

# Land Development Code Re-Write Review and Changes by City Commission September 29, 2017 at 9:00 A.M.

## Article 1: Purpose

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### 1.04.00 Authority

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These Land Development Code regulations are enacted pursuant to the requirements and authority of F.S. § 163.3202, the Local Government Comprehensive Planning and Land Development Regulation Act, the City Charter, and the general powers in F.S. ~~Chapters 165 and~~ Chapter 166.

\*165 deals with County authority.

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### 1.07.02 Exceptions

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1. **Previously issued and applied for building/development permits.** The provisions of these Land Development Code (LDC) regulations and any amendments thereto will not affect the validity of any lawful ~~by~~ application or issued and effective building/development permit applied for in good faith or issued prior to the date of these adopted regulations (which shall be **DATE OF ADOPTION**) and if:
  - A. The development activity authorized by the permit has commenced prior to the effective date of these LDC regulations or any amendment thereto, or after the effective date of these regulations but within twelve (12) months of issuance of the building/development permit.
  - B. The development activity continues for a minimum of thirty (30) days without interruption of permitted work, except because of war or natural disaster, until the development is complete.
  - C. If permit expires or is otherwise invalidated, any further development pertaining to that permit shall occur only in conformance with the requirements of these LDC regulations or amendments thereto.
2. **Previously approved building/development permits.** Projects with active building or development permits when this Land Development Code or an amendment thereto is adopted, where development activity has commenced and proceeds according to the time limits in the regulations under which the development was originally approved, must meet only the requirements of those regulations. If the building/development permit expires or is otherwise invalidated, any further development shall occur only in conformance with the requirements of these regulations or amendment thereto.

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### 1.11.00 Penalty

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The provisions of the Land Development Code (LDC) may be enforced and violations punished by any of the following methods, alone or in combination, in the sole discretion of the city and as described in Article 15:

- ~~1. The county court shall have jurisdiction to enforce these regulations by a fine not exceeding \$500.00 or imprisonment not exceeding 60 days or by both. Each day any violation shall continue shall constitute a separate offense.~~
- ~~2. The special magistrate appointed by the city, shall have jurisdiction to enforce these provisions, and any person, firm, corporation, or agent determined to be in violation shall be subject to all penalties and remedies available to the special magistrate as provided by law.~~
- ~~3. Any violation of the LDC may be treated as a civil infraction in accordance with the supplemental municipal code enforcement procedures set forth in § 162.21, Florida Statutes, as may be amended from time to time. Any code enforcement officer designated by the City Administrator or his/her designee is hereby empowered to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted provision of the LDC. For a person who does not contest the citation, initial violations of the LDC shall carry a civil penalty of \$100.00 and repeat violations shall carry a civil penalty of \$250.00, payable to the clerk of court. If contested, the court may impose a penalty of up to \$500.00.~~
1. The special magistrate appointed by the city, shall have jurisdiction to enforce these provisions, and any person, firm, corporation, or agent determined to be in violation shall be subject to all penalties and remedies available to the special magistrate as provided by law.
2. Any violation of the LDC which the City Commission has identified as enforceable by citation and designated a fine amount for each violation. The City Commission shall establish the citation process by ordinance.
3. The city may institute any appropriate action or procedure to bring about compliance or remedy a violation.
4. The city may order discontinuance of the use of any land, water, or building; the removal of any building, addition, or other structure; the discontinuance of any work being done; or any other act when such use or act is in violation of the LDC.
5. Unless necessary for purposes of correcting a violation of the LDC or to avoid imminent peril to life or property, no officer, official, agent, employee, or board of the city will approve, grant, or issue any development order for any person where:
  - a. The property that is the subject of the requested development order is the site of an uncorrected violation of any provision of the LDC, or an unpaid code enforcement, correction, or abatement lien; or
  - b. The applicant for development order has any unpaid civil penalty or costs arising from a code enforcement action regarding the real property that is the subject of the request. Appeal of any denial or refusal to act pursuant to this section shall be as provided in the general appeal provisions of the LDC for appeal of an administrative decision.
6. Specific provisions of the LDC may provide for additional remedies. It is the legislative intent of this section to set forth a general description of the methods by which the city may enforce the provisions of this LDC, and not to limit any power or authority of the city. The city's selection of a particular enforcement method shall not be deemed to prohibit the City Commission from selecting one or more additional methods of enforcement, whether referenced above or otherwise available to the city in law or in equity, regarding the same set of operative facts.

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### 1.12.00 Abrogation

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This Land Development Code (LDC) is not intended to repeal, abrogate or interfere with any existing easements, covenants, or deed restrictions duly recorded in the public records of ~~the City~~ ~~or~~ Volusia County.

## Article 3: Boards

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### 3.01.00 City Commission

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All powers of the city shall be vested in the City Commission except as otherwise provided by law or the City Charter, and the commission shall provide for the exercise of such powers and for the performance of all duties and obligations imposed on the city by law.

In addition, the following functions, powers and duties of the commission shall be, in general:

1. To ratify the updating of the Comprehensive Plan; to ensure the City's Comprehensive Plan meets present and foreseeable future needs and is consistent with the City Charter, as required from time to time.
2. To provide for the approval of proposals promoting orderly development along lines consistent with the Comprehensive Plan.
3. To provide for the approval of subdivision plats, site plans to ensure consistency with the Comprehensive Plan and the LDC regulations.
4. To conduct public hearings as may be necessary in the discharge of its enumerated duties.
5. To amend these regulations following reviews and recommendations by the local planning board (Planning and Land Development Regulation Commission).
6. To authorize and delegate duties to city administration or other boards as necessary to implement these LDC regulations.
7. To interpret the City's Land Development, Zoning, and Comprehensive Plan regulations when an appeal is made of ~~an interpretation a review of~~ conducted by the Planning and Land Development Regulation Commission.

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### 3.02.02 Functions, Powers, and Duties of the PLDRC

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6. Special Exception Uses (Article 13). The Planning and Land Development Regulation Commission shall hear and make recommendations to the City Commission on requests for Special Exception uses. In doing so, the commission may decide such questions as are involved in determining when conditional uses should be granted and either grant special uses with appropriate conditions and safeguards or deny conditional uses. After review of an application and a public hearing thereon, the Planning and Land Development Regulation Commission may make a recommendation that the City Commission allow ~~conditional~~ special exception uses only upon a determination that the use meets the following standards:

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### 3.02.02 Functions, Powers, and Duties of the PLDRC

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Under no circumstances shall the commission grant a variance which permits a use not generally, or by ~~conditional~~ special exception use, permitted in the zoning district involved, or any use expressly or by implication prohibited, by the terms of this code in the zoning district involved. Nonconforming uses of neighboring lands, structures or buildings in the same zoning classifications or district, and

permitted uses of lands, structures or buildings in other zoning classifications or districts shall not be considered grounds for the authorization of a variance.

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### **3.03.01 Powers and duties of the Historic Preservation Board**

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1. Update the official inventory of historic properties and submit to the City Commission recommendations and documentation regarding proposed changes contiguous to the City of Lake Helen Historic District ~~when needed~~.
2. Develop programs to stimulate public interest in the conservation of historic districts, to participate in the adaptation of existing codes, ordinances, procedures, and programs to reflect historic district conservation policies and goals.
3. Explore funding and grant sources and advise and educate property owners concerning availability of such funds for 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 historic preservation and concerns and policies, and assist in the development of proposed and future land use.
5. Represent the City Historic Preservation Board at educational meetings, workshops and conferences sponsored by the Department of State, Division of Historic Resources or other historic preservation organizations.
6. Advise property owners and other city agencies concerning the proper protection, maintenance, enhancement and preservation of historic properties.
7. Advise and educate the City Commission concerning the effects of City actions on historic properties and neighborhoods.
8. Provide written design guidelines to citizens and property owners, as needed, to foster an understanding of the purposes of this Article and Article 5.
9. Recommend approval, approval with conditions or denial of petitions for Certificates of Appropriateness required under this Article and Article 5.
10. Recommend approval, approval with conditions or denial of petitions for Certificates of Designation required under this Article and Article 5.
11. Provide a hearing and recommended decision in response to Variance claims as outlined in Article 5.05.16.
12. Notify the City Commission, City Code Compliance Officer and Building Official when it appears that there has not been compliance with the historic preservation regulations of this Code.
13. Create and recommend to the City Commission the initial City of Lake Helen Historic District and subsequent additions and deletions to the properties, structures and boundaries of said district.
14. Provide direction and an opportunity for public review and comment prior to final approval of a building permits within the Gateway Corridor.
15. Act as a resource for information, advice, education and references for the citizens of Lake Helen in historic matters.

## Article 6: Non-Conforming Situations

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### **6.00.00 Legal nonconforming lots, structures and uses**

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Within the districts established by these regulations and/or amendments thereto, there exist lots, structures, and uses which were lawful before these regulations were adopted but which would be classified as nonconforming under these Land Development Code (LDC) regulations. These lots, structures and uses are then classified as legally nonconforming.

These legal nonconformities shall be permitted to continue until they are removed, but they are not encouraged to remain in existence since they are declared to be incompatible with the current LDC regulations. These legal nonconformities shall not be expanded or extended, nor be used as grounds for adding other prohibited structures or uses.

It is the intent purpose of these regulations to not continue (Commissioner Connell wanted to know if purpose would be okay to use as well as to say to phase out or discontinue instead of “not continue) a nonconforming lot, structure or use. Casual, temporary or illegal use of a lot, structure or use shall not be sufficient to set a precedent or establish the existence of a nonconforming use or to create rights for the continuance of such use.

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### **6.02.0 Expansion or Modification of Nonconforming Uses or Structures**

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8. Any non-conforming use shall be brought into full compliance with all provisions of this Code if any of the following activities occur:

- a. When the non-conforming use has been discontinued for a period of 180 days;
  - i. Failure to have active utility accounts or an active local business tax receipt shall presume the use has been discontinued.
- b. If a non-conforming structure or portion of any structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance and is declared by any duly authorized official of the city to be an unsafe building, it shall not thereafter be repaired or rebuilt except in conformity with this Land Development Code.

## Article 7: Environmental and Resource Protection

## Article 9: Easements, Utilities, Stormwater

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### **9.07.17 Regulation of Wells**

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The City, through its commissioners, officers, agents and employees, shall have at all times, the right of access to any property upon which a well is located, for the purposes of inspecting the same or otherwise regulating the operation of the well under the terms of this section.

Question to Scott: Is this covered in Article 15? Mayor will ask about access to property and will call City Attorney Scott Simpson to discuss concerns...

## Article 10: Floodplains

None

## Article 12: LOS (Level of Service): Concurrency

None