.	Required, refer to Sec. 30-156.	Required, refer to Sec. 30-156.	Required, refer to Sec. 30-156.
Neighborhood Workshop	Not required	Not required	Required, refer to Sec. 30-350.	Required, refer to Sec. 30-350.
Technical Review Committee	Not required	Required, refer to Sec. 30-159.	Required, refer to Sec. 30-159.	Required, refer to Sec. 30-159.

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	RAPID	MINOR	INTERMEDIATE AND MAJOR	MASTER PLAN
Board Review	Not required	Not required	Required, board issues a preliminary development order, refer to Sec. 30-163.	Required, board issues a preliminary development order, refer to Sec. 30-163.
Final Staff Review	Required, staff issues a final development order, refer to Sec. 30-161.	Required, staff issues a final development order, refer to Sec. 30-161.	Required, staff issues a final development order, refer to Sec. 30-161.	Not required.

Section 30-4.19. First step meeting.

Prior to filing an application for development plan review, the applicant must attend a first step meeting to discuss the development review process, code requirements and to confer with staff about the development process. The first step meeting may be attended by staff of the technical review committee or staff of the planning and development services department. Comments made by staff at a first step meeting are made solely for preliminary informational purposes and shall not be construed as an approval or denial or agreement to approve or deny any development order.

Section 30-4.20. Submittal requirements.

- A. Application. A completed application, on the form provided by the city, shall be signed and notarized by all owners of the property, and by any agents of the owners. The application, together with applicable attachments and fees, shall be submitted to the city.

The city manager or designee shall determine completeness based on level of review required, the nature of the proposed development and other requirements as set forth in this code, the comprehensive plan and other city requirements deemed necessary to provide a professional and complete review and evaluation of the application.

- B. Format. Unless a particular format is required by city code, the information required may be presented textually, graphically or on a map, plan, aerial photograph or by other means, whichever most clearly conveys the required information. It is the responsibility of the applicant to submit the information in a clear and readable format that allows for determination of whether the requirements have been met.

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Section 30-4.21. Criteria for review.

Every development plan or amendment to any previously approved development plan shall be evaluated based upon the competent and substantial evidence presented to the reviewer related to the following criteria:

- A. Whether the plan meets submittal requirements of the land development code, including payment of fees, and complies with submittal schedules to provide adequate notice and review; and
- B. Whether the proposed development is consistent with the comprehensive plan and complies with the comprehensive plan, the land development code and other applicable regulations.

Section 30-4.22. Technical review committee review.

When an application is received by the city, a copy of the application shall be sent to each member of the technical review committee, who shall review the application and:

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- A. Determine that the application is incomplete and return the application to the applicant with a general description of the deficiencies; or
- B. Determine that the application is complete.

If the application is determined to be complete, the plan shall be placed on a committee agenda. Each committee member shall submit written comments as to the proposed development's consistency with the comprehensive plan and compliance with the city code and other applicable city requirements. After the committee meets to consider the plan and comments, the city manager or designee shall issue a written report, that includes the members written comments and sets forth findings and conclusions supporting its final decision (if a rapid or minor development) or its recommendation to the reviewing board (if an intermediate or major development). Each written report to the reviewing board shall recommend the board either: (1) issue a preliminary development order, or (2) deny a preliminary development order based upon a determination that the proposed development, even with reasonable modifications and conditions, does not meet the criteria set forth in section 30-158.

Section 30-4.23. Board review.

- A. Public hearing. Upon issuance of the written staff report, the development plan shall be scheduled for public hearing. Notice of the scheduled public hearing shall be given in accordance with the code and other applicable law. The reviewing board shall conduct a quasi-judicial hearing on the preliminary development plan to determine whether the plan satisfies the criteria for review set forth in section 30-158. At the hearing, the reviewing board shall:
 - 1. Find that all requirements have been met and issue a preliminary development order;
 - 2. Find that all requirements can be met with specified modifications and conditions and issue a preliminary development order;
 - 3. Deny a preliminary development order because the plan as presented fails to meet the requirements set forth in section 30-158; or
 - 4. With the consent of the applicant, continue the hearing to allow for further information or analysis to be provided, as deemed necessary by the board.
- B. Preliminary development orders.
 - 1. Mandatory requirements. A preliminary development order shall contain the following:
 - a. An approved development plan, with a listing of conditions and modifications, if required, in order for a final development order to be issued. The modifications shall be described in sufficient detail and exactness to inform the applicant to amend the plan accordingly. However, the failure to list all requirements of this chapter and other regulations of the city shall not relieve the applicant from complying with such requirements and regulations at the time of issuance of a final development order.
 - b. Notice that the preliminary development order does not constitute a final development order and that subsequently adopted ordinances, regulations and laws may require additional amendments to the proposal.
 - c. An initial determination of concurrency.
 - 2. A preliminary development order shall be effective for **6 months** from the date of board approval. During this **6 month** period, the applicant shall obtain final development approval. At the request of the applicant and for good cause shown, the reviewing board, at a public hearing, may extend the period for obtaining final development plan approval for a period of up to **twelve months** from the date of the public hearing at which the preliminary development order was issued.

Article IV. Development Review - Authority and Procedures**Section 30-4.24. Final Staff Review.**

- A. Rapid review. A rapid review development plan shall be submitted as part of a building permit application and reviewed by one or more members of the technical review committee. Each reviewing member shall approve the plans as submitted or provide a written explanation of the revisions necessary for the development to comply with code requirements. The plans shall be revised as necessary to comply with the requirements and resubmitted. Approval by the members of the technical review committee that reviewed the plan and issuance of a building permit shall be considered issuance of a final development order for the rapid review plan.
- B. Final development order for minor, intermediate and major review.
1. The applicant shall file multiple signed and sealed sets of the development plan as necessary to facilitate the review process. These plans shall be submitted prior to expiration of the preliminary development order. Upon receipt of a development plan submitted for final review, the city manager or designee shall:
 - a. Determine that the plan is incomplete and return the application to the applicant with a general description of the deficiencies; or
 - b. Determine that the plan is complete.
 2. Upon being determined complete, a copy of the development plan shall be sent to the appropriate members of the technical review committee and the plan shall be placed on a committee agenda. After the committee meeting, the city manager or designee shall:
 - a. Find that all requirements have been met and issue a final development order;
 - b. Inform the applicant in writing of the changes necessary for the development to comply with the conditions and requirements imposed by the preliminary development order, the code and the comprehensive plan; or
 - c. Find that the plan as submitted fails to meet the requirements and not issue a final development order.
 3. Contents of final development orders. A final development order shall contain the following:
 - a. An approved development plan, with a listing of conditions and modifications, if required, in order for a final development order to be issued. The modifications shall be described in sufficient detail and exactness to inform the applicant to amend the plan accordingly. However, the failure to list all requirements of this chapter and regulations of the city shall not relieve the applicant from complying with such requirements and regulations at the time of issuance of a final development order.
 - b. A certificate of final concurrency.
 - c. The expiration date for the final development order. A final development order shall remain valid only if development commences and continues pursuant to an active building permit to completion with due diligence and in good faith according to the terms and conditions of approval.
 4. A final development order shall be effective for a period of **one year** unless otherwise specified in the order.

Section 30-4.25. Amendments to approved development plans.

After a final development order has been issued, it shall be unlawful to change, modify, alter or otherwise deviate from the terms or conditions of the order without first obtaining an amendment to the approved development order. Amendment of the development plan shall be made in accordance with the process for development review, based upon the levels of review set forth in section 30-155.

Article IV. Development Review - Authority and Procedures**Section 30-4.26. Master plans.**

- A. Master plan review. Master plan review is an optional step for projects that fall within the intermediate or major level of development review. A master plan is intended to provide for large area planning for phased developments. The master plan is reviewed by the technical review committee, is publicly noticed in accordance with this chapter, and is reviewed and a decision rendered at a public hearing by the appropriate reviewing board. The board may approve (with or without conditions) or deny the master plan. Approval shall constitute a preliminary development order. Individual phases or portions of the project must be consistent with the approved master plan. The intent of the master plan is to identify internal and external connectivity, regulated natural and archeological resources, and developable areas. A master plan is intended to serve as a basis for review of future development plans in a phased development. A master plan shall contain justification of any requested phasing schedule.
- B. Approval of master plan. A master plan for an entire development site shall demonstrate that the completed development will be consistent with this chapter and with the comprehensive plan. Each phase shall include a proportionate share of any required recreational and open space, and other site and building amenities of the entire development, except that more than a proportionate share of the total amenities may be included in the earlier phases with corresponding reductions in the later phases. A certificate of preliminary and final concurrency shall be required for each phase. A revised master plan must be submitted with any development plan that includes deviations from the previously approved master plan

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- C. Expiration of master plan. A master plan shall be effective for **5 years** from the date of approval.
- D. Criteria for review of master plan. A master plan shall be reviewed in accordance with the criteria set forth in **Section 30-4.21** for development plan review.

Section 30-4.27. Concept review process.

Concept review is optional for all intermediate and major development. Concept review is intended for the applicant to receive public input and city comments on a concept for development prior to the preparation of detailed plans and data and to alert an applicant to issues with, or objections to, a particular proposed development. Concept plans should address conformity with the comprehensive plan, zoning standards, site design, environmental concerns, concurrency and transportation issues. The concept plan is reviewed by the technical review committee and by the appropriate reviewing board. Comments made by the technical review committee and the reviewing board during concept review are made solely for informational purposes and shall not be construed as an approval or denial or agreement to approve or deny a development order. The reviewing board shall issue no order, finding or other indication of approval or disapproval of the proposal.

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DIVISION 4. HEARINGS [LD19]**Section 30-4.28. Quasi-judicial proceedings**

A quasi-judicial proceeding shall conform to the following procedures, as required by law. Development orders that are quasi-judicial in nature, including, but not limited to, the consideration of development plans, subdivision plats, street vacations, special use permits, certificates of appropriateness and variances (hereinafter "development orders") shall be considered quasi-judicial proceedings.

- A. Burden and nature of proof. The burden of proof shall be as required by law.

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- B. Rules of procedure. The appropriate board shall by rule or by-laws adopt procedures for the conduct of quasi-judicial proceedings. These procedural rules shall be subject to review and approval of the city commission.
- C. Record. The record of the quasi-judicial proceeding shall contain the following:
 - 1. The reports and recommendations of the city's departments or other regulatory agencies;
 - 2. The reports and recommendations of the appropriate governmental reviewing boards.
 - 3. Physical evidence and exhibits admitted into evidence at the quasi-judicial proceeding; and
 - 4. Such other documentation and competent substantial evidence including testimony deemed appropriate by the reviewing body at the quasi-judicial proceeding.

Section 30-4.29. Legislative matters.

Any comprehensive rezoning of the city, change in land use, text amendment to the comprehensive plan or this chapter or any other matter deemed legislative in nature shall be considered a legislative matter. A change in land use shall not include small scale development activities as defined in F.S. Ch. 163. Each legislative hearing shall conform to the following requirements:

- A. Notice. Notice that complies with the requirements of state law shall be given as otherwise prescribed in this chapter.
- B. Conduct of hearing. The public hearing shall at a minimum:
 - 1. Comply with the requirements of state law.
 - 2. Present the department's analysis of the proposed decision.
 - 3. Present the department's summary of reports by other agencies.
 - 4. Permit any person to submit documents before or during the hearing, as provided by rule or order.
 - 5. Permit a reasonable opportunity for interested persons to make oral statements, as provided by rule or order.

Section 30-4.30. Neighborhood workshop.

- A. Purpose and intent. It is not the purpose of the citizen participation process to produce complete consensus on all applications, but to encourage applicants to be good neighbors and to allow for informed decision making. The purpose of the neighborhood workshop is to:
 - 1. Ensure that applicants pursue early and effective citizen participation in conjunction with their applications, giving the applicants the opportunity to understand and try to mitigate any real or perceived impacts their applications may have on the community;
 - 2. Ensure that citizens and property owners have an adequate opportunity to learn about applications that may affect them and to work with the applicant to resolve concerns at an early stage of the process; and
 - 3. Facilitate ongoing communication among the applicant, interested citizens and property owners, and city staff throughout the application review process.
- B. Applicability. Every development review application that requires a public hearing for the approval of a development plan, subdivision, rezoning, special use permit or change to the future land use map also requires that public participation be obtained at a neighborhood workshop. The following development applications are exempt from the requirements of this section:

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1. City-initiated comprehensive plan amendments (as described in F.S. ch. 163) to the future land use map of the city's comprehensive plan that change the future land use from Alachua County to City of Gainesville categories for annexed properties;
 2. City-initiated amendments to the zoning map that change the zoning from Alachua County to City of Gainesville districts for annexed properties;
 3. Special use permits for minor decorative functional or safety improvements to legal nonconforming uses, per **section 30-3.9.A**.
 4. Development plan approvals for nonresidential projects of 10,000 square feet or less of floor area when not located adjacent to or across the street from property designated for single family residential use on the future land use map;
 5. Development plan approvals for residential projects of ten units or less;
 6. Environmental remediation or safety improvements required by local, state and federal agencies;
 7. All text changes to the Comprehensive Plan or Land Development Code.
- C. Except for development applications that are exempt from the requirements of this section, every application that requires a public hearing for a development plan, subdivision, rezoning, special use permit or change to the future land use map shall include a written record of the citizen participation process.
- D. Workshop requirements.
1. The applicant must provide the opportunity for a workshop to inform neighboring property owners of the proposed application. The workshop must be held in a location generally near the subject property and must be held in a facility that is ADA compliant. The applicant must provide notification by mail to all owners of property located within 400 feet of the subject property and to all neighborhood associations registered with the city and located within ½-mile of the property. The city manager or designee shall provide mailing labels to the applicant. The applicant must mail these notices with proper postage at least **14 days** before the workshop. The applicant must also advertise the workshop in a newspaper of general circulation at least **14 days** before the date of the workshop.
 2. The workshop must start between 6:00 p.m. and 8:00 p.m. on a weekday or between 9:00 a.m. and 5:00 p.m. on a weekend. All required workshops must be held prior to submittal of the application. The applicant shall be required to schedule an additional workshop if the initial workshop has occurred more than **6 months** prior to submittal of the application.

Section 30-4.31. Hearing notification requirements.

- A. The hearing notifications listed in **Table IV - 3** shall be required prior to all public hearings.
- B. Unless otherwise provided by law, notice of a hearing pursuant to this division shall be provided in the legal notice section of a newspaper of general circulation in Alachua County.
- C. Unless otherwise provided by law, addresses for a mailed notice required by this chapter shall be obtained from the latest ad valorem tax records provided by the county property appraiser. The failure of any person to receive notice shall not invalidate an action if a good faith attempt was made to comply with the notice requirements of this article.
- D. The property under consideration for a land use or zoning map change, special use permit, street vacation or development plan review shall also have a sign posted at least **15 days** prior to the hearing date. The sign, which shall be posted by the property owner in accordance with procedures established by the City, shall specify that the property is under consideration for review and specify the time, date and place of the public hearing.

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E. A request by the petitioner to continue a public hearing shall require the petitioner to incur renotification and readvertising costs.

Table IV - 3: Hearing notification requirements

APPLICATION TYPE	APPLICANT	NEWSPAPER AD	MAIL NOTICE
COMPREHENSIVE PLAN			
Expedited (text change to GOPs; >10 acres; or >120 acres cumulative in one year)	Private or City	7 days prior to first hearing; 5 days prior to second hearing.	
Small Scale (text changes related to small scale map amendments; <10 acres; <120 acres cumulative in one year)	Private or City	5 days prior to hearing.	
ZONING AND LDC			
Zoning map designation	Private	At least 10 days prior to adoption	NA
List of permitted, conditional, or prohibited uses within a zoning category	Private or City	7 days prior to first hearing; 5 days prior to second hearing.	In lieu of newspaper advertisement, mail notice to each person owning real property within the area covered by the ordinance.
Zoning map designation involving less than 10 contiguous acres	City	NA	Mail notice to each person owning real property within the area covered by the ordinance at least 30 days prior to hearing
Zoning map designation involving 10 contiguous acres or more	City	7 days prior to first hearing; 5 days prior to second hearing (include location map).	In lieu of newspaper advertisement, mail notice to each property owner whose land the municipality will redesignate.
SPECIAL USE PERMIT	Private		Mail notice at least 10 days before the date of the hearing to all owners of property within 400 feet of the property for which a special use permit has been requested.

NOTE TO STAFF: WE PROPOSE USING THE TABLE ABOVE (EXTRACTED FROM FLORIDA STATUTES AND SOME FROM THE LDC) AND DELETING THE FOLLOWING]

[[LDI10]

DIVISION 5. ZONING COMPLIANCE PERMITS

Section 30-4.32. Required.

Except as otherwise specifically provided in this chapter, it shall be unlawful to conduct any of the following activities until the city manager or his/her designee has issued a zoning compliance permit certifying that such activity complies with the applicable provisions of this chapter.

- A. Begin a new business or use, or an addition to an existing business or use.
- B. Make a change of use, as the term is defined in **article II** of this chapter, of any land or structure, or to extend any use or any lot on which exists a nonconforming use.

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- C. Establish any business, profession or occupation, or to change the location of a business, profession or occupation which is subject to a business tax as provided for in sections 25-41 through 25-43 of the Code of Ordinances.

Section 30-4.33. Procedures.

- A. Application submittal. Applications for a zoning compliance permit shall be submitted per Section 30-4.20.A.
- B. Staff review. Upon receipt of a completed application, the city manager or designee shall direct staff to review the application to determine compliance with the applicable provisions of this chapter. Final action shall be based on findings as to compliance with all applicable provisions of this chapter and shall be one of the following;
1. Approval;
 2. Approval subject to conditions; or
 3. Denial.
- C. Actions subsequent to decision. In the case of approval or approval with conditions, the city manager or designee shall issue the zoning compliance permit. In the case of denial of an application, the applicant shall be notified as soon as possible, in writing, of the reasons for such denial.

Section 30-4.34. Expiration.

If the use, construction or activity authorized by approval of an application for a zoning compliance permit is not commenced within six months of the date of issuance of the zoning compliance permit, or within such further time stipulated in such permit, the zoning compliance permit shall automatically expire. Any other approval, grant, certificate, building permit or special permit issued or granted by the city plan board, development review board, city commission, city manager, building official or other official pursuant to or in conjunction with the zoning compliance permit shall become null and void unless any required work thereon is substantially underway or lawful use has begun within six months after the effective date of the issuance of such approval, certificate, grant, building permit or special permit, unless otherwise provided in this chapter. The city manager or designee shall determine whether the use, construction or activity is substantially underway or has begun upon review of substantial competent evidence.

Section 30-4.35. Revocation.

If any conditions of a zoning compliance permit or other requirements of this chapter applicable to the permit are violated, the city manager or designee may revoke the zoning compliance permit after reasonable notice has been given to the permit holder. The city manager or designee may reinstate a revoked zoning compliance permit if he/she determines that:

- A. The holder of a revoked zoning compliance permit submitted a request for reinstatement within 90 days of the revocation;
- B. The violations that were the cause of the revocation have been corrected; and
- C. The development fully complies with all conditions of the zoning compliance permit and all applicable requirements of this chapter.

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Section 30-4.36. Reserved.

Section 30-4.37. Reserved.**DIVISION 6. SUBDIVISIONS AND STREET VACATION**

(126) Cross reference— Buildings and building regulations, Ch. 6; housing, Ch. 13; parks and recreation, Ch. 18; streets, sidewalks and other public places, Ch. 23; utilities, Ch. 27.

Section 30-4.38. Purpose and intent.

This article is intended to provide direction and standards for the division of land in a manner that would facilitate the coordination of land development in accordance with orderly physical patterns; to encourage development of an economically stable and healthful community; to ensure proper identification, monumentation and recording of real estate boundaries; to ensure that adequate and necessary physical improvements of lasting quality will be installed in subdivisions by the subdividers and that taxpayers will not bear this cost; to provide for safe and convenient vehicle, bicycle, pedestrian and transit access; to provide an efficient, adequate and economic supply of utilities and services to new land developments; to prevent periodic or seasonal flooding and to protect groundwater and surface water quality through provision of protective flood control and stormwater management facilities; to help conserve and protect physical and scenic resources; to sustain and replenish the urban forest; to promote the public health, safety, comfort, convenience and general welfare; and to implement the city's comprehensive plan.

Section 30-4.39. Single lot replatting.

- A. Purpose and intent. The purpose of this section is to establish an abbreviated process by which existing (improved) subdivision lots may be replatted without going through the standard process of platting or replatting subdivisions.
- B. When a lot may be replatted. Individual lots shown on recorded plats that depict easements or front, side, or rear building setback lines may be replatted under this section. The lot must be improved (building or structure) and there must be an encroachment upon one or more of the building setback lines or easements indicated on the recorded plat.
- C. Single lot replatting process:
 - 1. Application submittal. The application plus all supporting documents must be submitted to the department of planning and development services in accordance with [Section 30-4.20.A](#). The planning and development services department shall then transmit a copy of the replat materials to the appropriate departments of the city for review and comment.
 - 2. Staff review. The city departments shall review the application and submit a recommendation to the city commission.
 - 3. City commission review. The city commission shall review the application for conformance with applicable laws and ordinances. If found in compliance, the city commission shall approve the replat in the form of a resolution.
 - 4. Recording the plat. Upon the adoption of the resolution by the city commission, the original linen or stable base film drawing of the replat shall be recorded with the clerk of the circuit court. It shall be recorded by the property owner requesting replat with all fees paid by that owner. Upon recording the replat, three signed and sealed linens and three signed and sealed paper print copies shall be submitted to the planning and development services department for its records.

Article IV. Development Review - Authority and Procedures**Section 30-4.40. Lot splits and lot line adjustments.**

A. Lot split procedures.

1. Pre-application conference. Prior to filing an application for a lot split the applicant must schedule a pre-application conference with staff.
2. Application submittal. After the pre-application conference, the applicant shall submit a complete application on a form provided by the planning and development services department and accompanied by the applicable fee and plans.
3. Staff review. Upon receipt of a complete application, the planning and development services department shall then transmit a copy of the proposed lot split to the several departments of the city for review and comments. The planning and development services department shall process only those lot splits which do not require any street, sidewalk, bikeway, bridge, drainage facility, screening wall or any other improvement required under this chapter. If the proposed lot split meets the conditions of this section and otherwise complies with all applicable laws and ordinances, the director of planning and development services or designee shall approve the lot split by affixing his/her signature to the application form.
4. Recording the lot split. Upon approval of the lot split, the planning and development services department shall record the split on the appropriate maps and documents in the department. In addition, lot splits shall be filed with the Alachua County Property Appraiser's office and in the public records of Alachua County.

B. Lot split restrictions.

1. Lot splits are not permitted in minor subdivisions approved in accordance with the provisions of this chapter.
2. No further division of an approved lot split is permitted, unless a minor subdivision or record plat is prepared and submitted in accordance with this chapter.

C. Lot split review criteria. The lot split shall conform to the following standards:

1. Each proposed lot must conform to the provisions of this chapter.
2. Each lot shall front a public street or approved private street for the required minimum lot width for the zoning district/category where the lots are located, except as provided in Article VII.

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3. A lot split shall be allowed only where water, sewer, fire and solid waste services are available to service the proposed lots. Alternatively, in the event city water or sewer is not available at any lot line, the lot may be served by a well or septic tank; provided the lot is a minimum size of one acre and the well or septic tank is permitted and approved by the governmental agencies with jurisdiction. Based on the review by the governmental permitting agencies, a well or septic tank may not be allowed within the wellfield districts, special environmental concern areas or areas with the presence of hazardous materials or known environmental contamination, due to health and safety concerns. Further, at the time city water or sewer become available at the lot line, the property owner shall, at its sole expense, connect to city water or sewer. This connection requirement shall run with the land and shall be evidenced in a written document executed by the property owner and recorded in the public records of Alachua County, Florida, at the time of approval of the lot split. In the case of a vacant lot, the connection shall be required at the time of application for development. In the case of existing development (other than single-family or two-family), the connection shall be required at the time of application for development plan review at the minor review level or higher. In the case of single-family or two-family development, the connection shall be required at the time of application for a permit for an additional bathroom or for any structure equal to or greater than 25 percent of the square footage of the existing principal structure.

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- D. Lot line adjustment. The lot lines of lots within an existing minor subdivision or existing lot split may be altered in accordance with the following requirements:
1. An application for a lot line adjustment, signed by the owners of all lots that will be adjusted, shall be filed with the planning and development services department, and shall include a surveyor's affidavit prepared by a professional land surveyor registered in the state that describes and depicts the adjustment in the lot line(s) and references the filing or recording information for the minor subdivision or lot split.
 2. The applicant shall pay the same fee as for a lot split as specified in **Appendix A** to this Code.
 3. The application shall be reviewed by city staff to verify that the requested adjustment, if approved, will not create any nonconformity or violations of this code. If same are created, the application shall be denied.
 4. The lot line adjustment, if approved by city staff, shall not be effective until the applicant records the surveyor's affidavit in the public records of Alachua County.
 5. A lot line adjustment shall only be used to adjust the lot line(s) of existing lots which were created by minor subdivision or lot split or acreage which was legally established or accepted as legal through annexation or other process and shall not be used to further subdivide existing lots or create new lots.

Section 30-4.41. Minor subdivision platting.

- A. Minor subdivisions procedures. Every minor subdivision shall be processed in the following manner:
1. Pre-application conference. Prior to filing an application for a minor subdivision the applicant must schedule a pre-application conference meeting with the city's technical review committee.
 2. Application submittal. After the pre-application conference, the applicant shall submit a complete application on a form provided by the planning and development services department and accompanied by the applicable fee and plans
 3. Staff review. Upon receipt of a complete application, the planning and development services department shall then transmit a copy of the proposed minor subdivision to the several departments of the city for review and comment on both the subdivision and the road construction plans, if any new streets are proposed. Minor subdivisions that include any street, sidewalk, bikeway, bridge, drainage facility, screening wall or any other improvement required under this chapter may receive conditional approval but will not receive final approval or be filed with the clerk of the circuit court until all required improvements are fully constructed and approved by the city. No building permits may be issued for any of the lots until final approval is granted and the minor subdivision is filed. If the proposed minor subdivision meets the conditions of this section and otherwise complies with all applicable laws and ordinances, the technical review committee shall forward the minor subdivision plat to the City Commission for final approval and signature prior to recording.
 4. Filing. Upon approval of the minor subdivision, the original linen or stable base film drawing of the survey and any covenants, deed restrictions or other required documents shall be filed with the clerk of the circuit court as an unrecorded map, in accordance with F.S. § 177.132. It shall be filed by the subdivider with all fees paid by the subdivider. Upon filing of the approved minor subdivision, a copy of any required documents, two linen or mylar copies, and four paper copies of the filed minor subdivisions shall be submitted to the planning and development services department for its records.
- B. Review criteria. The minor subdivision shall conform to the following standards:
1. Each proposed lot must conform to the provisions of this chapter.
 2. All existing principal and accessory structures on each lot must conform to the use and development standards of this Code.

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3. All lots shall have city water and sewer services available and constructed to the lot line of at least one lot, with appropriate easements granted to allow future water and sewer connections to each of the lots at the time each lot is developed.

[(LD113)]

[(LD114)]

[(LD115)]

[(LD116)]

Section 30-4.42. Subdivision review procedures.

To effectuate the purpose and intent of this article, the subdivision of land (other than lot split or minor subdivision) within the city shall be made in accordance with the requirements specified in this **section**. Proposed subdivisions must meet the level of service standards adopted in the comprehensive plan. Proof of meeting these standards shall exist in the form of a certificate of concurrency exemption, certificate of preliminary or final concurrency (as applicable at the particular review stage), or certificate of conditional concurrency reservation.

A. Pre-application conference.

Prior to the preparation of a design plat, the subdivider shall attend a pre-application meeting with city staff to become familiar with the subdivision requirements, city policies and provisions of the comprehensive plan. The subdivider is encouraged to bring plans and data specified in subsection (c) so as to clearly show existing conditions of the site and its vicinity and the proposed layout of the subdivision. It is intended that the procedure will assist the subdivider in preparing a plat which will meet the requirements of this article. This procedure does not require a formal application or fee.

B. Concept review (optional).

The applicant may request a subdivision concept review by city staff. As far as may be practicable on the basis of a sketch, the reviewer will, without prejudice to the city, advise the subdivider of the extent to which the proposed subdivision conforms to the standards of this chapter and other applicable ordinances or statutes, and will discuss possible plat modifications necessary to secure compliance and whether a traffic study will be required.

C. Preliminary plat review.

1. Application. The subdivider shall submit an application and the appropriate plans and filing fee to the planning and development services department, on such form as provided by the department. The application must include proof of meeting the level of service standards adopted in the comprehensive plan in the form of a certificate of concurrency exemption, certificate of preliminary concurrency or certificate of conditional concurrency reservation.
2. Developments of regional impact. For any subdivision which is presumed to be a development of regional impact as provided in **F.S. Ch. 380 and Chapter 27F, Florida Administrative Code**, additional copies of the design plat and a completed application for development approval shall be submitted for filing with the regional planning agency and the state land planning agency.

[(LD117)]

3. Staff review.

- a. Prints of the preliminary plat shall be referred by the planning and development services department to the technical review committee and other applicable departments and agencies for review and findings.

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The officials involved shall report their findings and recommendations to the planning and development services department.

- b. The director of public works or designee shall examine and check the preliminary plat to determine if the application conforms to criteria for general engineering, traffic stormwater management, flood plains and maintenance easement requirements.
 - c. The general manager for utilities or designee shall examine and check the preliminary plat for needed utility easements.
 - d. The planning and development services department shall submit to the development review board and city commission the report with the recommendations of the agencies mentioned above and county, state and federal agencies, together with an analysis of the conformance and nonconformance of the preliminary plat to the provisions of this chapter and other applicable requirements.
4. Neighborhood workshop. The applicant shall hold a public workshop per **Section 30-4.30**.
5. Development review board review of preliminary plat. The development review board review shall include consideration of staff findings and evidence and testimony from the general public. The board shall determine if the proposed subdivision is in conformity with the general goals and objectives of the city with respect to the officially adopted comprehensive plan; the city's official roadway map; existing zoning requirements, including amendments thereto; policies and plans established by the city with respect to neighborhoods, lake levels, water supply, maintenance of the tree canopy levels identified in the comprehensive plan, control of invasive non-native plant species, protecting environmental features, provision for emergency access, consideration of pedestrian, bicycle and transit access and greenway connections, waste disposal and other essential utilities; the overall stormwater management plan including landscaping of stormwater management basins; and policies for development in any special improvement and redevelopment districts. Particular attention shall be given to the arrangement, location and width of streets, the provision of high quality shade trees along the streets, their relation to the topography of the land, water supply, sewage disposal, stormwater management, lot sizes and arrangement and the present or future development of abutting property.

The board may approve the preliminary plat as presented if found to be in compliance, require modifications, or deny the plat. Approval of the preliminary plat, subject to conditions, revisions and modifications as stipulated by the board, shall constitute conditional board approval of the subdivision as to the character and intensity of development and the general layout and approximate dimensions of streets, lots and other proposed features. If the preliminary plat is denied, the development review board shall indicate the reasons therefor.

6. City commission review. Within **60 days** after development review board approval, the subdivider shall file with the planning and development services department at least three copies of the approved preliminary plat, including the modifications, if any, imposed by the development review board. Should the plat not be so filed within that period, no preliminary development order shall be issued unless an extension of time is requested in writing prior to the expiration of that period and is granted by the city commission. In granting an extension, the city commission may attach such other restrictions or conditions as the commission deems appropriate to serve the public interest. In the case of residential subdivisions, the city commission may vote to grant extensions for preliminary plat review of up to **six months** only and only if the subdivider possesses a valid, unexpired certificate of concurrency exemption, certificate of preliminary concurrency or certificate of conditional concurrency reservation, as appropriate. Further extensions for city commission review of preliminary plats for residential subdivisions shall require a new concurrency review.

The city commission shall review the recommended preliminary plat and consider findings made by the development review board and staff. The city commission shall determine if the proposed subdivision is in conformity with the general goals and objectives of the city with respect to the officially adopted

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comprehensive plan; existing zoning requirements, including all amendments thereto; policies and plans established by the city with respect to neighborhoods, lake levels, water supply, sustaining the urban forest, protecting environmental features, provision for emergency access, consideration of pedestrian, bicycle, vehicle and transit access and greenway connections, waste disposal and other essential utilities; the overall stormwater management plan; and policies for development in any special improvement and redevelopment districts. Particular attention shall be given to the arrangement, location, function and width of streets, their consistency with the goal of developing a multimodal transportation network and providing sufficient space for street trees both above and below ground, their interaction with the overall transportation system and relation to the topography of the land, water supply, sewage disposal, stormwater management, lot sizes and arrangement and the present or future development of abutting property.

The commission may approve the preliminary plat as presented if found to be in compliance, require modifications, or deny the preliminary plat if it is not in compliance. If disapproved, the preliminary plat must be redesigned before resubmission for approval.

7. Effect of approval. Approval of the preliminary plat by the city commission is a preliminary development order. It shall not constitute acceptance of a final plat but shall be deemed an expression of approval of the layout submitted as a guide to the preparation of the final plat.
8. Expiration. The preliminary development order shall expire and be of no further effect **12 months** from the date of approval unless a final plat is filed for approval or the time is extended with appropriate conditions by the city commission prior to expiration; otherwise, the subdivider must reapply for design plat approval in accordance with the provisions of this chapter. In the case of residential subdivisions, the city commission may vote to grant extensions of up to **six months** only, and only if all the concurrency management requirements of this chapter can be met and if the extension would not be in conflict with any other ordinance of the city. The approval of nonresidential subdivisions in no way reserves capacity for the purposes of concurrency.

D. Construction plans approval.

1. Preparation. Following the city commission approval of the preliminary plat, the subdivider shall submit construction plans and specifications for all subdivision improvements required, in accordance with this article. The construction plans must be prepared, by an engineer registered in the state, in conformance with **Section 30-4.44** of this article, the design manual on file in the public works department, and other applicable local, state and federal regulations.
2. Application submittal. The subdivider shall submit multiple sets of plans as necessary to facilitate review by the City. The plans shall be submitted to the planning division during a regular review cycle for development review.
3. Staff review. The construction plans shall be reviewed by Gainesville Regional Utilities and the city public works department, planning and development services department, the building department, and/or other department to be determined by the planning division.

Following their reviews, if the construction plans are consistent with the approved preliminary plat and comply with all standards and specifications, public works department and Gainesville Regional Utilities shall notify the subdivider and the planning division within the planning and development services department of construction plan approval. If the construction plans are not consistent with the preliminary plat as approved by the city commission or do not comply with all standards and specifications, the public works department and Gainesville Regional Utilities shall notify the subdivider of:

- a. Conditional construction plan approval, subject to any necessary modifications which shall be indicated on the plans or attached to them in writing; or

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- b. Denial of the construction plans or any portion thereof, indicating in writing the reasons for the disapproval. The subdivider shall be responsible for timely resubmittal of acceptable plans within **12 months** from the date of approval of the preliminary development order.
4. Required maps and drawings. Plans for the proposed improvements and a boundary survey shall be required to be approved by the planning and development services department, parks, recreation and cultural affairs department, public works department and Gainesville Regional Utilities prior to approval of the final plat by the city commission. The final plat shall be recorded in the public records unless the subdivider has complied in all respects with **Section 30-4.43.E**. The improvement plans shall show the proposed locations, sizes, types, grades and general design features of each facility, and shall be based upon reliable field data. These drawings shall include, at a minimum, a topographic map, stormwater management plan, a landscape plan, an invasive exotic plant control plan, and construction drawings showing street profiles, street cross sections and water supply, sewer and stormwater management as specified by the public works department and Gainesville Regional Utilities and all champion and heritage trees identified for preservation or removal, with protective barricades drawn to scale. The landscape plan shall show all buffers and stormwater management areas as well as the locations and specifications for street trees.

E. Final plat review.

1. Application submittal. After the preliminary plat of a proposed subdivision has been approved by the city commission, the subdivider has **12 months** or such additional time as may be granted by the city commission to submit a final plat. The final plat application and other required information must be submitted in correct form to the planning and development services department at least **25 working days** (to allow for advertising) prior to the meeting of the city commission at which the plat will be considered. Failure to submit plat. Failure to submit the final plat as provided above to the city commission within the time limit prescribed shall void design plat approval and require a new hearing on the preliminary plat.
2. Staff review. Prior to final plat approval, city staff and the city attorney's office shall review the proposed plat and supporting documents. If the final plat is consistent with the design plat as approved by the city commission, meets all requirements of this chapter, and otherwise complies with all applicable laws and ordinances, it shall be forwarded to the city commission for final consideration.
3. City commission review. The city commission shall review the final plat for consistency with the approved preliminary plat and applicable laws and ordinances. Upon approval by the commission, the final plat shall bear certification of the approval by the clerk of the city commission.
4. Recording. Upon approval of the final plat by the city commission the original linen or stable base film tracing of the final plat, any required covenants or deed restrictions, and the declaration of condominium if the subdivision is a condominium development, shall be recorded with the clerk of the circuit court by the subdivider with all recording fees paid by the subdivider within **15 business days** after the final plat has been returned to the subdivider by city staff. Recording the approved final plat shall constitute a final development order. Upon recording the approved final plat, three Mylar copies of the recorded plat and three paper copies of the recorded plat signed and sealed by the clerk of the circuit court shall be presented to the planning division of the planning and development services department within **15 business days** of recording.

Section 30-4.43. Security for construction and maintenance of public improvements.

- A. Bond required. Except as otherwise provided herein, no final plat of any subdivision shall be approved by the city unless a surety bond shall be filed with the city executed by a surety company authorized to do business in the state with a rating of not lower or less than A-XII as rated by A.M. Best Company, Inc., an independent national rating service for surety companies, which bond shall be conditioned to secure the construction and completion of the improvements required under the ordinances of the city in a satisfactory manner within **12**

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months from final plat approval and any extension of such period approved by the city commission. The surety bond shall be enforceable by and payable to the city in a sum at least equal to 120 percent of the total cost of the required improvements provided in the subdivision as estimated by the subdivider's engineer and verified and approved by the director of public works.

- B. Form of surety bond. The surety bond shall be first approved by the city attorney as to form and legality prior to its submission with the proposed final plat to the city commission for approval and shall be executed by both the subdivider and the party or parties with whom the subdivider has contracted to perform the work and construct the improvements.
- C. Alternative to construction bond. In lieu of the required surety bond, the subdivider may:
1. Place a cash deposit with the city in the same amount that would be required for the surety bond, which cash shall be deposited with the director of management and budget of the city and held by him/her under the same conditions as are provided for in the surety bond. Such deposit will be held for the developer and, in the event of any nonperformance by the developer as required by the ordinances of the city, will be used by the city to complete the required improvements. During construction, upon the request of the subdivider, and upon inspection and approval of construction and costs thereof by the city, the city shall refund to the subdivider an amount equal to the approved costs for such improvements, provided, however, at no time shall the balance of the cash deposit with the city be reduced to less than 30 percent of the estimated costs of the subdivision improvements until all the subdivision improvements are completed and so certified to by the city.
 2. Deposit with the city and place with the city manager an irrevocable and unconditional letter of credit by a Florida bank. The letter of credit shall be for an amount equal to 120 percent of the estimated costs of the required subdivision improvements. The letter of credit shall remain with the city as a valid letter of credit until the city is satisfied that all construction of required subdivision improvements has been completed in accordance with plans and specifications and that all other provisions of this chapter relating thereto have been fully complied with.
 3. Deposit with the city a construction loan agreement in the amount of at least 120 percent of the estimated cost of the required subdivision improvements, which agreement shall be entered into by a recognized lending institution with the subdivider for the benefit of and satisfactory to the city, providing that:
 - a. The lending institution will make payments on the proceeds of the loan to the city if the subdivision improvements are not completed and approved by the city within the time required;
 - b. No payments of proceeds of the portion of the loan reserved for improvements shall be made to anyone until the city has approved the payment, which approval will be given if work is accomplished in accordance with approved plans and specifications and ordinances of the city; and
 - c. At no time will the loan proceeds be expended by that lending institution in excess of 90 percent of the estimated costs of the required subdivision improvements until all the improvements are completed and so certified to by the city.
 4. Use a combination of such a loan as provided for in **subsection C.3** of this section, a letter of credit as provided in **subsection C.2** of this section, a cash deposit as provided in **subsection C.1** of this section, or the surety bond provided for in **subsection A** in order to reach the total of 120 percent of estimated costs of required subdivision improvements.
 5. Deposit with the city a construction loan agreement in the amount of at least 100 percent of the estimated cost of the required subdivision improvements, which agreement otherwise meets the requirements of **subsection 3** above, and an unconditional guaranty from the subdivider in the amount of at least 20 percent of the estimated cost of the required subdivision improvements that meets the following requirements:

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- a. Absolutely and unconditionally, jointly and severally, guarantees to the city the full and prompt payment of the amount set forth in the guaranty that will be used by the city to complete the required improvements, and the complete performance of the subdividers of all conditions and requirements to be performed by the subdivider under the City Code;
 - b. Unconditionally, jointly and severally, agrees to pay all reasonable expenses and charges, legal fee and other fees (including attorney's fees and costs, including court costs at trial, appeal or bankruptcy proceeding) paid or incurred by the city in enforcing the unconditional guaranty;
 - c. Jointly and severally agrees to indemnify and hold harmless the city, its elected and appointed officers, employees and agents from any loss suffered or occasioned by the failure of the subdivider to satisfy its obligations to third parties arising out of the subdivision of the land;
 - d. Binds the guarantors and their successors and assigns, and inures to the benefit of the city; and
 - e. Makes such other representations and warranties requested by the city manager or designee to protect the interests of the city.
- D. Determining cost of improvements. In determining the cost of the improvements for which a construction bond or other security is required, improvements otherwise covered by a separate bond or security arrangement between the subdivider and the city and those improvements already constructed and approved by the director of public works shall not be included.
- E. Construction without bond, conditional approval.
1. In lieu of the requirements of the preceding **Section 30-4.43.A and C**, a subdivider may proceed with installation of subdivision improvement, upon acceptance and approval of a final plat by the city commission, which approval shall be conditioned upon the full completion of the subdivision improvements within **two years** and in full accordance with approved plans and specifications and the ordinances of the city. The plats shall not be recorded, but shall be retained by the clerk of the commission until the city manager shall have certified that all required improvements have been completed in accordance with approved plans and specifications and ordinances of the city and the same has been approved by the city commission. Upon certification by the city manager and upon proof by title insurance or other similar assurance to the satisfaction of the city that there are no liens or possibilities of liens on the subdivision improvements or on the property to be dedicated to the public, and that the dedicator has clear fee title thereto, the city shall approve the plat and accept the dedication of the public right-of-way easements, and other dedicated portions as previously shown on the prior approved plat as set out in this chapter, and the subdivider shall record the plat and provide copies as specified in **Section 30-4.42.E.4**.
 2. No building permits shall be issued on property within the boundaries of the subdivision plat until the plat shall have been approved and accepted by the city commission and placed on record in the public records of the county.
 3. During construction the subdivider may, upon the posting of a bond or other such security for the cost of the uncompleted improvements, have a prior conditional approval converted to final approval and acceptance provided that all other requirements and conditions of this chapter applicable to final plat acceptance have been met.
- F. Maintenance.
1. Under any arrangement for subdivision development within the city, the subdivider is obligated to the city for any necessary repair of all required improvements under the ordinances of the city for the period of **one year** following acceptance for maintenance. During the **one-year period** the subdivider must provide the city with a surety bond, cash, an unconditional irrevocable letter of credit from a Florida bank, or a construction loan agreement as referred to in **Section 30-4.43.A and C**, or a combination thereof, in an amount equal to

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15 percent of the costs of the required subdivision improvements, which may be used by the city to pay the costs of any necessary repairs and maintenance on the subdivision improvements during the **one-year period**. Interest earned on all such cash deposits with the city shall be for the account and to the credit of the person or persons making such deposit.

2. In determining the cost of the improvements for which a maintenance bond or other such security is required, improvements otherwise covered by a separate bond or security arrangement between the subdivider and the city and those improvements constructed or installed by the city shall not be included.
3. In those developments where lands and improvements remain under private common ownership, instruments relating to the use and maintenance of such areas and improvements shall be required. The city may require the establishment of an appropriate entity and the execution and recording of any appropriate legal instrument necessary to ensure the maintenance, protection and preservation of common areas designated on the plat. The title to all land and improvements that are shown on the plat as common areas, private roads, etc., shall be held and continue to be held so as to ensure their proper maintenance and care and to permit and ensure their continued use as intended in the approved plat. The instruments shall include means legally enforceable by the city, the subdivider and his/her successors to guarantee payment of such sums of money as are necessary for the maintenance; and all conveyances or transfers of any interest in any of the property of the development shall be legally encumbered of record so as to guarantee the continued use of the common areas and roads as contemplated by the plat and the guarantee of the payment of the cost of the maintenance.

Section 30-4.44. Required improvements.**A. Generally.**

1. Within **12 months** after final plat approval, the subdivider shall construct the improvements enumerated in this section in accordance with the provisions of this chapter, other applicable ordinances and statutes, and such additional standards and specifications as may be adopted from time to time by resolution of the city commission.
2. An engineer shall design the installation of all streets, sidewalks, bikeways, drainage structures, bridges, bulkheads and water and sewer facilities.

B. Monuments.

1. Permanent reference monuments (PRM's) and permanent control points (PCP's), as defined in F.S. Ch. 177, shall be placed as required by F.S. Ch. 177. PRM's shall be set in the ground so that the upper tip is flush with or no more than one foot below the finish grade.
2. All lot corners shall be designated with a permanent marker such as an iron rod, iron pipe or concrete monument.
3. The land surveyor shall, within **one year** after city commission approval of the final plat, including conditional approval if applicable, certify that the above-required monuments have been set and the dates they were set.

C. Streets. Streets shall be **designed in accordance with the following:**

1. Standards contained in the design manual that specify dimensions and construction standards for subgrade, pavement base, wearing surface and minimum pavement width for minor local streets, major local streets, minor local collectors, major local collectors, minor arterials, and major arterials.
2. Guidelines that address curb and gutter roadways, noncurb and gutter roadways, roadway widths for on-street parking, and the location of sidewalks.

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3. Street trees shall be planted along the sides of all streets within the subdivision and on the subdivision side of any contiguous street, meeting the requirements of Article IX.
- D. Costs of street improvements.
1. It shall be the responsibility of the subdivider to install all local and minor collector streets located within a subdivision. When a major collector or a major or minor arterial street is located within a subdivision, the subdivider shall be required to construct the street, but shall only be required to pay a portion of the construction cost, which portion shall be determined by the ratio that the estimated average daily traffic on the street generated by the subdivision lands at full development bears to the total estimated average daily traffic for the street based on full development of its entire service area. The city shall pay the remaining portion of the street construction costs, but the total dollar liability of the city shall be limited to its proportion of the estimated construction costs prepared by the subdivider and approved by the city commission prior to construction. At its option, the city commission may waive the requirement for construction of the major local collector or major or minor arterial and any associated bikeways or sidewalks, in which case the subdivider's only obligation shall be the dedication of the required right-of-way. Also at its option, when the subdivider's portion of the cost of the major local collector or major or minor arterial exceeds 50 percent, the city commission may permit the construction of a half street by the subdivider.
 2. When the average daily trips of a subdivision impact an existing minor or major arterial or major local collector street, it shall be the responsibility of the subdivider to make improvements as necessary to serve the proposed development while maintaining the operating conditions of the affected roadway. These improvements can include, but are not limited to, installation of additional lanes, signalization, associated stormwater management improvements, and the installation of associated bikeway, sidewalk and transit improvements. The city commission may determine the proportional cost of programmed improvements to be allocated to the subdivider.
- E. Sidewalks and shared use bicycle paths. Sidewalks and bicycle paths shall be installed as required in article VII and the following.
1. The installation of sidewalks shall be the responsibility of the subdivider and the sidewalks shall be installed prior to the acceptance of the improvements by the city. The subdivider may elect to postpone installation of sidewalks until such time as building permits are issued for 60 percent of the subdivision lots, up to a maximum of five years. However, security for the construction of such sidewalks, in the amount of 150 percent of the estimated costs of construction, shall be provided by one of the methods described in subsections 30-4.40.A and C. In subdivisions, sidewalks along streets fronting common areas such as stormwater basins, entrance streets, or open space must be installed within 12 months of final plat approval (acceptance of improvements by the city), and are not eligible for the above-described postponement provisions.
 2. The city manager or designee may grant a waiver to the requirement of installing a streetside sidewalk or the sidewalk width requirement to save a Heritage tree or a regulated tree deemed by the city manager or designee to have special value to the urban forest. Instead, the sidewalk right-of-way is allowed to be re-aligned or a short narrowing of the sidewalk width is allowed. The city manager or designee can approve either a sidewalk less than five feet wide for a distance less than 15 feet, or may require the dedication of additional right-of-way or easement so that the sidewalk can avoid the tree.
 3. Where a previously dedicated street forms a boundary of a subdivision, and where adequate right-of-way for the installation of a required sidewalk does not exist, the subdivider must dedicate proper sidewalk areas upon the side of the street abutting the lands subdivided and construct the required facilities.
 4. Sidewalk construction in accordance with this chapter shall be required for each individual lot in a subdivision created after September 11, 2000, prior to being issued a certificate of occupancy.

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- F. Bridges. Bridges shall be constructed in accordance with design standards delineated in the design manual.
- G. Permanent development identification signs and structures. Permanent development identification signs and structures for subdivisions may be located in the public right-of-way provided there is compliance with **article X, division 1**, of this chapter and provided there is compliance with the following restrictions:
1. Maintenance agreement. A maintenance agreement between the city and the subdivision or neighborhood organization or the developer placing the sign in the public right-of-way is required. The agreement shall provide that the subdivision or neighborhood organization or developer, including its successor or assign, is responsible for maintaining the sign and the public right-of-way where the sign is located.
 2. Permitted signs and structures with indemnification agreement. If the subdivision or neighborhood organization or the developer enters into an agreement that is acceptable to the city attorney indemnifying the city from any liability, the city may permit structures such as walls, permanent planters, or one single- or double-sided street graphic containing a maximum of 32 square feet of sign area per side, to be placed at the entrance(s) and located in the city's right-of-way.
 3. Permitted signs with no indemnification agreement. If the subdivision or neighborhood organization or the developer does not or is unable or unwilling to enter into an indemnification agreement with the city that is acceptable to the city attorney, the city will permit an identification sign on the right-of-way at the entrance(s) to the subdivision pursuant to the conditions found in **article X, division 1**, of this chapter and the following additional conditions:
 - a. One double-sided sign no taller than four feet in height from the ground may be placed in an entrance median. If made of wood, the sign may be no wider than six inches in width, and, if made of masonry, may be one course thick (unreinforced) and no wider than 12 inches, including letters.
 - b. Alternatively, two single-faced signs equal in size may be placed within the right-of-way on each side of an entranceway. Unless mounted on a wall, each face of the subdivision sign shall be no taller than four feet from the ground.
 - c. The sign(s), whether located in a median strip or along the side of the entrance street, shall be located at least four feet behind the face of the median curb.
 - d. Location and materials of the signs must receive approval from the director of public works, city traffic engineer and Gainesville Regional Utilities.
- H. Stormwater management required. A complete stormwater management system, in conformance with **article VII**, shall be provided in all areas of the subdivision for handling stormwater runoff within or across the subdivision lands.
- I. Utilities required.
1. Sanitary sewer. The subdivider shall provide sanitary sewer services to each lot within the subdivision. All sewer lines serving lots within the subdivision shall be installed by the subdivider prior to the paving of the street and should be designed to operate on a gravity flow basis unless otherwise approved by the utility department.
 2. Water supply. The subdivider shall install a system of water mains as approved by the utility department and connect the system to the public water supply. The installation of the mains and connection to each lot shall occur prior to paving of the street.
 3. Water and sewer systems.
 - a. New central water and sewer systems where required shall be designed by an engineer in accordance with the regulations of the utilities department, the state department of environmental protection and the county health department, and with standards established in this chapter. Central water and sewer

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systems shall be designed and constructed for an economic life of not less than 20 years, and the water system shall be designed in accordance with the fire protection requirements provided in chapter 10

- b. Fire hydrants shall be connected to mains no less than six inches in diameter; however, the utilities department may require larger diameter mains for long lines that are not connected to other mains at intervals close enough for proper mutual support.
 - c. Sufficient storage or emergency plumbing facilities shall be provided to such an extent that the minimum fire flows will be maintained.
- J. Screening walls and landscaping. Screening separating residential lots from abutting FDOT functionally classified arterial streets and from streets designated by the city commission as arterial streets based on their physical design, moderately long trip length, and existing or anticipated traffic characteristics shall be required in the form of low-maintenance walls, dense plant material or planted earth mounds. Such a screen shall be at least six feet in height and shall be completely in place before required improvements for the subdivision are accepted for maintenance. The responsibility for maintenance of the wall, plant material and earthen mounds shall be conveyed to the neighborhood association established for the maintenance of common property within the subdivision or the subdivider may provide a financial mechanism for such purpose, subject to the approval of the city attorney.
- K. Erosion and sediment control measures. The city may require the subdivider to utilize grading techniques, subdivision design, landscaping, sedimentation basins, special vegetation cover and other measures to reduce erosion and sediment. The subdivider shall comply with the requirements of **article IX** of this chapter and the design manual concerning erosion and sediment control measures.
- L. Inspection of improvements.
1. The director of public works and Gainesville Regional Utilities shall be authorized to inspect required improvements during construction to ensure that the work is in accordance with the approved plans and specifications. If any substantial changes are required in the approved plans or specifications during construction, the changes must be submitted for approval of the director of public works and Gainesville Regional Utilities as applicable.
 2. The subdivider shall retain a reputable recognized commercial laboratory which shall certify all materials and perform and certify all required density, LBR, concrete or other tests as may be required by the city engineer when reasonably necessary to ensure that all improvements are constructed as per approved plans and specifications.
- M. Acceptance for maintenance.
1. Prior to acceptance for maintenance by the city, the subdivider shall notify the Gainesville Regional Utilities in writing that all required improvements have been completed. Upon receipt of notice from the subdivider, the director of public works and Gainesville Regional Utilities will make an inspection of the construction work. If work is found to be satisfactorily completed, the city will accept the improvements for maintenance. After a period of **one year** from the time of inspection, the same city departments will make a final inspection, and, if the workmanship and materials are found satisfactory or if all deficiencies due to faulty workmanship or materials are repaired or corrected, the city will then release the subdivider from his bond on the project.
 2. Acceptance for maintenance is intended to mean normal maintenance functions as routinely performed by the city. It shall not include removal of soil accumulations on streets caused by excessive erosion from adjacent lots, either prior to or during building construction within the subdivision. It shall not include damage to any improvements caused by private construction or private utility vehicles within the one-year maintenance period. All decisions regarding abnormal damage or maintenance shall be made by the public works department or Gainesville Regional Utilities, with appeals possible to the city manager.

Section 30-4.45. Vacating subdivision and streets.

- A. Reversion of subdivided land to acreage. Reversion of subdivided land to acreage shall be in accordance with the provisions of F.S. § 177.101.
- B. Street vacation.
1. On application to abandon public streets or public places by virtue of a new plat, the owners of land abutting the street or public place to be abandoned, or owning property within 300 feet thereof, shall be notified of the proposed abandonment and of the plan board meeting at which the application, as well as the new plat showing the area after the abandonment, shall be scheduled for public hearing and review. For this purpose the owners shall be deemed to be those persons shown as owners upon the city's latest tax rolls. The notice shall be mailed to the address shown upon the tax rolls at least **ten days** before the date of the hearing.
 2. An application to abandon a public street or public place may be initiated by:
 - a. The city commission where it is deemed that the use of the public street or public place no longer serves a public purpose; or
 - b. Upon receipt of an application presented in the form of a petition which is to be signed by all owners of land abutting the portion of public street or place to be closed.
 3. All applications for the abandonment of a public street or public place shall be considered by the city plan board at a public hearing, notice of which shall be placed in a newspaper of general circulation in the city at least **ten days** before the hearing. Where the city commission has initiated consideration of the abandonment, all owners of property abutting the portion to be abandoned shall be notified by mail **ten days** before the hearing. For this purpose the owners shall be deemed to be those persons shown as owners upon the city's latest tax rolls. Prior to the public hearing, the petition proposing the abandonment shall be reviewed in accordance with the development plan review process as stated in **Division 3** of this article. Following the public hearing, the plan board shall submit a recommendation to the city commission concerning any petition to abandon the public street or public place.
 4. At the public hearing, the plan board and city commission shall make a determination that:
 - a. The public street or public place no longer serves a public purpose; or
 - b. The vacation of the public street or public place is in the public interest.
 5. At the public hearing, the plan board and the city commission shall consider the following criteria in determining whether the vacation is in the public interest:
 - a. Whether the public benefits from the use of the subject right-of-way as part of the city street system;
 - b. Whether the proposed action is consistent with the comprehensive plan;
 - c. Whether the proposed street vacation is consistent with the minimum block size requirements and other applicable street connectivity standards;
 - d. Whether the proposed action would deny access to private property;
 - e. The effect of the proposed action upon public safety;
 - f. The effect of the proposed action upon the safety of pedestrians and vehicular traffic;
 - g. The effect of the proposed action upon the provision of municipal services including, but not limited to, emergency service and waste removal;

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- h. The necessity to relocate utilities both public and private;
- i. The effect of the proposed action on the design and character of the area.

Section 30-4.46. Enforcement.

- A. Generally. Within the city, no subdivision shall be made, platted or recorded, nor any building permit issued on subdivided lands, unless the subdivision meets all the requirements of this chapter and has been approved in accordance with the requirements provided in this chapter. The city or any aggrieved person may have recourse to such remedies in law and equity as may be necessary to ensure compliance with the provisions of this chapter, including injunctive relief to enjoin and restrain any person from violating the provisions of this chapter, and any rules and regulations adopted under this chapter.
- B. Building permits and certificates of occupancy. No building permit or certificate of occupancy shall be issued for any lot or parcel of land subject to the provisions of this chapter, except as follows:
 - 1. If the lot or parcel is within a subdivision for which a final plat has been approved by the city commission and recorded and the required improvements have been installed and accepted for maintenance by the city, both a building permit and a certificate of occupancy may be issued.
 - 2. If the lot or parcel is within a subdivision for which a final plat has been approved by the city commission and recorded and security for the required improvements has been provided by the developer in accordance with **Section 30-4.43**, a building permit may be issued, but no certificate of occupancy may be issued unless the city manager determines that all required subdivision improvements serving such lot or parcel have been satisfactorily completed and that reasonable ingress and egress can be provided to the lot or parcel and the remaining portions of the subdivision until all improvements are complete and the required maintenance bond is received and approved.
 - 3. If the lot or parcel is within a minor subdivision which has been approved by the director of planning and development services, city engineer, city traffic engineer and deputy manager for utilities (or their designees) in accordance with the provisions of this chapter.
 - 4. If the lot or parcel is part of a legal lot split which has been approved by the city manager or designee in accordance with the provisions of this chapter.
 - 5. If the lot or parcel is a nonconforming lot as provided in **article III**.
- C. Violations. Any person who, in connection with a subdivision of lands, shall do or authorize any clearing and grubbing, or shall lay out, construct, open or dedicate any street, sanitary sewer, storm sewer, water main or drainage structure, or shall erect any building or transfer title to any land or building, without having first complied with the provisions of this chapter, or who performs any of such actions contrary to the terms of an approved subdivision plat, or who otherwise violates this chapter, shall be guilty of an offense. Each day that the violation continues shall constitute a separate violation.

Section 30-4.47. Reserved.

DIVISION 7. SPECIAL USE PERMIT [128]

Section 30-4.48. Intent.

It is the intent of this article to recognize and permit certain uses and developments which require special review, and to provide the standards by which the applications for permits for uses and development shall be evaluated. It is further intended that special use permits be required for developments which, because of their inherent nature,

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extent and external effects, require special care in the control of their location, design and methods of operation in order to ensure conformance with the comprehensive plan.

Section 30-4.49. Special use permit required.

Those uses listed in **article V** as permitted special uses in a zoning district may be established in that district only after issuance and recordation of a special use permit by the city plan board.

Section 30-4.50. Review criteria.

No special use permit shall be approved by the city plan board unless the following findings are made concerning the proposed special use. **The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this chapter remains at all times on the applicant.**

- A. The use or development complies with all required regulations and standards of this chapter and all other applicable regulations.
- B. The proposed use or development will have general compatibility and harmony with the uses and structures on adjacent and nearby properties.
- C. Necessary public utilities are available to the proposed site and have adequate capacity to service the proposed use and development.
- D. The use or development is serviced by streets of adequate capacity to accommodate the traffic impacts of the proposed use.
- E. Screening and buffers are proposed of such type, dimension and character to improve compatibility and harmony of the proposed use and structure with the uses and structures of adjacent and nearby properties.
- F. The use or development conforms with the general plans of the city as embodied in the city comprehensive plan.
- G. The proposed use or development meets the level of service standards adopted in the comprehensive plan and conforms with the concurrency management requirements of this chapter as specified in **article III**.

Section 30-4.51. Procedures for approval.

- A. Applications submittal. Each application shall be filed with the city's planning and development services department on the form prescribed. Applications must include a development plan or master plan in accordance with this article. Any incomplete applications will be returned to the applicant. The application must include proof of having met the requirements of **Section 30-4.30, neighborhood workshop**.
- B. Preliminary conference with applicant. The applicant for a special use permit shall meet with the technical review committee to discuss the procedures and requirements and to consider the elements of the proposed use and site and the proposed site layout.
- C. Report to city plan board. The city manager or designee shall submit to the city plan board a written report that includes analysis of the application and a recommendation based on the findings required in **Section 30-4.50** and **Section 30-4.21**.
- D. Notice. Notice shall be mailed at least **ten days** before the date of the hearing to all owners of property within 400 feet of the property for which a special use permit has been requested. For this purpose, the owner of property shall be deemed to be the person so shown on the current ad valorem tax records of the county property appraiser.
- E. City plan board hearing and action.

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1. The city plan board shall consider the evidence presented in the public hearing and the written report submitted by the city manager or designee and shall act on the application based on the findings required in **Section 30-4.50** and **Section 30-4.21**.
2. Action on the application shall be one of the following:
 - a. Approval;
 - b. Approval subject to conditions; or
 - c. Denial, with a statement of the reasons for denial.
- F. Effect of denial or withdrawal on subsequent application. No application for a special use permit shall be entertained within **two years** after the denial or withdrawal of a request for the same use for the same property. The city plan board may waive this time limitation by the affirmative vote of a super [sic] majority of the members provided **30 days** have elapsed since the action of the city plan board to deny the original request, and the city plan board deems such action necessary to prevent an injustice.
- G. Amended application. Amendment of a petition by the applicant may be permitted at any time prior to or during the public hearing, provided that no such amendment shall be such as to make the case different from its description in the notice of public hearing. If the amendment is requested by the applicant after notice of the hearing has been given, and such amendment is at variance with the information set forth in the notice, the applicant shall pay an additional fee, in the same amount as the original fee, to cover amended public notice. If the amended notice can be mailed at least **ten days** prior to the hearing originally scheduled, the hearing on the amended petition may be held on that date, otherwise the chairperson shall announce that the public hearing will be continued to a future meeting, before which appropriate notice will be given.
- H. Appeal of decision. Any affected person may appeal the city plan board's decision on an application for a special use permit to a hearing officer. The appeal must be filed within **15 days** of the decision. The procedure for the appeal shall be the same as is provided in Section 30-4.88 for appeals from decisions of the development review board.
- I. Final development plan approval. Prior to the issuance of any development order or building permit, final development plan approval will be required in accordance with applicable provisions of this Article.

Section 30-4.52. Amendments to and modification of special use permits.

- A. Any change or amendment which modifies one of the following criteria shall constitute a modification of the special use permit and will be processed as a new special use permit:
 1. A change in the boundaries of the approved site;
 2. A change from the approved use;
 3. Either an increase of ten percent or more or incremental increases that total ten percent or more in the floor area or number of parking spaces as approved;
 4. Substantial changes in the approved location of principal and/or accessory structures;
 5. Structural alterations significantly affecting the basic size, form, style, ornamentation and appearance of principal and/or accessory structures as shown on the approved plans;
 6. Substantial changes in approved pedestrian or vehicular access or circulation; and
 7. Substantial change in the approved amount or location of landscape screens or buffers.

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Section 30-4.53. Expiration, abandonment, revocation and extension of permits.

- A. Expiration. Special use permits issued under this article will expire within **12 months**, or an additional time period should the city plan board deem necessary, if the petitioner has taken no act in reliance on the issued permit.
- B. Abandonment of permits. On request of the permit holder, the Planning and Development Services Department may approve the abandonment of a special use permit provided no construction has begun.
- C. Cessation of use. If use granted by a special use permit pursuant to this article ceases for a continuous period of **12 months**, the permit becomes void.
- D. Revocation of permit. If any conditions of the special use permit are violated, the permit issuing authority may revoke the permit after giving proper notice to the grantee. The permit may be reinstated by the department of planning and development services if the circumstances leading to the revocation are corrected.
- E. Extension of permit. At the request of the applicant and for good cause shown, the board may, at a public hearing, extend the time of the permit's expiration, if no acts of reliance have occurred. The extension may only be granted if all the concurrency management requirements of this chapter can be met and if the extension would not be in conflict with any other ordinance of the city.

Section 30-4.54. Reserved.

DIVISION 8. WELLFIELD PROTECTION SPECIAL USE PERMIT

Section 30-4.55. Purpose.

- A. This division is established for the purpose of protecting the immediate and long-term supply of potable water in the community by creating a permit procedure for uses and developments within the Murphree Wellfield Protection Zones (a/k/a Murphree Wellfield Management Zones) as delineated in the Alachua County Code of Ordinances, as may be amended from time to time, and to provide the standards by which the applications for permits for uses and development shall be evaluated.
- B. It is further intended that wellfield protection permits or wellfield protection special use permits be required for developments which require special care in the control of their location, design and methods of operation in order to ensure conformance with the city's comprehensive plan and Alachua County Murphree Wellfield Management Code (a/k/a Murphree Wellfield Protection Code), as may be amended from time to time.

Section 30-4.56. Permit required.

Within the primary, secondary and tertiary wellfield protection (management) zones of Alachua County, all new development and existing development that will intensify, expand or modify a use directly associated with the storage of hazardous materials, except for uses allowed within the residential zoning districts, as defined in **Article II**, and uses exempted under **Section 30-4.57** (hereinafter "exempt use"), shall be required to obtain a wellfield protection permit, or a wellfield protection special use permit, whichever is applicable, as issued by the city commission or city manager or designee, as provided herein. In addition, all existing development which requires any level of development plan review for expansion or changes at a site shall be required to obtain a wellfield protection permit, or a wellfield protection special use permit, unless the development is an exempt use.

- A. The standards and requirements of this division shall apply to all properties located in the wellfield protection management zones. Properties that may only be partially located in a wellfield protection management zone shall be treated as if the entire property is located completely within the wellfield protection management zone.
- B. The primary, secondary, and tertiary wellfield protection zones are those zones delineated on the Murphree Wellfield Protection management zones map on file with the department of planning and development services.

Article IV. Development Review - Authority and Procedures**Section 30-4.57. Exemptions.**

- A. Any proposed uses or development associated with the Murphree Water Treatment Plant, or electric transmission and distribution systems or generally the provision of utility service by a government-owned utility shall be exempt from the wellfield protection permit and wellfield protection special use permit requirements.
- B. Exemptions from the permit requirements shall be allowed for uses and developments that meet the following criteria, except for specially regulated industrial uses allowed by special use permit :
 - 1. There is no manufacture, storage, use, or sale of hazardous materials at the site or development as defined and regulated in the Alachua County Hazardous Materials Management Code, other than hazardous materials excluded from the provisions of the Hazardous Materials Management Code, as may be amended from time to time.
 - 2. The project is part of an environmental cleanup or facility upgrade that is required by a local, state or federal environmental agency, and the project is in compliance with the Alachua County Hazardous Management Materials Code and all other applicable state and federal regulations.
 - 3. Redevelopment of an existing site that may manufacture, store, use, or sell hazardous materials at the site or development as defined and regulated in the Alachua County Hazardous Materials Management Code, but where the actual development project will not involve hazardous materials other than those associated with similar construction projects, and the project is in compliance with the Alachua County Hazardous Materials Management Code and all other applicable state and federal regulations.
- C. "Hazardous material" shall be as defined in the Alachua County Hazardous Materials Management Code.

Section 30-4.58. Procedures for approval.

- A. Preliminary conference with applicant. The applicant for a wellfield protection special use permit shall meet with staff to discuss the procedures and requirements and to consider the elements of the proposed use and site, and the proposed site plan.
- B. Application submittal. Applications will be filed with the city manager or designee on the form prescribed. Any incomplete applications will be returned to the applicant.

If any of the items required for the preliminary development plan are inapplicable or irrelevant to a proposed development, such item may be omitted upon approval of the appropriate staff, provided the applicant identifies in writing any missing item and includes a brief explanation of why it is inapplicable or irrelevant. The city commission may, at the public hearing, approve the omission of items from the preliminary development plan if the city commission finds they are not relevant to a determination that the proposed use or development meets the requirements of [Section 30-4.60](#).

- C. Staff review. The staff shall review the request and submit to the city plan board a written analysis of the application and a recommendation based on the findings required in [Section 30-4.60](#) and development plan review process. The city plan board shall forward a recommendation on the special use permit to the city commission.
- D. City plan board review.
 - 1. In considering whether to recommend approval of an application for a wellfield protection special use permit, the city plan board will consider the evidence presented in the public hearing and the city staff report and shall make a recommendation to the city commission on the application based on the findings required in [sections 30-4.55 and 30-4.58](#) and the development plan review process. The recommendation of the plan board is advisory only; however, the decision should be based on evidence presented at the hearing or otherwise in the record.

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2. Burden of presenting evidence. The burden of presenting a complete application and evidence to support the findings necessary to obtain a wellfield protection special use permit shall be upon the applicant.
 3. The city plan board shall send a recommendation to the city commission for approval, approval subject to conditions, or denial stating the reasons for denial.
- E. City commission review.
1. In considering whether to approve of an application for a wellfield protection special use permit, the city commission will consider the city plan board recommendation, evidence presented in the public hearing and the city staff report and shall act on the application based on the findings required in **Section 30-4.57**, **Section 30-4.60** and **Section 30-4.21**. The hearing shall be held and the order granting or denying the permit shall be issued pursuant to city commission rules for a quasi-judicial hearing. All findings shall be based on competent, substantial evidence.
 2. The city commission shall approve, approve subject to conditions, or deny the application. If the application is denied, the city commission shall issue a statement with the reasons for denial.
- F. Notice of decision. The decision of the city commission shall be sent to the applicant by certified mail. If a wellfield protection special use permit is approved or approved with conditions, the permit will be filed in the department of planning and development services.
- G. Final development plan approval. Prior to the issuance of any development order or building permit, final development plan approval will be required in accordance with applicable provisions of this **article**.

Section 30-4.59. Limit on petitions for the same property.

No application for a wellfield protection special use permit shall be entertained within **two years** after the denial or withdrawal of a request for the same use for the same property. The city commission may waive this time limitation by the affirmative vote of a super-majority of the members provided **30 days** have elapsed since the action of the city commission to deny the original request, and the city commission deems such action necessary to prevent an injustice.

Section 30-4.60. Criteria for issuance.

- A. Wellfield protection permit. After an assessment by appropriate Gainesville Regional Utilities, Alachua County Environmental, public works and planning and development services staff, the city manager or designee may approve and issue a wellfield protection permit in the tertiary and secondary zones in accordance with this **article**, based on the SUP review criteria contained in **Section 30-4.50**^[LD118].
- B. Wellfield protection special use permit.
1. Development in the secondary zone and tertiary zone that cannot be exempt under **Section 30-4.57** or approved by city manager or designee under **Section 30-4.60.A** must apply for a wellfield protection special use permit in accordance with **Section 30-4.58**. The development or use shall be reviewed using the following criteria:
 - a. Whether **criteria listed in subsection 30-4.58**, have been complied with; and
 - b. Whether the development properly addresses environmental features such as wetlands, creeks, lakes, sinkholes and soils to ensure that hazardous materials will not endanger the potable water supply and the environmental features.
 2. Development in the primary zone. No use involving hazardous materials shall be allowed in this zone, except for uses or development associated with the Murphree Water Treatment Plant, or electric transmission and distribution systems or generally the provision of utility service by a government-owned utility. All other uses shall obtain a wellfield protection special use permit.

Article IV. Development Review - Authority and Procedures**Section 30-4.61. Amendments to and modification of permits.**

- A. Amended application. Amendment of a petition by the applicant may be permitted at any time prior to or during the public hearings, provided that no such amendment shall be such as to make the development different from its description in the notice of public hearings. If the amendment is requested by the petitioner after public notice of the hearings has been given, and such amendment is at variance with the information set forth in the public notice, the petitioner shall pay an additional fee, in the same amount as the original fee provided for in this article, to cover amended public notice. If the amended notice can be mailed and published **ten days** prior to the hearing originally scheduled, the hearings on the amended petition may be held on that date, otherwise the chairperson shall announce that the hearing originally scheduled on the petition will be continued to a future meeting, before which appropriate public notice will be given, and will state the reasons for the continuance.
- B. Minor changes in the development plans associated with wellfield protection special use permits may be permitted in accordance with the rapid review process as provided in **Section 30-4.18**
- C. Regardless of the above, any change or amendment which modifies one of the following criteria shall constitute a modification of the wellfield protection special use permit and will be processed as a new application:
1. A change in the boundaries of the approved site, except for minor boundary adjustments;
 2. A change from the approved use to a new use regulated under this section;
 3. An increase in the storage capacity or type of any hazardous materials used, manufactured, sold or stored at the site, including new hazardous materials not previously listed in the original wellfield protection special use permit. This criterion shall not apply to hazardous materials excluded from the provisions of the Alachua County Hazardous Materials Management Code, as may be amended from time to time.

Section 30-4.62. Expiration, abandonment, revocation/suspension, transfer and extension of permits.

- A. Expiration. Permits issued under this article will expire within **12 months**, or an additional time period should the city commission deem necessary, unless the petitioner has been issued a building permit. After the petitioner receives a building permit, if the building permit expires, the wellfield protection special use permit shall also automatically expire.
- B. Abandonment of permits. On request of the permit holder, the city manager or designee may approve the abandonment of a special use permit provided no construction has begun.
- C. Cessation of use. If a use granted by a wellfield protection special use permit pursuant to this article ceases for a continuous period of **12 months**, the permit becomes void and of no further force and effect.
- D. Revocation or suspension of permit. If any conditions of the wellfield protection special use permit are violated, the city commission may issue an order to show cause why the permit should not be suspended or revoked. If the permit holder does not request a hearing on the suspension or revocation, or does not produce evidence that the conditions of the permit are not being violated, the city commission may revoke or suspend the permit. The city commission may reinstate the permit if the circumstances leading to the revocation or suspension are corrected and the permit holder provides evidence of the correction at a hearing before the city commission.
- E. Transfer of permit. If there is a change of ownership or operator at the development site, the new owner or operator must inform the city of its identity and registered agent for service of notice within **30 days**. Failure to do so shall be considered a violation of a condition of the permit.
- F. Extension of permit. At the request of the applicant and for good cause shown, the city commission may, at a public hearing, extend the time of the permit's expiration, if unforeseen delays have occurred that are not attributable to the action or inaction of the applicant. The extension may only be granted if all the concurrency

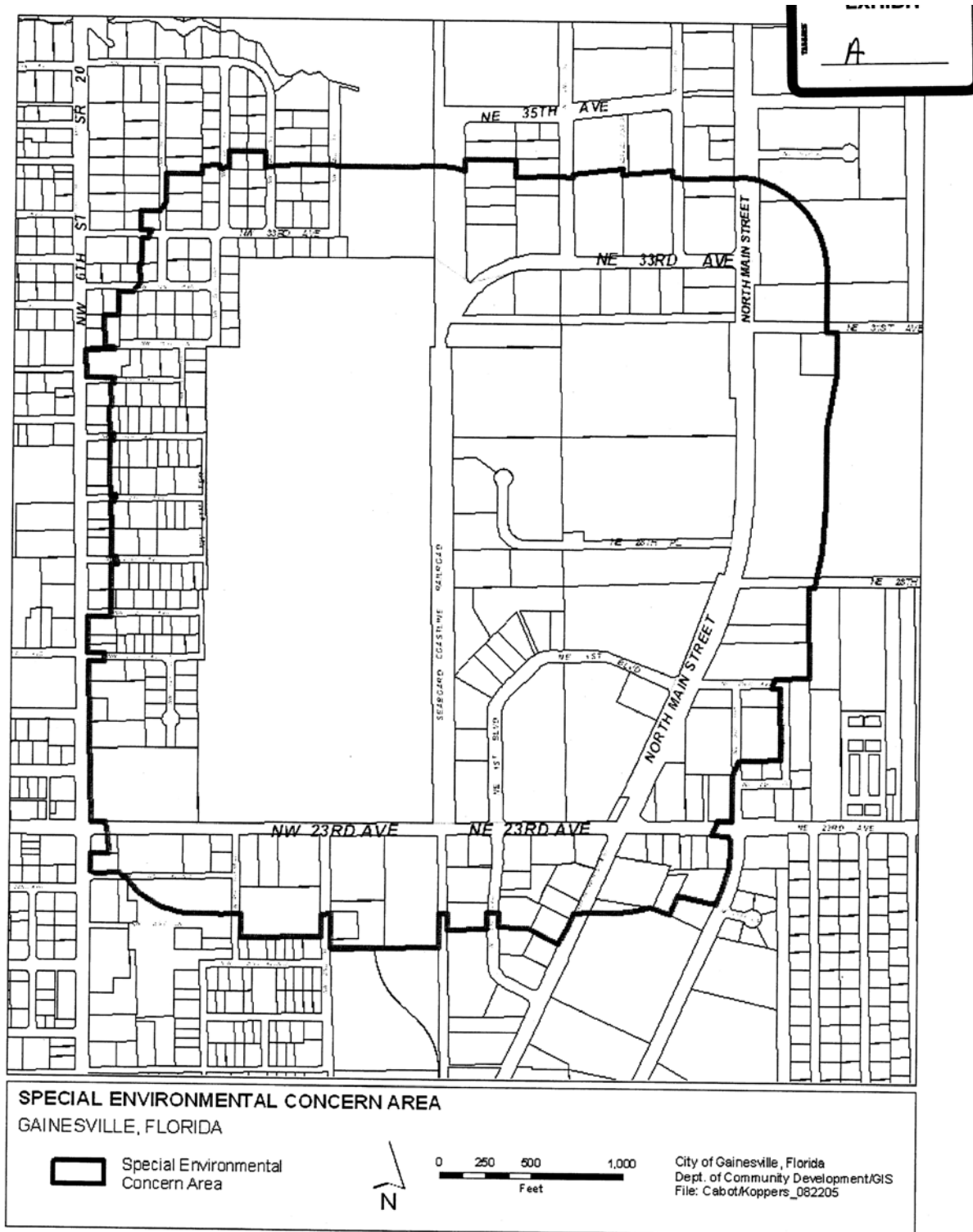
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management requirements of this chapter can be met and if the extension would not be in conflict with any other ordinance of the city.

Section 30-4.63. Special environmental concern area.

- A. Purpose. This overlay is established for the purpose of protecting the immediate and long-term potable water supply by creating a procedure for projects going through development review in any area designated by the U.S. Environmental Protection Agency as a superfund area, and that certain area adjacent to the superfund area, hereinafter referred to as a special environmental concern area (Area). Additionally, this overlay is established for the purpose of providing special review and care for any development in the Area.
- B. New construction. In the Area, all new construction projects (except for the construction of a single-family home on a lot of record) are required to follow the process as stated below:
1. The applicant/owners of all development projects in the Area shall schedule and attend a mandatory first-step meeting.
 2. The applicant shall schedule and hold a neighborhood workshop in accordance with the neighborhood workshop guidelines.
 3. Following the neighborhood workshop, and as a condition precedent to proceeding with a development project in the Area, the applicant shall file an application for development review and a wellfield special use permit pursuant to **Division 8** of this Article.
 4. A completed copy of the above-referenced application shall be submitted by the applicant to the following agencies for review and comment:
 - a. United States Environmental Protection Agency.
 - b. Florida Department of Environmental Protection.
 - c. Gainesville Regional Utilities.
 - d. Responsible Party for Remedial Action.
 - e. Occupational Health and Safety Administration (OSHA) (Health and Safety Plan Review).
 - f. Alachua County Department of Environmental Protection.
 5. Following the period allowed for receipt of comment from the agencies listed above and from the city manager or designee, the applicant may proceed through the development review and wellfield special use permit process as described in the Code. The applicant shall respond to all comments and concerns of the reviewing agencies throughout the development review process and prior to receiving final approval.
 6. Hold harmless and indemnification agreement. By filing an application for development in the special environmental concern area, the owner(s) shall be required to sign a hold harmless and indemnification agreement with the city, releasing the city from any liability associated with the development of the site.
- C. Reuse of existing buildings and interior remodeling. All reuse projects that do not involve the excavation of soil or the drilling of wells are exempt from the requirements of **subsection B** above, but shall otherwise comply with the development review and wellfield protection processes stated in the Code.
- D. Conflict with other laws. In the event of a conflict between the provisions of this ordinance and any state or federal law, rule or regulation, the more stringent requirement will apply.

Figure IV-1: Special concern area.



Section 30-4.64. Reserved.

DIVISION 9. ZONING MAP, LDC AND COMPREHENSIVE PLAN CHANGES

Section 30-4.65. Review procedures

The following procedures shall apply to all applications for zoning or land use changes, and land development code and comprehensive plan amendment applications. Proposals originated by the city commission or initiated by the city plan board shall be processed in the same manner.

- A. Pre-application conference. It is recommended that anyone intending to file a petition for amendments to the future land use map or zoning map atlas, or text of the comprehensive plan or this chapter, meet with the planning and development services department prior to filing the petition, in order to discuss the amendment and petition process. No person may rely upon any comment concerning a proposed amendment, or any expression of any nature about the proposal made by any participant, at the pre-application conference as a representation or implication that the proposal will be ultimately approved or rejected in any form.
- B. Application submittal. Applications for rezoning of land and changes to the future land use map may be filed by an owner thereof or by any person having a legal or equitable interest therein. If there are multiple owners, each shall be named on the petition. If an agent represents the owner(s) in this proceeding he/she shall be so authorized by affidavit from the owner(s). A petition for a text amendment may be filed by any citizen or owner of land in the city.
- C. Staff review. The city manager or designee shall submit to the city plan board a written report that includes analysis of the application and a recommendation based on the findings required in Section 30-4.66 for comprehensive plan amendments, Section 30-4.67 for zoning map land development code amendments, and Section 30-4.68 for transect zone amendments.
- D. Neighborhood workshop. The applicant shall hold a neighborhood workshop per Section 30-4.30.
- E. City plan board review. The city plan board shall review the proposed application at a public hearing. When reviewing the petition, the city plan board may receive and consider the comments and concerns of other relevant boards serving the city commission, such as the development review board and the historic preservation board.

After consideration of a petition for rezoning of land, change in the future land use map, or text amendment to the land development code or comprehensive plan the appropriate reviewing board shall transmit the petition and its recommendation thereon either to the city commission or the city attorney, as follows:

1. If both the planning and development services department and the city plan board recommend approval of the petition as submitted or with amendments voluntarily agreed upon by the petitioner, then the petition may be forwarded to the city attorney who is authorized to prepare the appropriate ordinance in accordance with law.
 2. If either the planning and development services department or the city plan board recommends denial of the petition, then the petition shall be forwarded to the city commission for approval, denial, approval with amendment, or remand to the board for further consideration. If the city commission approves the petition as submitted or with amendments, then the city attorney is authorized to prepare the appropriate ordinance in accordance with law.
- F. City commission review.
1. The city commission shall consider the application at one public hearing for small-scale comprehensive plan amendments as required by section 163.3187, Florida Statutes, or two hearings (transmittal/first reading and adoption) for expedited comprehensive plan amendments per section 163.3184(3), Florida Statutes. Land development code and zoning map amendments require two hearings.

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2. If the matter is determined to be quasi-judicial (rezoning), the city commission shall conduct the quasi-judicial proceeding at first reading of the ordinance, as applicable. The recommendations of city departments or other regulatory agencies and the appropriate reviewing boards shall be included and become a part of the record before the city commission.
3. The city commission may act on any change or amendment without a recommendation from the city plan board if the board has not acted on the matter within **45 days** of the date of the first regular meeting of the city plan board after a petition or proposal for a change or amendment has been filed with or received by the city manager [LDI19].
4. If a petition or recommendation for a change or amendment is not acted upon finally by the city commission within **six months** of the date upon which the report of the city plan board is filed with the city commission, the petition shall be deemed denied without prejudice. However, no petition shall be deemed denied if the city commission has continued its consideration to a date certain, or has stayed action on the petition by enactment of a moratorium ordinance.

Section 30-4.66. Review criteria for future land use map and comprehensive plan text amendments

In reviewing and formulating recommendations to the city commission on requested or proposed changes to the future land use map, the city plan board shall consider and evaluate the changes in relation to all pertinent factors, including the [LDI20]:

- G. The goals, objectives and policies of the comprehensive plan.
- H. An analysis, by planning and development services staff, of the need for the additional land based on the projected population of the city and the availability of property designated for the land use being requested by the petitioner.
- I. The location of the site in relation to adjacent uses and other similar uses.
- J. The potential impact of the proposed use on adopted level of service standards.

[LDI21]

Section 30-4.67. Review criteria for zoning map and LDC text amendments

In reviewing and formulating recommendations to the city commission on requested or proposed changes in the zoning ordinances that are quasi-judicial in nature, the city plan board shall consider and evaluate the changes in relation to all pertinent factors, including the [LDI22]:

- A. Compatibility of permitted uses and allowed intensity and density with surrounding existing development;
- B. The character of the district and its peculiar suitability for particular uses;
- C. Conservation of the value of buildings and encouraging the most appropriate use of land throughout the city;
- D. The applicable portions of any current city plans and programs such as land use, traffic ways, recreation, schools, neighborhoods, stormwater management and housing;
- E. The needs of the city for land areas for specific purposes to serve population and economic activities;
- F. Whether there have been substantial changes in the character or development of areas in or near an area under consideration for rezoning;
- G. The goals, objectives and policies of the comprehensive plan; and
- H. The facts, testimony and reports presented to the city plan board at public hearings.

[LDI23].

Section 30-4.68. Rezoning to Transect Zones**A. Rezoning Criteria.**

Applications to rezone to a transect zone (T-Zone) shall meet the following criteria:

1. Rezoning from a T-Zone designation to another T-Zone.

- a. The proposed T-Zone must provide a logical extension of an existing zone, or an adequate transition between zones (a T-3 should not be approved if adjacent to a T-5, unless existing circumstances/entitlements justifies it);
- b. The area must have had a change in growth and development pattern to warrant the rezoning to a more urban or less urban T-Zone; and
- c. The rezoning request must be consistent with the overall City of Gainesville vision and the City of Gainesville Comprehensive Plan.

2. Rezoning from a Zoning District Designation to a T-Zone.

- d. If adjacent to an existing T-Zone, the proposed rezoning provides a logical extension of that zone (a T-3 should not be approved if adjacent to a T-5, unless existing circumstances/entitlements justifies it), and the site is located within an existing or planned pedestrian shed;
- e. If not adjacent to an existing T-Zone, the rezoning site must comprise a minimum of 30 acres [e24] of contiguous property in an area that is determined to be or is planned to become a walkable urban environment;
- f. The rezoning will not have a negative effect on the surrounding area; and
- g. The rezoning request is consistent with the overall City of Gainesville vision and the City of Gainesville Comprehensive Plan.

B. Submittal Requirements

1. The applicant shall prepare a regulating plan for the site showing the proposed transect zones (as defined in Article V), civic zones, and special districts (if any proposed), and also the location of the pedestrian sheds and circulation plan.
2. The following restrictions apply to the allocation of T-zones:
 - a. T-4M should be located along a Principal Street as defined in Article V.
 - b. T-5 shall be located along a Storefront or Principal Street as defined in Article V.
 - c. T-6 can only be used within the Downtown area. No new T-6 zones are allowed outside the core.
3. The regulating plan shall assign a street type (per Article V) to every street contained within, or adjacent to, the rezoning area.
4. The regulating plan must be structured using one or several pedestrian sheds based on existing and/or proposed future conditions, such as traffic intersections, adjacent developments and natural features.
5. Modifications or additions to the transect zones defined in Article V or to the street classification established in Article V may be processed as Code amendments in conjunction with the rezoning.

Article IV. Development Review - Authority and Procedures**C. Sec. 30-347.6. - Withdrawal of applications.**

Any application for any action provided by this chapter may be withdrawn by the applicant. However if notice has been given, the application must be withdrawn by the applicant at a public hearing, and, for purposes of refiling a land use or zoning map petition, a withdrawn application shall be limited as if it were denied as prescribed in **Section 30-4.69**. Fees paid shall not be refundable if any expense has been incurred by the city for public notice.

Section 30-4.69. Limit on petitions relating to same property.

- I. When the city commission has taken action to deny a petition for a land use change or rezoning the city plan board shall not consider any further petition to any part of the same property for a period of **12 months** from the date of the action. If a comprehensive plan amendment is necessary for a rezoning to planned development the foregoing **one-year** limitation may be waived by a simple majority of the city commission.
- J. Whenever the city commission has changed the zoning or land use of property by an ordinance amendment, the city plan board shall not consider any petition for rezoning of any part of the same property for a period of **12 months** from the date of the action.
- K. The city commission may waive the above time limitations by the affirmative vote of five commissioners, provided **30 days** have elapsed since the action of the commission to deny the original request, and if the city commission deems such action necessary to prevent an injustice or facilitate the proper development of the city.

[LD125]

Section 30-4.70. Reserved.

DIVISION 10. PLANNED DEVELOPMENT REZONE

Section 30-4.71. Minimum requirements for rezoning to planned development.

An applicant for a PD rezoning must present evidence that justifies the rezoning. Justification must include one or more of the following:

- A. Unconventional and promoted by comprehensive plan. The proposed development is unconventional and does not fit the typical development parameters contained in the city code. Although it does not fit within an existing zoning district, it is consistent with the city comprehensive plan, except it may require a land use change. Other options available under the existing zoning district(s) in the city land development code would not allow the use and associated design elements of the proposed project.
- B. Size, scale, complexity and design. The proposed development is of such size, scale, complexity, and/or unique design that it would be inconvenient and inefficient to process such a proposal outside the PD process.
- C. Specialized compatibility and design characteristics. The nature of the proposed use at a specific site requires specialized design characteristics to preserve and protect neighborhood character, environmental concerns and other concerns unique to the immediate area, consistent with comprehensive plan policies.

Section 30-4.72. Review procedures.

The review and approval process consists of a mandatory first-step meeting, technical review committee review, and city plan board and city commission hearings. At the applicant's request, the review of the PD rezone may be done concurrently with the subdivision review and/or development review.

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- A. Pre-application meeting. Before submittal of a PD application, the developer must present a generalized description of the project to the city manager or designee at a pre-application conference.
- B. Application submittal. After the pre-application conference, the applicant shall submit a complete application on a form provided by the planning and development services department and accompanied by the applicable fee and plans.
- C. Technical review committee review. The technical review committee must review the application for conformance with the city's land development code and comprehensive plan and issue a recommendation.
- D. Neighborhood workshop. The applicant shall hold a neighborhood workshop **per Section 30-4.30**.
- E. City plan board review. The city plan board shall review the application (PD layout plan and report) and the technical review committee recommendation at a public hearing. The city plan board shall make a motion recommending approval, approval subject to modifications, or denial of the application. The recommendation is forwarded to the city commission for its consideration.
- F. City commission review.
 - 1. The city commission shall hold a public hearing on the proposed petition and shall either deny the petition, approve the petition, or approve the petition with whatever amendments or additions to the development plan it deems necessary and appropriate.
 - 2. Should the applicant not be agreeable to a PD in the form in which it is approved by the city commission, the petition may be withdrawn at any time prior to the second reading of an ordinance enacting the rezoning.
 - 3. Approval of the petition is not effective until the ordinance rezoning the property to PD has been adopted. If a petition is withdrawn or denied, further petitions for rezoning the property to PD will be subject to the limits described in **Section 30-4.80**.
 - 4. If the city commission approves a PD layout plan with conditions or modifications, then the applicant shall revise the plan to clearly indicate such conditions or modifications, and the revised plan with the Planning and Development Services Department within **60 days** of such approval. Failure to file the revised PD layout or development plan within the time prescribed herein shall render any approval of the city commission null and void unless the applicant files with the city commission a written request for an extension of time within such 60-day period. The city commission may grant an extension for good cause shown and upon evidence that an unexpired valid certificate of preliminary concurrency has been issued; however, the rezoning ordinance may not be prepared, advertised, or adopted until the revised PD layout plan and PD report are submitted.

Section 30-4.73. Review criteria.

In considering a proposed PD for approval, the city plan board and the city commission shall evaluate the proposal in consideration of these criteria:

- A. Conformance with the PD objectives and the comprehensive plan. No development plan may be approved unless it is consistent with the Planned Development objectives set forth in **Article V**, and the city's comprehensive plan, future land use map and concurrency management system.
- B. Concurrency. The proposed PD must meet the level of service standards adopted in the comprehensive plan. Proof of meeting these standards shall exist in the form of a certificate of concurrency exemption, certificate of preliminary or final concurrency (as applicable at the particular review stage), or certificate of conditional concurrency reservation.

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- C. Internal compatibility. All land uses proposed within a PD must be compatible with other proposed uses; that is, no use may have any undue adverse impact on any neighboring use, based on the streetscape, treatment of pedestrian ways and circulation, motor vehicle circulation, and the separation and buffering of parking areas and sections of parking areas; the existence or absence of, and the location of, focal points and vistas, open spaces, plazas, recreational areas and common areas, and use of existing and proposed landscaping; use of the topography, physical environment and other natural features; use and variety of building setback or build-to lines, separations and buffering; use and variety of building groupings, building sizes, architectural styles, and materials; variety and design of dwelling types; particular land uses proposed, and conditions and limitations thereon; and any other factor deemed relevant to the privacy, safety, preservation, protection or welfare of any proposed use within the PD.
- D. External compatibility. All land uses proposed within a PD must be compatible with existing and planned uses of properties surrounding the PD; that is, no internal use may have any avoidable or undue adverse impact on any existing or planned surrounding use, nor shall any internal use be subject to undue adverse impact from existing or planned surrounding uses. An evaluation of the external compatibility of a PD should be based on the following factors: adjacent existing and proposed uses, design of the development, traffic circulation, and density and intensity.
- E. Intensity of development. The residential density and intensity of use of a PD shall be compatible with (that is, shall have no undue adverse impact upon) the physical and environmental characteristics of the site and surrounding lands, and they shall comply with the policies and density limitations set forth in the comprehensive plan. Within the maximum limitation of the comprehensive plan, the permitted residential density and intensity of use in a PD may be adjusted upward or downward in consideration of the following factors: the availability and location of public and utility services and facilities; the trip capture rate of development; and the degree of internal and external connectedness of streets.
- F. Usable open spaces, plazas and recreation areas. Usable open spaces, plazas and recreation areas provided within a PD shall be evaluated based on conformance with the policies of the comprehensive plan and the sufficiency of such areas to provide appropriate recreational opportunities, protect sensitive environmental areas, conserve areas of unique beauty or historical significance, enhance neighborhood design, and encourage compatible and cooperative relationships between adjoining land uses.
- G. Environmental constraints. The site of the PD shall be suitable for use in the manner proposed without hazards to persons either on or off the site from the likelihood of increased flooding, erosion or other dangers, annoyances or inconveniences. Condition of soil, groundwater level, drainage and topography shall all be appropriate to the type, pattern and intensity of development intended. The conditions and requirements of **article IX, resource and environmental management** must be met.
- H. External transportation access. A PD shall be located on, and provide access to, a major street (arterial or collector) unless, due to the size of the PD and the type of uses proposed, it will not adversely affect the type or amount of traffic on adjoining local streets. Access shall meet the standards set in **article VII, development site and subdivision design, and chapter 23, streets, sidewalks, and other public places**. Connection to existing or planned adjacent streets is encouraged. The trip generation report shall be signed by a professional engineer registered in the state when there is a difference between the traffic report provided by the petitioner and the concurrency test.
- I. Internal transportation access. Every dwelling unit or other use permitted in a PD shall have access to a public street either directly or by way of a private road, pedestrian way, court or other area which is either dedicated to public use or is a common area guaranteeing access. Permitted uses are not required to front on a dedicated public road. Private roads and other accessways shall be required to be constructed so as to ensure that they are safe and maintainable.

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- J. Provision for the range of transportation choices. Sufficient off-street and on-street parking for bicycles and other vehicles, as well as cars, shall be provided. The requirements of **article VIII** shall be used as a guide only. Parking areas shall be constructed in accordance with such standards as are approved by the city commission to ensure that they are safe and maintainable and that they allow for sufficient privacy for adjoining uses. When there is discretion as to the location of parking in the project, it is strongly encouraged that all motor vehicle parking be located at the rear or interior side of buildings, or both. The design of a PD should, whenever feasible, incorporate appropriate pedestrian and bicycle accessways so as to provide for a variety of mobility opportunities. Connection to all sidewalks, greenways, trails, bikeways, and transit stops along the perimeter of the PD is required. Where existing perimeter sidewalks do not exist, sidewalks shall be provided by the development.

Section 30-4.74. Phasing.

The city commission may permit or require the phasing or staging of a PD. When provisions for phasing are included in the development plan, each phase must be so planned and so related to previous development, surrounding properties and the available public facilities and services that a failure to proceed with subsequent phases will have no adverse impact on the PD or surrounding properties. Concurrency certification is not reserved by PD phasing.

Section 30-4.75. Development time limits.

The city commission may establish reasonable periods of time for the completion of any dedicated public facilities within a PD, facilities planned for common areas, and the total PD. If phasing is provided for, time limits for the completion of each phase shall also be established or may be deferred until development review. Any such limit may be extended by the city commission, plan board or development review board for reasonable periods upon the petition of an applicant for an amendment to the PD layout plan or development plan and based upon good cause, as determined by the city commission. Any such extension shall not automatically extend the normal expiration date of a building permit, site plan approval or other development order. If time limits contained in the approved PD layout plan are not complied with and not extended for good cause, the city commission may rezone the property or any part of it, or amend the approved development plan, so as to best protect adjoining properties and the public health, welfare or safety. Failure to complete phasing on schedule shall require a new concurrency review and appropriate concurrency permit.

Section 30-4.76. Bonds.

In addition to the usual requirements of **section 30-4.40** for bonds for subdivision improvements, the city commission may also include, in the development plan, requirements for bonds (or alternatives therefor as provided in **article IV**) conditioned upon the satisfactory and timely completion of facilities planned for common areas, for the benefit of purchasers from the applicant, when the development time limits and phasing schedule do not preclude the sale of individual units prior to the completion of such facilities.

[LD126].

Section 30-4.77. Model home centers.

The development review board may, in conjunction with the review of the PD rezone, authorize a temporary permit for a model home center in residential PDs and residential portions of mixed use PDs, subject to the provisions and conditions for model homes set forth in **Article VI**.

Section 30-4.78. Applicability of other regulations.

All building code, housing code and other land use regulations of this chapter are applicable to a PD, except for those permitting special use permits and variances, and except to the extent that they conflict with a specific provision of the approved PD. Unless otherwise provided in the approved development plan, all land use regulations which apply in relation to a zoning district category, including the regulation of signs, shall apply to areas of a PD. All

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such land use regulations shall apply in other areas of a PD in the manner determined by the city commission as part of the approved PD layout plan or, if not determined therein, by the development review board during the development plan approval process, giving due regard to the purpose of each such regulation and the similarity of each area of the PD to other zoning districts, in terms of permitted uses.

Section 30-4.79. Amendments to approved planned development.

- A. Except as noted in subsections B and C of this section, an amendment to an approved PD (except for an extension of a time limit) must be accomplished only by a rezoning petition and ordinance accompanied by a new proposed PD. All appropriate maps, plans and reports submitted with the approved PD layout plan may be resubmitted with the rezoning petition, along with sufficient new maps, plans and reports to clearly and thoroughly indicate the proposed changes, as the new proposed PD layout plan.
- B. Amendments to the final plan of an approved PD of the following types may be authorized by the development review board during any required development plan review, provided such amendments meet the criteria set forth in article IV, development review process:
1. Minor adjustments or shifts in the location and siting of buildings, structures, parking bays and parking spaces;
 2. Changes in the location of utility tie-ins and solid waste, recycling, and yard trash containers;
 3. Reductions in the overall density or intensity of structural ground coverage of the development;
 4. Changes in the location and types of landscape materials, excluding changes in location of buffers;
 5. Minor changes in the walkway and bikeway systems;
 6. The addition of accessory structures or utility buildings of less than 1,000 square feet where there are no major changes to the perimeter features of the development;
 7. The addition of up to ten new parking spaces;
 8. Any expansion of gross floor area or enlargement of the building envelope which does not require the addition of required parking spaces or alter standards of the PD ordinance; and
 9. Modifications which do not entail amendments to specific language included within the PD ordinance.

[(LD127)]

Section 30-4.80. Time limits for rezoning to planned development.

The rezoning of property, by amendatory ordinance, to a PD district based on a particular PD layout plan, shall operate the same as any other rezoning to prohibit the consideration by the city plan board of any new petition for rezoning for any part of such property, excluding an application to amend the approved PD layout plan, development plan, or both, for a period of 12 months from the date of the amendatory action. Neither the denial of a petition to rezone to PD, nor the withdrawal of a petition to rezone to PD, shall operate to deny the applicant consideration of a new rezoning petition at any time, except that no new petition to rezone to PD may be considered by the city plan board within a period of 12 months from the date of such denial or withdrawal. The denial of a petition to rezone to a category other than PD shall not act to prohibit the filing of a petition for PD zoning at any time.

Section 30-4.81. Reserved.

DIVISION 11. VARIANCES AND MODIFICATION OF STANDARDS

There are two (2) levels of relief from the requirements of this Code: variances and modifications of standards.

Section 30-4.82. Modification of Standards.

It is recognized that because of the individual unique characteristics or circumstances of any given development, flexibility in the application of development requirements may be warranted in certain situations. Modifications from the standards provided in this chapter may be requested by an applicant as part of the site review process. If an applicant requests multiple modifications, each modification shall be evaluated independently.

- A. Application. All requests for modifications shall be submitted in writing with the application for development review on forms provided by the City. The request shall be approved or denied during development plan review and, if granted, shall be noted on the final development plan. If denied, there is no further administrative appeals process.
- B. Administrative modifications. The city manager or designee shall have the authority to grant limited modifications, as set forth below, where the city manager or designee determines that the proposed development meets the intent of the zoning district, the requested modification is the minimum necessary to allow reasonable development of the site and the requested modification is not injurious to the public health, safety and welfare. Administrative modifications are limited to ten (10) percent of the dimensional requirements established in the following sections:
 1. Section 30-5.17, Building form standards in transect zones
 2. Section 30-5.18, Transect zone supplemental standards (dimensional standards only)
 3. Section 30-5.22, Dimensional standards in conventional zoning districts
 4. Article VI, Division 1, Accessory structures
 5. Article VI, Division 3, Standards for specific uses
 6. Section 30-9.4, Landscaping requirements for vehicular use areas
 7. Section 30-9.5 Landscape buffer requirements for buffer strip areas
- C. Board modifications. Modifications of more than ten (10) percent but no more than thirty (30) percent of a dimensional requirement listed above, modifications of ten (10) percent or less previously denied or referred to the Board by staff, and modifications to the following non-dimensional requirements, shall be reviewed and approved by the Plan Board in accordance with the special use permit procedures. Changes of more than thirty (30) percent of a dimensional requirement shall be processed as variances.
 1. Section 30-5.17, Building form standards in transect zones
 2. Section 30-5.18, Transect zone supplemental standards (dimensional and non-dimensional standards)
- D. Prohibited modifications. No modification shall be granted for the following:
 1. Use of land
 2. Development density
 3. Modifications to approved planned developments. See Section 30-4.78 for allowable amendments to PDs.
 4. A reduction in sidewalk width that would result in a sidewalk with less than 5 feet clear space.
 5. A reduction of a setback to less than 5 feet adjacent to a single family residential district.
- E. Review criteria. A modification may be granted by the approving authority if it finds that strict application of the requirements of this chapter is not warranted and that granting a modification will fulfill the intent of this LDC.

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The approving authority shall apply all the following criteria, when applicable, to determine if the applicant has justified a request for a modification:

1. The request is consistent with the comprehensive plan and generally consistent with the purpose of the LDC.
2. The proposed modification will not have a material negative impact on adjacent uses, or the applicant proposes to mitigate the negative impact to be created by the modification.
3. Compliance with the requirement is technically impractical or undesirable based on site conditions, or approval of the waiver will result in superior design.
4. The request would not have a material negative effect the public health, safety, and welfare.
5. The applicant may provide other information in addition to that listed above to justify a request for a modification and demonstrate that granting the proposed modification will fulfill the intent of this LDC and the comprehensive plan.

F. Additional requirements.

1. The burden of presenting evidence sufficient to satisfy the applicable criteria set forth in this section as well as the burden of persuasion on those issues remains with the applicant seeking the modification.
2. In granting a modification, the approving authority may impose such reasonable conditions as will ensure that the use of the property to which the modification applies will be reasonably compatible with the surrounding properties, including visual screening.
3. As an exception to **Article III, Division 2, Non-conforming lots, uses and structures**, modifications may be granted even if nonconforming structures will be enlarged or altered as a result of the modification.
4. A granted modification and any conditions attached to it shall be entered on the face of or attached to the development order or permit and development plan.
5. A proposed change to an approved modification shall be added to the approved modification and considered in the aggregate. The total modification (approved modification plus proposed change) shall determine the approving authority per **subsections A and B** above.

Section 30-4.83. Variances.

The development review board shall have the power and duty to authorize a variance from the terms of the land development code and building chapters, except as otherwise provided for therein, as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the land development code or building chapters would result in unnecessary hardship.

A. Authorized variances.

For the purpose of this chapter, a variance is authorized only for height of structures; size of yard setbacks; driveway widths; and landscape and tree management provisions. A variance shall not be granted:

1. For establishment or expansion of a use otherwise prohibited; or
2. Because of the presence of nonconformities in the zoning district or adjoining districts; or
3. Because of financial loss or business competition; or
4. Because the property was purchased with the intent to develop or improve the property, and the intended development or improvement would violate the restrictions of the land development code or building chapter, whether or not it was known at the time of purchase that such development would be a violation.

Article IV. Development Review - Authority and Procedures**B. Review criteria.**

A variance from the terms of this chapter or building chapters shall not be granted unless the development review board finds that:

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 district.
2. Literal enforcement of the provisions of the land development code or building chapters would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the land development code or building chapters.
3. The special conditions and circumstances do not result from the action of the applicant.
4. Granting the variance requested will not confer on the applicant any special privilege that is denied by this section to other lands, structures or buildings in the same district.

C. Review procedures.

1. Pre-application meeting. A pre-application meeting is not required; however, the applicant is encouraged to attend a meeting with staff to go over procedural and regulatory requirements.
2. Application submittal. After the pre-application meeting, the applicant shall submit a complete application on a form provided by the planning and development services department and accompanied by the applicable fee and plans.
3. Staff review and recommendation. The city manager or designee shall review the application and prepare a recommendation for submittal to the development review board.
4. Development review board hearing. The development review board shall hold a duly advertised public hearing. At the hearing, the board shall make a finding that application meets the criteria of **Section 30-4.83.B**.

In granting any variance, the board may prescribe appropriate conditions and safeguards in conformity with the land development code or building chapters. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable according to applicable law. Under no circumstances shall the board grant a variance under this chapter to permit a use not permitted generally or by special exception in the district involved, or any use expressly or by necessary implication prohibited by the terms of this chapter in the district.

D. Expiration.

Any variance granted shall expire within **six months** after the date of grant, unless a building permit based upon and incorporating the variance is issued within the aforesaid **six-month** period and construction has begun thereunder.

Section 30-4.84. Limit on petitions relating to same property.

The development review board shall not entertain any petition for a variance within **two years** after the denial of a request for the same variance for the same property.

Section 30-4.85. Variances and appeals.

No variance shall be authorized by the development review board upon appeal from the terms of this chapter unless a public hearing on the appeal has been held by the board after notice of the hearing has been given.

Section 30-4.86. Reserved.**DIVISION 12. APPEALS**

Section 30-4.87. Administrative decisions.

- A. Unless otherwise provided for in this Code of Ordinances, appeals regarding a specific property where a person has a legal interest (affected person) must be taken to the development review board by the affected person within **20 days** from the date of the notice of the final administrative action by an administrative officer regarding any land development code or building chapter provision (chapters 6 and 30), which affects a specific property where the affected person has a legal interest, when that decision is adverse to his/her interest or by the applicant within **20 days** from the time the building inspector refuses to issue any permit after application therefore has been duly made. Each notice of final administrative action shall include an explanation of the affected person's right to appeal and give the time period (**20 days**) for filing a petition for appeal to the board.
- B. All petitions for appeal containing or attaching the requisite information described in this paragraph shall be filed with the Planning and Development Service Department on forms prescribed by the City Manager and shall be accompanied by all of the papers constituting the record upon which the action was taken. In addition, all petitions for appeal must include:
1. An explanation of how the petitioner's substantial interest is affected by the administrator's decision;
 2. A statement of how and when the petitioner received notice of the administrator's decision;
 3. A statement of all disputed issues of material fact or a statement that there are no disputed issues of material fact;
 4. A concise statement of the ultimate facts alleged, including specific facts that the petitioner contends would warrant reversal by the board or would warrant modification of the administrator's decision; and
 5. A statement of relief sought by the petitioner, stating precisely the remedy the petitioner seeks from the board.
- C. An appeal to the development review board shall stay all collateral proceedings related to the action appealed from, including but not limited to collateral proceedings pending pursuant to **chapter 2, article V, division 8, notice of violation, or division 6, civil citations**, unless the officer from whom the appeal is taken shall certify to the board after the appeal has been filed that, by reason of facts stated in the certificate, a stay, in his/her opinion, would cause imminent peril to life or property, in which case proceedings on the collateral action shall not be stayed other than by order of the board or by a court of equity after notice to the officer from whom the appeal is taken and on due cause shown.
- D. The board shall hear and determine all appeals promptly after giving to all parties at least **ten days'** written notice of the time and place of the hearing, as is stated in this section. Any party in interest at a hearing may appear in person or be represented by an agent or attorney.
- E. Timely filed petitions stating there are no disputed issues of material fact shall be processed and heard as follows:
1. The board secretary shall schedule a quasi-judicial hearing of the matter before the board after giving all parties at least **ten days** written notice of the time and place of the hearing.
 2. All parties shall submit to the secretary of the board any documentary evidence intended to be introduced at the hearing on their behalf at least **five business days** prior to the hearing.

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3. At the hearing, the board shall provide all parties the opportunity to present written or oral evidence in support of the documentary evidence submitted on their behalf including the petition.
 4. If during the course of the proceeding a disputed issue of material fact arises then, unless waived by all parties, the proceeding under this subsection shall be terminated and a proceeding under subsection F, below, shall be conducted.
- F. Timely filed petitions stating there are disputed issues of material fact shall be processed and heard as follows:
1. The city, through the city attorney's office, shall arrange for the services of a hearing officer to conduct the formal quasi-judicial hearing.
 2. In conducting the hearing to resolve disputed issues of material fact, the hearing officer shall have the power to administer oaths, issue subpoenas, compel the production of books, paper, and other documents, and receive evidence. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the hearing officer's recommended order, and to be represented by counsel or other qualified representative. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
 3. The hearing officer shall prepare a recommended order consisting of findings of fact, conclusions of law and affirmative relief, if applicable. The hearing officer shall transmit the recommended order to the board and all parties. Each party shall have 15 days from the date of the hearing officer's order to submit written exceptions to the hearing officer's recommended order. The order will be set on the next available development review board agenda following the expiration of time to submit written exceptions and shall only be removed from the agenda for good cause shown. The board shall review such order and any written exceptions and may set forth any deficiencies it finds with respect to the order. Said deficiencies shall be limited to determinations that the findings were not based upon competent, substantial evidence, or that the proceedings on which the findings were based did not comply with the essential requirements of law. In reviewing such recommended order, the board shall not have the power to receive or consider additional evidence. The board shall have no power to reject or modify the findings of fact contained in the recommended order unless the board first determines from a review of the entire record and states with particularity in the order that the findings of fact were not based upon competent, substantial evidence or upon a showing that the proceedings on which the findings were based did not comply with the essential requirements of law. The board may either adopt the recommended order as the final order, or by a three-fourths majority vote of those present reject the hearing officer's recommendation.
- G. Upon reaching its decision, the board shall make such order as it shall deem to be proper to each case and to that end shall have all of the powers of the officer from whom the appeal was taken. Each order shall thereafter be reduced to writing and shall contain a full recital of the board in each case. A copy thereof shall be filed in the records of the board by its secretary.
- H. In connection with appeals where it is alleged there is error in any order, requirement, decision or determination made by any administrative official in the enforcement of this chapter, notification shall be given to all owners of property within 300 feet of the premises which are involved in the appeal.
- I. In exercising any of the powers now or otherwise given to the development review board, the board may, so long as such action is in conformity with this section and the requirements of the land development code and building chapters, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the administrative official from whom the appeal is taken.

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- J. Any person aggrieved by a decision rendered by the board under administrative review may appeal the decision to the city commission by writ of certiorari within **30 days** from the date the decision of the board is reduced to writing and sent by U.S. mail to such person. The appeal shall be made by filing a written notice of appeal within the above-prescribed time period with the clerk of the city commission. The notice shall set forth concisely the decision appealed from and the reasons or grounds for the appeal.
- K. The appeal shall be heard by the city commission at its next regular meeting, provided at least **21 days** have intervened between the time of the filing of the notice of appeal and the date of such meeting. The city commission shall consider only evidence and testimony placed in the record before the board at its hearing and may hear oral argument by each party in support of or in opposition to the board's finding and decision. The city commission shall consider only whether due process was afforded the parties, whether the board applied the correct law, and whether the board's findings are supported by competent substantial evidence and shall then promptly make its decision and issue a final order affirming, amending or reversing the board's decision. The decision of the city commission shall be reduced to writing and shall constitute final administrative action. Appeals from decisions of the city commission may be made to the courts by writ of certiorari.
- L. Unless otherwise provided herein, any affected person aggrieved by any final administrative decision under this section may appeal the decision to a court of competent jurisdiction within **30 days** of the date of the decision.

Section 30-4.88. Development review board decisions.**A. Development plan appeals.**

An affected party may appeal a final development order on a development plan acted upon by the development review board to a hearing officer by filing a notice of appeal with the planning and development services department within **15 working days** of the final development order.

1. Application for appeal. The application for appeal shall contain at minimum the following items, plus any additional items required in specific sections of this chapter:
 - a. A statement of the decision to be reviewed, and the date of the decision.
 - b. A statement of the interest of the person seeking review.
 - c. The specific error alleged as the grounds of the appeal.
2. Stay during appeal. An appeal shall stay all proceedings in furtherance of the action appealed from until the findings of the hearing officer are rendered and any required action is taken by the original decision-maker.
3. Appellate hearing. Unless otherwise indicated in this chapter, within **45 days** of an appeal being filed, the hearing officer assigned to hear the appeal shall conduct a hearing open to the public in compliance with the following procedures as supplemented where necessary:
 - a. Scope of review.
 - i. The hearing officer's review shall be limited to the record and applicable law.
 - ii. The hearing officer shall have the authority to review questions of law only, including interpretations of this chapter, and any rules and regulations implementing this chapter. For this purpose, an allegation that a decision of the decision-maker is not supported by competent substantial evidence in the record as a whole is deemed to be a question of law. The hearing officer may not reweigh the evidence but must decide only whether competent substantial evidence supports the decision under review.
 - b. Authority of hearing officer. A hearing officer shall have the authority:
 - i. To request briefs to be filed on behalf of any party and prescribe filing and service requirements.

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- ii. To hear oral argument on behalf of any party.
 - iii. To adjourn, continue or grant extensions of time for compliance with these rules, either on his/her own motion or upon application of the party, provided no requirement of law is violated.
 - iv. To dispose of procedural requests or similar matters, including motions to amend and motions to consolidate.
 - v. To keep a record of all persons requesting notice of the decision in each case.
- c. Improper influence.
- i. No person who is party, nor a person who is reasonably likely to become a party in the near future, nor anyone appearing on behalf of a party, shall communicate ex parte, i.e., outside a hearing, with a hearing officer concerning any application, pending or proposed; provided, however, a hearing officer may consider requests regarding scheduling of hearings when made in writing.
 - ii. A person who accepts an appointment as a hearing officer is, for a period of two years from the date of termination as a hearing officer, hereby expressly prohibited from acting as agent or attorney in any proceeding, application or other matter before any commission, board, agent or office of city government, involving property which was the subject of an application which was pending before that person during the person's term as a hearing officer.
 - iii. A hearing officer shall neither initiate nor consider ex parte, i.e., outside a hearing, communications concerning a pending or impending proceeding. A hearing officer, however, may obtain the advice of a disinterested expert on law, planning or other subject applicable to a proceeding before him/her if he/she gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Costs and expenses of any expert shall be borne by the party appealing the decision.
- d. Decision of hearing officer and final action.
- i. The hearing officer must affirm each contested decision or find it to be an incorrect interpretation of law or not supported by competent substantial evidence. The hearing officer shall prepare a written opinion stating the legal basis for each ruling. The hearing officer shall submit the opinion to the department, which shall distribute it to the decision-maker and the parties.
 - ii. When the hearing officer affirms a contested decision pertaining to a final action of a decision-maker, that action shall be deemed to be the final action of the decision-maker and shall be subjected to no further review under this article.
 - iii. When the hearing officer finds any decision to be an incorrect interpretation of law or not supported by competent substantial evidence, that decision shall be referred back to the decision-maker for reconsideration in light of the hearing officer's opinion. The decision-maker shall reconsider its decision based solely on the record and the opinion of the hearing officer. If the decision-maker reaffirms the original decision, it shall be deemed to be the final action of the decision-maker and shall be submitted to no further review under this article.
- e. Custody of books and papers. The planning and development services department shall be the custodian of all documents, including the application, the hearing officer's decision, and the record of the proceedings.
- B. Judicial review.
- Any final order of the board may be appealed to the appropriate court within **30 days** of the order by an action in the nature of a writ of certiorari.