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# **CHAPTER 134 - GENERAL AND ADMINISTRATIVE PROVISIONS**

## **ARTICLE I. - IN GENERAL**

### **DIVISION 1. – CODE APPLICATION**

#### **Section. 134-1. - How Code designated and cited.**

The ordinances embraced in the following chapters shall constitute and be designated as the "Pinellas County Land Development Code."

- (a) Chapter 134 – General and administrative provisions
- (b) Chapter 138 – Zoning
- (c) Chapter 142 – Airport zoning
- (d) Chapter 146 – Historical preservation
- (e) Chapter 150 – Impact fees
- (f) Chapter 154 – Site development, right-of-way improvements, subdivisions and platting
- (g) Chapter 158 – Floodplain management
- (h) Chapter 166 – Environmental and natural resource protection
- (i) Other chapters that may be added and/or amended in connection with the Land Development Code.

#### **Section 134-2. – Definitions.**

The terms expressed in Chapter 1, Section 1-2 of the Pinellas County Code shall be applicable to this chapter, unless otherwise defined within a specific division or section of this chapter.

#### **Section 134-3. - The effect of history notes and references in Code.**

- (a) The catchlines of the several sections of this code set in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of such sections, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.
- (b) The history or source notes appearing in parentheses after sections in this code are not intended to have any legal effect but are merely intended to indicate the sources of matter contained in the section. Cross references, editor's notes and state law references which appear after sections or subsections of this code or which otherwise appear in footnote form are provided for the convenience of the user of this code and have no legal effect.
- (c) All references to chapters, articles or sections are to be chapters, articles and sections of this code unless otherwise specified, but references to provisions in chapters 1—133 are to provisions in the Pinellas County Code.

#### **Section 134-4. - Effect of repeal of ordinances.**

- (a) The repeal or amendment of an ordinance shall not revive any ordinance in force before or at the time the ordinance repealed or amended took effect.
- (b) The repeal or amendment of any ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending

at the time of the repeal for an offense committed under the ordinance repealed or amended.

**Section 134-5. - Amendments to Code; effect of new ordinances; amendatory language.**

- (a) All ordinances passed subsequent to this code which amend, repeal or in any way affect this code may be numbered in accordance with the numbering system of this code and printed for inclusion in this code. Repealed chapters, sections and subsections, or any part thereof, by subsequent ordinances may be excluded from this code by omission from reprinted pages affected thereby. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of these subsequent ordinances until such time that this code and subsequent ordinances are readopted as a new code.
- (b) Amendments to any of the provisions of this code may be made by amending those provisions by specific reference to the section number of this code in the following language:  

"Section \_\_\_\_\_ of the Pinellas County Land Development Code is hereby amended to read as follows: ...." The new provisions may then be set out in full as desired.
- (c) If a new section not then existing in the code is to be added, the following language may be used:  

"The Pinellas County Land Development Code is hereby amended by adding a section (or article or chapter) to be numbered \_\_\_\_\_, which section reads as follows: ...." The new section may then be set out in full as desired.
- (d) All provisions desired to be repealed should be specifically repealed by section, article or chapter number, as the case may be, and/or by setting them out at length in the repealing ordinance.

**Section 134-6. - Supplementation of Code.**

- (a) Supplements to this code shall be prepared and printed whenever authorized or directed by the county. A supplement to the code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the code. The pages of a supplement shall be so numbered that they will fit properly into the code and will, where necessary, replace pages that have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the code will be current through the date of adoption of the latest ordinance included in the supplement.
- (b) In preparing a supplement to this code, all portions of the code that have been repealed shall be excluded from the code by the omission thereof from reprinted pages.
- (c) When preparing a supplement to this code, the person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the person may:
  - (1) Organize the ordinance material into appropriate subdivisions.
  - (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the code printed in the supplement, and make changes in such catchlines, headings and titles.
  - (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the code and, where necessary to accommodate new material, change existing section or other subdivision numbers.

- (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections \_\_\_\_\_ to \_\_\_\_\_" (inserting section numbers to indicate the sections of the code which embody the substantive sections of the ordinance incorporated into the code).
  - (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the code.
- (d) In no case shall the person preparing the supplement make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the code.

**Section 134-7. - Severability.**

It is declared to be the intent of the Board of County Commissioners that if any section, subsection, sentence, clause, phrase or portion of this code or any ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holding or invalidity shall not affect the remaining portions of this code or any ordinance, and it shall be construed to have been the legislative intent to pass this code or such ordinance without such unconstitutional, invalid or inoperative part therein, and the remainder of this code or such ordinance after the exclusion of such part or parts shall be deemed and held to be valid as if such part or parts had not been included herein. If this code or any ordinance or any provision thereof shall be held inapplicable to any person, group of persons, property or kind of property, or circumstances or set of circumstances, such holding shall not affect the applicability of this code to any other person, property or circumstance.

**Section 134-8. - General penalty; continuing violations.**

- (a) In this section "violation of this code" means:
  - (1) Doing an act that is prohibited or made or declared unlawful, or an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance;
  - (2) Failure to perform an act that is required to be performed by this code or by rule or regulation authorized by this code; or
  - (3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by this code or by rule or regulation authorized by this code.
- (b) In this section, "violation of this code" does not include the failure of a county officer or county employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.
- (c) Except as otherwise provided by law or ordinance, a person convicted of a violation of this code shall be punished by a fine not to exceed \$500. With respect to violations of this code that are continuous with respect to time, each day the violation continues is a separate offense.
- (d) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise, the imposition of civil fines or other administrative actions, including action pursuant to F.S. ch. 162 and Article VIII of Chapter 2 of the Pinellas County Code, nor does it preclude other civil judicial remedies.
- (e) The Board of County Commissioners is authorized and empowered to institute legal proceedings in the circuit court of the county for the purpose of obtaining injunctive relief and such other relief as may be proper under the law against violators of this code. This remedy is in addition to all other remedies. The imposition of a penalty does not prevent equitable relief.

- (f) No applications for development permits, site plans, variances, development agreements, special events, or building permits shall be accepted, nor shall any approvals or permits be issued for a property, which has been issued a code enforcement notice of violation; or, which has a County recorded, unpaid, code enforcement lien; or which has outstanding, unpaid, development review fees that have remained unpaid after the County has notified by certified mail the party responsible for the fees and said property owner that such fees remain unpaid. These restrictions shall not apply to applications submitted to correct a code enforcement violation; a federal, state or other agency violation; a Florida Building Code violation; a Florida Fire Prevention Code violation; or, an imminent life safety, health or welfare condition as determine by the building official, fire marshal, or other applicable County official.

**Section 134-9. - Certain ordinances not affected by Code.**

- (a) Nothing in this code shall affect any ordinance:
  - (1) Promising or guaranteeing the payment of money by or to the county or authorizing the issuance of any bonds of the county, or any evidence of the county's indebtedness, or any contract or obligation assumed by the county.
  - (2) Relating to fixing positions, classifications, benefits or salaries of county officers or employees.
  - (3) Granting a right or franchise.
  - (4) Dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating or prescribing the grades of any road or public way in the county.
  - (5) Levying or imposing taxes not codified in this code.
  - (6) Providing for local improvements and assessing taxes therefor.
  - (7) Codified in the Pinellas County Code.
  - (8) Rezoning specific property.
  - (9) Adopted for purposes which have been consummated.
  - (10) Which is temporary, although general in effect.
  - (11) Which is special, although permanent in effect.
  - (12) Declaring a moratorium that is not codified in this code.
  - (13) Creating any special district not codified in this code.
- (b) All ordinances specified in subsection (a) of this section are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this code.
- (c) Nothing in this code or the ordinance adopting this code repeals or modifies any exhibit, attachment or appendix to an ordinance referenced in this code if the exhibit, attachment or appendix is not published in this code.

**Section 134-10. - Provisions considered as continuation of existing ordinances.**

- (a) The provisions appearing in this code, so far as they are the same as those of ordinances existing at the time of the adoption of this code, shall be considered as a continuation thereof and not as new enactments.
- (b) The adoption of this code does not alter the effective date of any ordinance in this code, it being the intent of the Board of County Commissioners that the adoption of this code shall not be interpreted as creating any new preexisting uses or altering the date by which preexisting uses must comply with a county ordinance.



**Section 134-11. - Code does not affect prior offenses, acts, penalties or rights.**

Nothing in this code or the ordinance adopting this code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this code.

**Sections 134-12—134-13. - Reserved.**

**DIVISION 2. – QUASI-JUDICIAL PROCEEDINGS**

**Section 134-14. - Quasi-judicial proceedings.**

- (a) *Purpose and intent.* The Board of County Commissioners ("Board") has prepared these rules to encourage public participation during quasi-judicial hearings in a manner consistent with the requirements of law. The board intends that these hearings be informal and not intimidating for the public, while recognizing the need for certain structure to maintain orderly hearings. Notwithstanding the procedures established in this section, these procedures may be modified by the hearing body utilizing said procedures to effectuate the effective presentation of evidence.
- (b) Applicability of these procedures.
  - (1) *Land Development Code.* These procedures apply to all quasi-judicial proceedings held to interpret, implement, and enforce the land development code by all hearing bodies, as further defined herein. Examples of quasi-judicial proceedings include but are not limited to: site specific rezonings, variances, Type 2 and 3 uses, site plan review and approval, and administrative appeals.
  - (2) *Covered decision makers.* These procedures shall be utilized by the Board of County Commissioners, the Local Planning Agency, and the Board of Adjustment and Appeals ("hearing bodies").
  - (3) *Applicants.* Applicants shall be limited to the property owner(s) or their representatives, as further detailed herein.
  - (4) *Legislative proceedings.* Utilization of these procedures by a hearing body when sitting in a legislative capacity does not change the character of the legislative proceeding nor does it confer any additional rights or remedies upon any person or party.
- (c) Pre-hearing submittals.
  - (1) *Application.* The applicant shall submit an application as provided in the procedures established for the individual decision being requested.
  - (2) *Staff recommendation.* To the extent that the applicable procedure requires a staff review and written recommendation to be presented to the hearing body, that written recommendation shall be completed and available for public inspection no less than one week prior to the hearing.
  - (3) *Supplemental material.* No later than one week prior to the scheduled public hearing, any applicant, proponent, or opponent may submit any written arguments, evidence, explanations, studies, reports, petitions or other documentation for consideration by the hearing body in support of or in opposition of the application. Unless an oversized exhibit is absolutely essential, documentary paper or photographic exhibits should not exceed 24 inches by 36 inches and, if mounted on a backboard, shall be removable therefrom. All non-digital documentary evidence should be capable of being folded and filed. If an exhibit is presented, it becomes part of the record and will not be returned. No new materials will be accepted at

the hearing as of right; such material shall only be accepted in the hearing body's sole discretion.

- (4) *Applicant representation.* Applicants may represent themselves, or choose to be represented by an attorney or non-attorney representative. In the case of a non-attorney representative, and if the applicant will not appear at the hearing, the applicant shall furnish a properly executed power of attorney or other such document authorizing such representation.
- (5) *Record.* The applicant's application, staff recommendation, and properly filed supplemental material shall automatically become part of the record. In addition, properly sworn testimony during the hearing shall also automatically become part of the record. Additional materials shall only become part of the record in the hearing body's sole discretion in accordance with the terms herein.

(d) Public hearing.

- (1) Generally. It is the expectation that the hearing will be as informal and non-intimidating as possible. Each person who addresses the hearing body shall utilize the speaker's lectern, if available, to allow his or her comments to be recorded and shall provide their name, address and whether they will speak on behalf of others.
  - a. *Recording.* All quasi-judicial hearings shall be recorded. Any party who wishes to appeal a decision shall be solely responsible for ensuring a verbatim transcript of the proceedings is created for appeal.
  - b. *Time limitation guidelines.* It is expected that presentations will be organized and efficiently presented. Persons in the following status should complete their presentation or comments within the prescribed time limits, unless an extension is granted by the hearing body upon a showing of good cause:
    1. Staff should introduce and present the case in 20 minutes, including their response and summary.
    2. The applicant should present his or her entire case in 20 minutes, including rebuttal.
    3. Persons who have been authorized to represent an organization with five or more members or a group of five or more persons should limit their presentation to 10 minutes. Others in the organization or group shall waive their time. The five represented individuals must be present and waive their time.
    4. All other persons may speak up to a total of three (3) minutes each.
  - c. *Registration of proponents or opponents.* To the extent possible, persons who desire to make presentations as proponents or opponents of an item should, prior to the meeting at which such item is to be heard, register with the hearing body's clerk on the forms provided. Five or more persons deemed by the hearing body to be associated together or otherwise represent a common point of view on an item may be requested to select a spokesperson.
  - d. *Organizational or group speakers.* Prior to presenting his/her case, any person representing an organization or other persons shall indicate who he/she represents and how he/she received authorization to speak on behalf of such organization or group of persons. The hearing body may make further inquiry into the represented authority of such person if necessary.
  - e. *Speaker's qualifications.* Persons speaking on issues requiring educational, occupational and other experience should identify those qualifications. The hearing body may further inquire as to such qualifications.

- f. *Restrictions on testimony or presentation of evidence.* At any proceeding, the chair, or administrative official leading the proceedings, unless overruled by majority of the hearing body members present, may restrict or terminate presentations which in the chairman's judgment are irrelevant, frivolous, unduly repetitive, inflammatory, or otherwise out of order.
  - g. *Ex parte communications.* Individuals should not contact the person or entity responsible for issuing or recommending the final development order(s) about issues coming before said official or hearing body, and said officials and hearing bodies shall avoid such communication to the extent practicable. If such communication inadvertently or unavoidably takes place, such conversations should be disclosed and made part of the record before or during the hearing. Such disclosure shall include the subject of the communication and the identity of the person, group, or entity with whom the communication took place.
- (2) Order and subject of appearance. The public hearing shall be conducted in the following manner:
- a. Disclosure of any ex-parte communications by hearing body members.
  - b. Initial presentation by staff. County staff shall make the initial presentation to the hearing body regarding any item under consideration. Affected parties may ask questions of, or seek clarification from, staff by request through the chair after staff's initial presentation.
  - c. Applicant's presentation. After staff presentation, the applicant(s) shall be allowed to present their case.
  - d. Proponent's presentation. After presentation by the applicant(s), proponents of the item or request shall be allowed to speak in support of the case.
  - e. Opponent's presentation. After the hearing body and staff inquiry of the proponents, opponents of an item or request shall be allowed to speak.
  - f. Applicants' rebuttal presentation. The applicant shall be allowed an opportunity for rebuttal. Rebuttal shall only address previous testimony. Proponents, opponents or staff who believe that the rebuttal presentation includes an error of fact may ask for and may be allowed an opportunity to point out such error of fact.
  - g. *Inquiry by hearing body.* The hearing body shall have an opportunity to comment or ask questions of or seek clarification from staff, applicant(s), proponent(s), or opponent(s) at any time during the proceedings. After the respective parties' presentations, affected parties may ask questions of or seek clarification from the applicant(s), proponent(s), or opponent(s) by request through the chair.
  - h. *Closing of public comment.* For those matters in which public comment is heard by the hearing body, the chair shall close the public comment portion of the meeting on that item upon the conclusion of the last appropriate speaker's comments. No additional public comments shall be allowed, except in specific response to questions by members of the hearing body or in said body's sole discretion.
- (3) *Waiver of hearing.* The applicant may waive the right to a full hearing if it agrees with the staff recommendation and no one from the audience wishes to speak for or against the application.
- (4) Continued public hearings.

- a. *Continuance requested by the applicant.* The applicant shall have one opportunity to continue his or her case to a future scheduled meeting date for up to 70 days, by submitting a notification to continue in writing to the county department responsible for scheduling the hearing prior to formal publication of the hearing. If the applicant notifies said department after publication, requests a continuance for more than 70 days, or seeks to continue the case after the case has previously been continued, such a request shall be decided by the responsible hearing body. All costs associated with a continuance, including but not limited to re-advertising, shall be borne by the applicant.
  - b. *Opportunity to be heard.* In any matter where it is known that a scheduled public hearing will be continued to a future date, public comment may be limited to those persons who state that they believe they cannot be available to speak on the date to which the public hearing is being continued. Such persons may then make their comments at the current meeting, provided, that upon making their comments, such persons shall waive the right to repeat or make substantially the same presentation at any subsequent meeting on the same subject. This waiver shall not preclude such persons from making different presentations based on new information or from offering response to other persons' presentation, if otherwise allowable, at any subsequent meeting.
- (e) *Burden of proof.* The applicant has the burden of producing competent substantial evidence for the hearing body to make an informed decision and conclude that the applicable standards for the case at hand have been met. Failure to submit sufficient timely evidence or testimony, or address the relevant criteria on which the application is based, may be a sufficient basis for the hearing body to deny the application.
- (f) Administrative appeals.
  - (1) *Scope of review.* Administrative appeals shall be held by the Board of Adjustment and Appeals or Board of County Commissioners in conformity with the provisions herein, and shall be reviewed de novo.
  - (2) *Right of Appeal.* Appeals may be filed by any affected party aggrieved by the application of the land development code or the Comprehensive Plan by the Development Review Committee, or aggrieved by an action that provides for an appeal to the Board of County Commissioners ("appellant").
  - (3) *Procedure for appeal.* An appeal shall be filed in writing with the applicable department responsible for issuing the decision, or administering the application, for which a decision has been rendered, within 15 calendar days after rendition of the final development order or determination at issue. The date of rendition shall be the date at which a written, dated instrument expressing such decision is executed by the administrative official or original hearing body.
  - (4) *Filing fee.* Each appeal shall be accompanied by a filing fee, as determined by the annual fee schedule adopted by the Board of County Commissioners.
  - (5) *Substance of appeal.* At a minimum, the appeal shall indicate the following:
    - a. The section(s) of the Pinellas County Land Development Code that the appellant has a reasonable basis to believe were not adhered to regarding the final decision on appeal;
    - b. How the appellant has been aggrieved by such noncompliance, which must include specific reasons beyond generalizations, and must be different in nature and scope to the general public or neighborhood at large; and
    - c. Whether a pre-hearing conference is requested.

- (6) *Denial and consolidation.* The hearing body hearing the appeal shall have the right to deny the appeal if the appeal does not adhere to the requirements herein. Said hearing body also reserves the right to consolidate multiple appeals of the same decision, or multiple appeals of different decisions affecting the same project, when appropriate.
- (7) *Effect of appeal.* Upon filing of an appeal, all work on the premises associated with the final development order shall be at the sole risk and cost of the applicant.
- (8) *Finality of decision.* No new application for an identical request on the same parcel shall be accepted for consideration within a period of six (6) months following a final decision on an administrative appeal. An applicant may request a waiver to this provision and the responsible hearing body may waive this provision for good cause.
- (9) *Judicial review of decisions.* Any affected person may appeal a final adverse administrative decision to circuit court, provided that the aggrieved party has first filed an administrative appeal, was denied relief, and has filed an appeal to circuit court within 30 calendar days of the final adverse decision.
- (10) *Pre-hearing conference.* The Board of Adjustment and Appeals or Board of County Commissioners may require a preliminary hearing in its sole discretion. If the hearing body determines a prehearing conference is needed, it shall issue a notice of prehearing conference outlining the specific requirements of the hearing.
  - a. Minimum requirements. At a minimum, the notice shall require each party to furnish the following items in an effort to narrow the issues on appeal:
    - 1. A list of documentary evidence and exhibits that will be offered during the hearing and brief statement explaining their purpose;
    - 2. A list of all possible witnesses, which shall include the witnesses' name, address, phone number, and a brief summary of the substance of each witness' proposed testimony;
    - 3. The parties must bring copies of any documents or exhibits they intend to use at the hearing, to be placed in the record for the hearing.
  - b. Failure to comply. Failure to comply with the terms of the Notice may result in the prehearing conference to be continued and/or the non-complying party's witnesses and/or exhibits being disallowed or such other relief as the hearing body may determine.
  - c. Failure to appear. Failure to appear at the scheduled pre-hearing conference may constitute grounds for the hearing body to find that the appellant has withdrawn the appeal.

**Sections 134-15—134-45. - Reserved.**

## **ARTICLE II. - COUNTYWIDE PLANNING AUTHORITY**

### **Section 134-46. – Countywide Planning Authority.**

In accordance with Chapter 2012-245, Laws of Florida, the Board of County Commissioners service as the countywide planning authority with the Pinellas Planning Council serving as its advisory board.

### **Section 134-47. – Process.**

For applicable review procedures related to the countywide planning authority refer to Chapter 138 Article II.

Secs. 134-48—134-80. - Reserved.

## **ARTICLE III. - COMPREHENSIVE PLAN**

### **Section 134-81. - Authority.**

This article is adopted in compliance with and pursuant to the local government Comprehensive Planning and land development regulation act, F.S. § 163.3161 et seq.

### **Section 134-82. - Purpose and intent.**

- (a) The Comprehensive Plan is intended to function as a guiding document implemented through applicable codes, ordinances, manuals, and similar regulating documents, consistent with Chapter 163.F.S. The goals, objectives, policies and strategies of the Comprehensive Plan shall enable staff and policy-makers to:
- (1) Consider long-term impacts and evaluate policy decisions to ensure that they support a sustainable future
  - (2) Create and enhance safe, healthy communities that attract and retain a socially and culturally diverse population
  - (3) Facilitate a strong local economy that supports sustainable, healthy communities and enhances employment opportunities and the quality of life for its citizens
  - (4) Provide a range of housing options to meet the needs of a diverse and intergenerational community
  - (5) Provide an interconnected, resilient multimodal transportation network that safely, efficiently and equitably addresses the mobility needs of all citizens, visitors, and businesses, while simultaneously minimizing opportunities for traffic related fatalities and injuries
  - (6) Protect the diverse ecosystem that makes up the county's natural resources and contributes to the county's public health, quality of life and local economy
  - (7) Promote the advancement of best practices and technologies that benefit the economy, healthy communities, and the public health, safety and welfare
  - (8) Recognize opportunities for responsible regionalism and promote inter-coordination with the county's municipalities, community organizations and regional entities.
- (b) The Pinellas County Comprehensive Plan, and those elements thereto are also established with specific objectives and policies to achieve the following:
- (1) to preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement, fire prevention, and general welfare;
  - (2) to ensure that the existing rights of property owners be preserved in accord with the constitutions of the state and of the United States.
- (c) Nothing in this article or the Comprehensive Plan adopted in this article, or in the land use regulations adopted consistent with the requirements of this article, shall be construed or applied so as to result in an unconstitutional temporary or permanent taking of private property or the abrogation of validly existing vested rights.

### **Section 134-83. - Adopted.**

The Pinellas County Comprehensive Plan, and all amendments thereto, are hereby adopted as required by, and pursuant to, the provisions of the community planning act, F.S. § 163.3161 et seq., as the local Comprehensive Plan of the Pinellas County Board of County Commissioners.

**Section 134-84. - Administration.**

- (a) The county administrator or designee shall be responsible for the general administration of the Comprehensive Plan.
- (b) The planning director or designee shall be responsible for reviewing all ordinances pursuant to Florida State Statutes pertaining to the Comprehensive Plan.

**Section 134-85. - Appeals.**

- (a) The Board of County Commissioners or its designee shall hear appeals relating to any administrative decision or determination concerning implementation or application of the Comprehensive Plan's provisions. The Board of County Commissioners shall establish procedures and proceedings and times for appeals to be heard.
- (b) In order to prevent the taking of property pursuant to the provisions of subsection 134-82(c), the Board of County Commissioners shall establish administrative procedures which any party challenging the denial of a development order as a temporary or permanent taking of private property or an abrogation of vested rights must exhaust before any action on a request for development is deemed final by any court or quasi-judicial proceeding.

**Section 134-86. - Protection of vested rights.**

- (a) Definitions.
  - (1) *Final local development order.* For the purpose of this article, a "final local development order" means the last approval necessary to carry out the development provided that the proposed project has been precisely defined and development has commenced and is continuing in good faith. Terms used in this definition shall be as defined in Chapter 138.
  - (2) *Final site plan approval.* For the purpose of this article, "final site plan approval" means that a site development plan has been reviewed and approved by all applicable county departments for compliance with all currently applicable rules, regulations, and ordinances and has subsequently been reviewed, approved, and signed by the county administrator and is the last review needed for issuance of a building permit.
  - (3) *Special exemptions.* For the purposes of this article, special exemptions mean exemptions granted by the county to Comprehensive Plan policies based on previous approval of development orders. The provisions of this section shall apply to those situations. However, no exemptions shall be granted to environmental/health policies set forth in the Comprehensive Plan.
- (b) *Vested development order.* For the purpose of this article, a "development order" shall be the last county approval necessary to carry out the development provided that the proposed project has been precisely defined and development has commenced and is continuing in good faith.
- (c) *Vesting standards.* The following standards apply to projects with a vested development order.
  - (1) Notwithstanding any other provisions of this Comprehensive Plan, it shall be the policy of the county to consider granting special exemption status to a development order which may be deemed inconsistent with a policy or operative provision in this Comprehensive Plan if a project phase or a project as indicated in an approved development order in its entirety is completely contained on a site for which one or more of the following development orders has received final approval by the county, and development must have commenced and is continuing in good faith,

prior to the date of adoption of this Comprehensive Plan for purposes of consistency or prior to January 1, 2019, or purposes of concurrency:

- a. Final approved development orders relating to a development of regional impact (DRI) project or Florida Quality Development (FQD) pursuant to F.S. ch. 380.
  - b. Valid and approved final local development order.
- (2) Additionally, it shall be the policy of the county to consider granting special exemption status to a proposed development order which may be deemed inconsistent with a policy or operative provision in this Comprehensive Plan if that project in its entirety or project phase as indicated in an approved development order is completely contained on a site which has one of the following determinations, provided development commences within one year of the determination and continues in good faith:
- a. A development order or rights determined to be vested pursuant to any prior judicial determination or any judicial determination by an appropriate court overturning a vested right determination made through any administrative procedure subsequently established by the Board of County Commissioners
  - b. A development order or right determined to be vested pursuant to a vested right determination made through any administrative procedure subsequently established by the Board of County Commissioners based on the owner's establishment by the presentation, at a public hearing, of competent, substantial evidence that he acted in good faith and in reasonable reliance upon some act or omission of the county and has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights he has acquired. A land use designation in a prior Comprehensive Plan, or a zoning designation, is not sufficient to constitute an act or omission of the county. The treatment of similar cases by state courts, as reviewed by the county attorney or his designated representative, as well as recommendations of staff, shall be relevant to the determination of the extent of vested rights established, if any. Any person who claims that he has vested rights must file an application for a vested rights determination on or before June 30, 2019. Such application not filed by that date shall not be accepted or reviewed, and any such rights claimed after that date shall be irrevocably waived and abandoned. Vested rights determinations shall be deemed to be an action taken on a development order and shall be subject to challenge in the manner provided in F.S. § 163.3215.
- (3) Projects with special exemptions under subsections (c)(1)a and (c)(1)b of this section shall not be required to comply with the provisions of this article as to concurrency. Development orders determined to have "vested rights" under Subsections (c)(2)a and (c)(2)b of this section shall be required to comply with the provisions of this article except to the extent provided in the vested rights determination or judicial order.
- (4) To the extent that any subsequent amendment to development orders with a special exemption status established pursuant to the foregoing procedures may alter existing development rights otherwise preserved under the special exemption status, such subsequent amendments shall not qualify for the special exemption and shall be reviewed in accordance with the then-existing Comprehensive Plan.
- (5) It is not the intent of this section to preclude the consideration of appropriate extensions of development orders or phasing deadlines. Special exemption status



shall, however, terminate upon expiration, repeal, or rescission of any approved development order that created the special exemption status on the project or project phase or extension thereof. Any project, or all phases thereof, that are made a special exemption under this policy, or any development that does not comply with the then-existing Comprehensive Plan, shall be considered nonconforming and shall lose such special exemption status upon the expiration of any final plan or permit, or the missing of any phasing deadline for such project.

- (6) In the event that a phased project in its entirety qualifies as a special exemption, succeeding phases of that project shall retain that status so long as the following conditions are met:
  - a. For the first phase, no more than one year has passed since the approval of the final site plan and/or no more than six months have passed since the issuance of a building permit and the commencement of development, which must continue in good faith.
  - b. Each subsequent phase shall utilize the initial final site plan approval date as a base, and the approved phase number will be the date in years for required commencement of development for that phase. (Example: In a three-phased project, the third phase shall commence development within three years of the final site plan approval.) All phases must continue development in good faith to retain special exemption status.
- (7) Any proposed development order considered under the exemption provisions of this section must be consistent with the development orders previously approved and issued prior to the plan adoption for the proposed project or project phase. A developer may elect to be processed under this Comprehensive Plan, in its entirety, as it exists at the time of the request for development order approval. Unless a developer indicates that the special exemption provisions, as set forth in this section, apply to a request for development order approval at the time of application for such development order, then such project shall be processed under the terms of the Comprehensive Plan in existence at the time of such application.
- (8) Nothing in this section precludes review of a proposed project or project phase that has been determined to have special exemption status under this section for compliance with other applicable development regulations not contained in this Comprehensive Plan. Nothing in this section precludes review of a proposed project or project phase that has been determined to have special exemption status under this section for compliance with the provisions of this Comprehensive Plan, provided that requiring compliance with those provisions shall not substantially impair rights deemed to be vested pursuant to this section.

**Section 134-87. - Reserved.**

**Section 134-88. - Contents.**

Along with the provisions of this article, the Pinellas County Comprehensive Plan shall consist of the adopted principles, goals, objectives, policies, maps and tables, including the future land use map and the future land use map category descriptions and rules, and the monitoring and concurrency management procedures, as well as the implementation strategies, supporting data and analysis, glossary, and appendices.

**Section 134-89. - Legal status.**

- (a) All development undertaken by and all actions taken in regard to development orders of the Board of County Commissioners shall be consistent with the Pinellas County Comprehensive Plan adopted in this article.

- (b) The Board of County Commissioners shall be the sole authority for enacting or implementing the provisions of the Pinellas County Comprehensive Plan, unless otherwise delegated to a specific designee.
- (c) All land development regulations enacted or amended shall be consistent with the Pinellas County Comprehensive Plan adopted by this article. No land development regulations or amendment thereto shall be adopted by the Board of County Commissioners until such regulations, code, or amendment has been referred to the county's local planning agency for review and recommendation as to the relationship of such proposal to the Pinellas County Comprehensive Plan.

**Section 134-90. - Evaluation and amendment.**

The Pinellas County Comprehensive Plan is subject to periodic evaluation and amendment, as allowed and required by the State of Florida, in order to ensure that the plan remains an effective long-range planning tool for the county, and at a minimum, address changes in local conditions as well as any new state planning requirements. In order to achieve this, the Comprehensive Plan, as referenced in this article, shall be the plan as originally adopted in 1989 and amended through subsequent amendment cycles, including the 2008, and any succeeding, evaluation and appraisal report-based amendments, as prescribed by the Florida States Statutes pertaining to Comprehensive Planning.

**Secs. 134-91—134-120. - Reserved.**

**ARTICLE IV. - ADMINISTRATIVE PROCEDURES FOR REVIEW AND REMEDY OF TAKING CLAIMS**

**Section 134-121. - Definitions.**

*Final site plan* shall have the specific meaning set forth in Section 134-86(a)

*Landowner* means an owner of a legal or equitable interest in real property, and includes the heirs, successors, and assigns of such ownership interests.

*Sworn statement* means the sworn statement supplied by a takings claimant as described in section 134-125(a)(2)—(a)(5), and includes all accompanying documents, witness lists and other information supporting the takings claim.

*Takings administrator* means the county administrator

*Takings claim* means any claim that falls within the scope of this article, as set forth in Section 134-2, whether claimed to be temporary or permanent in character

The following terms shall have the specific meaning as set forth in Section 134-221:

- (1) *Development*
- (2) *Development order*
- (3) *Development permit*, except that this term shall include tree permits and grubbing permits where appropriate to further the purposes of this article.

**Section 134-122. - Legislative findings and intent.**

- (a) Legislative findings. The Board of County Commissioners finds and declares that:
  - (1) The provisions of F.S. § 163.3161 et seq. establish the local government Comprehensive Planning and land development regulation act ("the act");
  - (2) The provisions of F.S. § 163.3202(2)(g) provide that counties shall have the power and responsibility to plan comprehensively for their future development and growth,

including the adoption and implementation of appropriate land development regulations which are necessary or desirable to implement a Comprehensive Plan;

- (3) The county adopted its Comprehensive Plan (the "county plan") on August 8, 1989, through the adoption of Ordinance No. 89-32;
- (4) The county plan establishes the minimum requirements necessary to maintain, through orderly growth and development, the character and stability of present and future land use and development in the unincorporated areas of the county;
- (5) Section 134-82(b) provides that the Board of County Commissioners retains the power and authority to enact ordinances, rules and regulations that are more restrictive than those originally adopted in the county plan;
- (6) Section 134-82(c) provides that nothing in the county plan or its subsequent land use regulations shall be construed or applied so as to result in the taking of property; and
- (7) Section 134-85(b) provides that the Board of County Commissioners shall establish administrative procedures which any party challenging denial of a development order or a development permit as a taking of property must exhaust before any action on a request for development is deemed final by any court or quasi-judicial proceeding.

(b) Intent.

- (1) It is the intent of the Board of County Commissioners to ensure that each and every landowner has a beneficial use of owned property in accordance with the requirements of the Fifth and 14th Amendments to the United States Constitution, and thus, to provide an administrative procedure whereby landowners believing they have been or may be subjected to a taking of their private property by application of any law or regulation promulgated by the county may obtain relief through an efficient, non-judicial procedure.
- (2) The establishment of an administrative review and remedy procedure will promote the goals of the county plan in a manner which is consistent with section 2 of article I of the state constitution, guaranteeing all natural persons the inalienable right to acquire, possess and protect property.
- (3) It is the specific intent of the Board of County Commissioners that no provision of its laws or ordinances be interpreted so as to take private property in an unconstitutional manner.
- (4) It is the specific intent of the Board of County Commissioners that no administrative determinations made under its laws or ordinances result in either a temporary or permanent taking of private property without just compensation as required under the United States or state constitution.
- (5) The Board of County Commissioners specifically intends that it shall be the duty and responsibility of the party alleging a taking of property to affirmatively demonstrate the legal requisites of the claim alleged.
- (6) It is the board's specific intention that the procedures provided for in this article not be utilized routinely or frivolously, but rather, be solely limited to those extreme circumstances where a potential taking of private property or development rights would otherwise result.
- (7) It is the intent of the Board of County Commissioners, consistent with the provisions of F.S. § 163.3161(10), that the provisions of this article be utilized to sensitively administer the county Comprehensive Plan and its land development regulations.
- (8) It is the intent of the Board of County Commissioners, consistent with the provisions of F.S. § 163.3161(10), that the provisions of this article not be utilized as a substitute for judicial relief from takings that have already occurred but to provide an

opportunity to make a final decision regarding the applicability of certain ordinances or Comprehensive Planning provisions to prevent inadvertent takings.

- (9) It is the additional intent of the Board of County Commissioners to simplify the judicial inquiry regarding the "ripeness doctrine" as enunciated in Williamson County Regional Planning Council v. Hamilton Bank, 473 U.S. 172 (1985) and its progeny by providing a final decision after which a taking claim may be instituted in court.

**Section 134-123. - Authority.**

- (a) This article is adopted in compliance with and pursuant to the local government Comprehensive Planning and land development regulation act (F.S. § 163.3161 et seq.), and F.S. § 125.01(1)(t) and (1)(w).
- (b) This article is adopted pursuant to the constitutional and home rule powers of Fla. Const. art. VIII, § 1(g) and article II of the Pinellas County Home Rule Charter.
- (c) This article is specifically adopted in furtherance of the legislative intent as expressed in F.S. § 163.3161(10) that the county recognize and respect judicially acknowledged or constitutionally protected private property rights and that all regulations and programs adopted under the local government Comprehensive Planning and land development regulation act (F.S. § 163.3161 et seq.) be developed, promulgated, implemented, and applied with sensitivity for private property rights.

**Section 134-124. - Scope.**

- (a) This article shall apply to:
- (1) A landowner's or developer's claim which would otherwise arise in a court of competent jurisdiction as a taking of property without just compensation under any law applicable to the county and that arises from:
- a. The denial of property or development rights sought as part of a final site plan, development permit or development order; or
- b. The application of any other provision of the county plan, its implementing land development regulations, or other ordinances;
- (2) Persons denied a claimed remedy sought as part of a vested rights determination under article V of this chapter; and
- (3) Any aggrieved or adversely affected party meeting the standard for "standing" defined in F.S. § 163.3215(2), and alleging that the grant or issuance to another person of a final site plan, development order or development permit by the county constitutes a taking of his property.
- (b) Notwithstanding the provisions set forth in subsection (a) of this section, this article shall not apply to takings claims arising as part of a condemnation or eminent domain action to which the county is, or may be, a party.

**Section 134-125. - Administrative procedures for review of takings claims.**

- (a) Filing and documentation of takings claims.
- (1) All takings claims must be filed with the takings administrator and be accompanied by such fee as the Board of County Commissioners, or its designee, may require.
- (2) Any person filing a takings claim must affirmatively demonstrate the validity of the claim alleged by submitting a sworn statement setting forth the facts upon which the takings claim is based. The sworn statement should include any information the applicant considers necessary. As such, a statement may contain attachments, appendices or exhibits that substantiate those facts supporting the claim. The guide

for inclusion of information should be whether the information would constitute competent, substantial evidence in a quasi-judicial or judicial proceeding.

- (3) In addition to a demonstration of a potential taking claim, the applicant's evidence should also provide that information necessary to fashion a remedy, should a potential taking claim be found to exist. As part of a typical claim package, the sworn statement required by this subsection (a) should support the claim for a remedy by including any affidavits, copies of drawings, contracts, recordings, reports, letters, appraisals, or any other form of documentation or information that may apply, including, but not limited to:
  - a. The transcript or record of any previous hearing where the claim is alleged to have arisen.
  - b. Evidence of the expenditure of funds for land, the acquisition of which provides the basis of the taking claim.
  - c. Evidence of expenditures of funds for planning, engineering, environmental, and other consultants for site plan preparation, site improvement or other preparation, or construction.
  - d. Evidence of expenditures for construction of actual buildings in accordance with an existing or prior development order or development permit issued by the county.
  - e. Any relevant donations or dedications of real property or any other property interest made to the county for the following purposes:
    1. Roads or other transportation facilities;
    2. Access (ingress/egress) or rights-of-way;
    3. Drainage easements;
    4. Parks or recreation/open space;
    5. Retention/detention areas;
    6. Conservation areas;
    7. Any other purpose consistent with the provision of services for any element of the county plan; which are either on- or off-site with respect to the property involved in the claim.
  - f. Evidence of costs of construction of any roads, sidewalks, stormwater detention/retention or drainage facilities, sewer or water facilities, parks, etc., which would be either on- or off-site, and part of a plan permitting development on the subject property.
  - g. Other development orders or development permits issued by the county with respect to the property involved in the takings claim, and any related federal, state or regional permits.
- (4) As part of a sworn statement, the claimant is required to provide a list of the names and addresses of any witnesses which the claimant shall present in support of the claim and a summary of the testimony of each witness.
- (5) Additionally, the claimant should consider submitting as part of its sworn statement information which:
  - a. Demonstrates that the claimant has acted in good faith and without knowledge that changes to applicable ordinances, resolutions, or regulations might affect his development expectations.

In establishing "good faith," the claimant should consider submitting information which affirmatively states that the claimant:

1. Has not waived, abandoned, or substantially deviated from related prior county development approvals;
  2. Has not, by act or failure to act, consented or assented to changes in related prior county development approvals;
  3. Has, at all times relevant, conformed with the applicable laws, rules, and regulations of the state and the county.
- b. If applicable, details the specific governmental act, ordinance, resolution, regulation or Comprehensive Plan provision that the claimant believes gave rise to the takings claim.
- (6) The signature of the claimant, or any attorney for the claimant, upon any document submitted as part of a sworn statement shall constitute certification that the person signing has read the document and that to the best of the person's knowledge it is supported by good grounds and that it has not been submitted solely for purposes of delay. Further, the claimant and any attorney for the claimant shall have a continuing obligation to amend or correct any document submitted which is incorrect because of changed circumstances or was found to have been incorrect.
- (7) If the Board of County Commissioners makes a determination and finding that the sworn statement submitted as part of a taking claim is:
- a. Based on facts that the claimant or any attorney for the claimant knew or should have known was not correct or true; or
  - b. Frivolous or filed solely for the purposes of delay; then the Board of County Commissioners, in addition to the penalties set forth in section 134-8, may pursue any remedy or impose any penalty provided for by law or ordinance.
- (b) Review, hearing and standards for takings claims.
- (1) Within ten working days of filing a sworn statement (and any accompanying information) as part of a takings claim, the takings administrator or his designee shall determine whether the statement received is complete. If the statement is deficient, then the claimant shall be notified, in writing, of the deficiencies.
  - (2) Once a statement is complete, or the claimant has informed the takings administrator that no further information is forthcoming, the takings administrator or his designee shall timely review the application, provide requisite public notice, and schedule a public hearing before the Board of County Commissioners on the takings claim.
  - (3) At the scheduled public hearing, sworn testimony and evidence which meets the criteria of subsection (a) of this section should be offered into the record to support the claimant's position. The takings administrator, county staff and county attorney personnel may offer testimony and evidence relevant to the hearing.
  - (4) No later than 30 days after the Board of County Commissioners closes the public hearing, the board shall make and report a conclusive, final decision based upon the record presented. Nothing in this subsection shall prevent the board's decision to continue the hearing to give staff the opportunity to prepare alternatives, in consultation with the applicant, or to give staff or the applicant the opportunity to prepare responses to questions which the board may have regarding information presented at the hearing.
  - (5) Because the law in the area of takings is constantly changing in both substance and interpretation, the Board of County Commissioners shall be guided by advice from the office of the county attorney regarding interpretations of appropriate considerations in its deliberations. In evaluating whether a valid taking claim is

presented by the record, and what the measure of relief to be provided to the claimant should be, if any, the following factors shall be taken into consideration:

- a. Whether and to what degree the challenged regulation or combination of regulations has resulted in any physical invasion of the claimant's property by the county or others;
  - b. Whether the challenged regulation, or combination of regulations, has resulted in a denial of all beneficial use of the claimant's property by the county and, if so, whether the logically antecedent inquiry into the nature of the owner's estate shows that the prescribed use interests were not part of his title to begin with;
  - c. Whether and to what degree the claimant's expectations of use were investment-backed;
  - d. Whether and to what degree the claimant's expectations of use were reasonable in light of the following circumstances as they may apply:
    1. The logically antecedent inquiry into the nature of the owner's estate shows that the prescribed use interests were not part of his title to begin with;
    2. The existing land use and zoning classification of the subject and nearby properties, as may be relevant;
    3. The development history of the subject property and nearby properties;
    4. The suitability of the subject property for the intended or challenged development or use;
  - e. Whether and to what degree the intended or challenged development or use has or would cause any diminution in value of the subject properties, or any relevant properties arising from Section 134-124(a)(3);
  - f. Whether and to what degree any such diminution of property values has promoted the public health, safety, morals, aesthetics or general welfare, and was consistent with the county plan; and
  - g. To what extent the public would gain from the intended or challenged development or use compared to any resulting hardship upon the claimant alone.
- (6) Any relief to be provided a claimant shall be limited to the minimum necessary to provide a reasonable, beneficial use of the subject property and may be in the form of alternative uses of additional development intensity which may be severed and transferred, or other such nonmonetary relief as is deemed appropriate by the Board of County Commissioners. Any relief granted shall be presumed abandoned and expire if not utilized for its proper purpose within one year from the date it was granted. Subsequent applications under this article may review the expired decision for possible reinstatement, with or without modification as deemed necessary under then existing conditions.
- (c) Appeal of takings claim. Any claimant aggrieved by the final decision of the Board of County Commissioners may seek judicial review of the board's decision by timely filing an action in a court of competent jurisdiction.

**Section 134-126. - Exhaustion of administrative remedies required.**

Any development order, permit or other governmental act of the county relating to the approval or denial of rights that pertain to the development of land shall not be deemed a final order in any court or quasi-judicial proceeding challenging the denial of a development order or permit,

or other governmental act as a temporary or permanent taking of private property, unless the administrative remedies provided for by this article have been exhausted.

**Secs. 134-127—134-155. - Reserved.**

## **ARTICLE V. - PROCEDURES FOR ADMINISTRATIVE REVIEW AND REMEDY OF CLAIMS OF VESTED DEVELOPMENT RIGHTS**

### **Section 134-156. - Definitions**

*Board of adjustment and appeals (BCC)* shall be as defined in Chapter 138, Division 2.

*Commencement of development* means the onset of construction, such that actual, on-site grade alterations or other material physical changes have been made to the appearance of land in conformance with:

- (1) An approved final site plan;
- (2) A habitat management permit that is consistent with an associated site plan; or
- (3) Final construction plans approved by the county.

*Continue in good faith* means that all necessary and required development orders or permits have been applied for prior to the expiration of any previously received county development order, expressly including any development agreement, such that development and construction continue in a reasonably prudent, commercial manner that is of a real, actual and genuine nature as opposed to a sham or deception, and which meets the standards for "good faith" outlined in Section 134-160. A rebuttable presumption of not having continued in good faith shall arise from the lapse, expiration or abandonment of any development order or permit issued by the county, or from any other voluntary act of the claimant which has the same effect.

*Development review committee (DRC)* shall be as defined in Chapter 138, Division 2.

*Divest* means to abrogate or revoke preexisting vested rights.

*Vested right* means any property right that would attach to and run with a described property that authorizes the development and use of that property; and includes, but is not limited to: a special exemption status provided for in Section 134-86; an authorized land use designation or density or intensity of development; and any other specifically identified condition of development or mitigation.

*Vested right determination* means those administrative procedures defined in this article used for reviewing a landowner's or developer's request for a remedy under this article that would recognize and define vested rights.

### **Section 134-157. - Legislative findings and intent.**

The Board of County Commissioners finds and declares that:

- (1) The provisions of F.S. § 163.3161 et seq. establish the local government Comprehensive Planning and land development regulation act (referred to in this article as "the act").
- (2) The provisions of F.S. § 163.3202(2)(g) provide that counties shall have the power and responsibility to plan comprehensively for their future development and growth, including the adoption and implementation of appropriate land development regulations which are necessary or desirable to implement a Comprehensive Plan.
- (3) The county adopted its Comprehensive Plan (the "county plan") on August 8, 1989, through the adoption of Ordinance No. 89-32.



- (4) The county plan establishes the minimum requirements necessary to maintain, through orderly growth and development, the character and stability of present and future land use and development in the unincorporated areas of the county.
- (5) The provisions of F.S. § 163.3167) provide for statutory vesting of certain development rights as they may further be defined by local government.
- (6) Section 134-82(b) provides that the Board of County Commissioners retains the power and authority to enact ordinances, rules and regulations that are more restrictive than those originally adopted in the county plan.
- (7) Section 134-82(c) provides that nothing in the county plan or its subsequent land use regulations shall be construed or applied so as to result in the abrogation of validly existing vested rights.
- (8) Section 134-85(b) provides that the Board of County Commissioners shall establish administrative procedures which any party challenging denial of a development order or a development permit as an abrogation of vested rights must exhaust before any action on a request for development is deemed final by any court or quasi-judicial proceeding.
- (9) Section 134-86(c)(2)b. provides that a development order or right may be determined to be vested through any administrative procedure subsequently established by the Board of County Commissioners.
- (10) It is necessary and desirable that administrative determinations of vested property rights be made so as to ensure reasonable certainty, stability, and fairness in the land use planning process in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors with respect to growth management.
- (11) The establishment of an administrative determination procedure will promote the goals of the county plan in a manner which is consistent with Section 2 of Article I of the state constitution guaranteeing all natural persons the inalienable right to acquire, possess and protect property.
- (12) It is the specific intent of the Board of County Commissioners that no provision of this article be interpreted so as to abrogate validly existing vested private property rights which would exist under the United States or state constitutions.
- (13) It is the specific intent of the Board of County Commissioners that no administrative determination made under this article result in either a temporary or permanent taking of private property without just or full compensation under the United States or the state constitutions.
- (14) The Board of County Commissioners specifically intends that it shall be the duty and responsibility of the party alleging vested rights to affirmatively demonstrate the legal requisites of the rights alleged.
- (15) It is the Board of County Commissioners' specific intention that the procedures provided for in this article not be utilized routinely or frivolously, but rather, only in those extreme circumstances where a potential denial of private property or development rights would otherwise result.
- (16) The delays attendant the full hearing process may be deemed unnecessary for applications for vested rights which are of such a limited nature and are based on clear provisions of a development order.
- (17) In order to effectively administer a program of vested rights applications, it is often necessary to fashion variable forms of relief, consistent with the equitable nature of vested rights decisions. Thus it is the intent of the Board of County Commissioners for the development review committee, acting in his designated capacity on vested

rights matters, to have the authority to fashion the relief necessary to protect the legitimate vested rights of property owners while at the same time protecting the rights of the citizens of the county.

- (18) Both the purpose and intent of the various land development regulations, the provisions of the Comprehensive Plan and the statutory and case law governing vested rights provide the development review committee with ample guidance in exercising his authority under this article.

**Section 134-158. - Authority.**

- (a) This article is adopted in compliance with and pursuant to the local government Comprehensive Planning and land development regulation act (F.S. § 163.3161 et seq.), with specific reliance on F.S. §§ 163.3167(1)(a), (d), (8), and 163.3171(2).
- (b) This article is adopted pursuant to the constitutional and home rule powers in Fla. Const. art. VIII, § 1(g), and article II of the Pinellas County Home Rule Charter.

**Section 134-159. - Scope.**

- (a) This article shall apply to:
- (1) Vested rights determinations sought under Article III of this chapter, and its implementing regulations, or the provisions of this article, for:
- a. Final approved development orders issued pursuant to a development of regional impact (DRI) project or a Florida quality development (FQD) authorized under F.S. ch. 380 which are subjected to consistency or concurrency regardless of when issued:
1. Through application of the specific terms and conditions of a DRI's or FQD's particular development order; or
  2. Through an amendment to a DRI or FQD development order but only as to those development rights that were a part of or affected by the amendment.
- b. Final local development orders, as defined in Section 134-86(a)(1) regardless of when issued:
1. For any proposed development which has not, after August 10, 1989, for vested rights relating to consistency, or after December 31, 1989, for vested rights relating to concurrency:
    - i. Commenced development within, and then,
    - ii. Continued development in, good faith throughout the time periods provided for by those development permits obtained as part of a final local development order;
  2. Through application of the specific terms and conditions of the final local development order; or
  3. Through an amendment to the final local development order but only as to those development rights that were a part of or affected by the amendment.
- (2) Amendments to development orders issued after August 11, 1989, for vested rights relating to consistency, or after December 31, 1989, for vested rights relating to concurrency, and which alter any development right within a particular development order, regardless of whether the change is a substantial or non-substantial deviation, but only to the extent of the development rights changed by the deviation.

- (3) Any landowner or developer, or designee of either, who desires a vested right determination regarding rights which may exist for property which is included as part of a proposed development agreement or an amendment to an existing development agreement adopted pursuant to F.S. §§ 163.3220—163.3243.
  - (4) Any applicant alleging that the county plan, as applied to the applicant's proposed development order or development permit, would constitute an abrogation of his vested rights.
  - (5) Development orders or development permits which may otherwise be subject to a divestment of development rights as provided for in Section 134-161
- (b) This article shall not apply to:
- (1) Nonconforming uses, as defined in Chapter 138
  - (2) Issues relating primarily to development impact fees.

**Section 134-160. - Procedures for vested rights determinations.**

- (a) Applications for vested rights determinations.
- (1) All applicants for vested rights determinations must file an application for a vested rights determination with the county administrator through the county zoning department. Vested rights claims arising under Section 134-86(c)(2)b. must be filed by June 30, 2019, unless the filing date therefor has been otherwise extended.
  - (2) A vested rights application must meet the requirements of this section, and each application should include any information the applicant considers necessary to demonstrate compliance with the standards outlined in this section. As such, applications may contain attachments, appendices or exhibits that substantiate those facts supporting the applicant's claim. The guide for inclusion of information in an application should be whether the information would constitute competent, substantial evidence in a quasi-judicial or judicial proceeding.
  - (3) A typical application package might contain affidavits, drawings, contracts, recordings, or any other form of documentation or information that may apply, including, but not limited to:
    - a. The transcript or record of any previous hearing where action on the challenged development order or permit was taken.
    - b. Any donations or dedications of real property or any other property interest made to the county for the following purposes:
      - 1. Roads or other transportation facilities;
      - 2. Access (ingress/egress) or rights-of-way;
      - 3. Drainage easements;
      - 4. Parks or recreation/open space;
      - 5. Retention/detention areas;
      - 6. Conservation areas;
      - 7. Any other purpose consistent with the provision of services for any element of the county plan; which are either on- or off-site with respect to the property involved in the vested rights determination.
    - c. Other development orders or development permits issued by the county with respect to the property involved in the vested rights determination, and any related federal, state or regional permits.
    - d. The construction of roads, sidewalks, stormwater detention/retention or drainage facilities, sewer or water facilities, parks, etc., which are either on- or

- off-site, especially where such construction is in excess of capacity for the development seeking a vested rights determination.
- e. Expenditures of funds for planning, engineering, environmental, and other consultants or projects, including site preparation or grading.
  - f. Construction of actual buildings in accordance with an existing or prior development order or development permit issued by the county.
  - g. Expenditure of funds for land acquisition made specifically for the proposed development.
- (4) The information in Subsection (a)(3) of this section should be limited, however, to those actions by the applicant (or his predecessor) made in reasonable reliance upon an affirmative act or approval of the county which formally authorized, accepted, or approved a course of development on the land in question. To that extent, the applicant is encouraged to so specifically identify the acts relied upon.
- (5) Additionally, the applicant should consider submitting information which:
- a. Demonstrates that the applicant has acted in good faith and without knowledge that subsequent changes to applicable ordinances, resolutions, or regulations might affect his development expectations.  
 In establishing "good faith," the applicant should consider submitting information which affirmatively states that the applicant:
    1. Has not waived, abandoned, or substantially deviated from prior related county development approvals;
    2. Has not, by act or failure to act, consented or assented to changes in prior county development approvals;
    3. Has, at all times relevant, conformed with the applicable laws, rules, and regulations of the state and the county;
    4. Is not otherwise estopped from claiming vested rights through acts or omissions which arose in the development or marketing of preexisting county development approvals, upon which others have relied to their detriment.
  - b. Details the specific ordinance, resolution, regulation or Comprehensive Plan provision that the applicant alleges should not apply because of the vested rights claimed.
- (b) Review, hearing and standards for vested rights determinations.
- (1) Within ten working days of receipt of an application for a vested rights determination, the county administrator or his designee shall determine whether the application received is complete. If the application is deficient, then the applicant shall be notified in writing of the deficiencies.
  - (2) Once an application is complete, or the applicant has informed the county administrator or his designee that no further information is available, the county administrator shall schedule a public hearing on the application before the development review committee.
  - (3) At the public hearing sworn testimony and evidence, which meets the recommendations of Subsection (a) of this section, should be offered into the record before the development review committee to support the applicant's position. County staff and county attorney personnel may offer testimony and evidence relevant to the hearing, which shall also become part of the record along with the testimony and evidence of other interested parties.

- (4) Within 30 working days of the development review committee public hearing, the development review committee shall make and report findings of fact and conclusive decisions based upon the record presented and consideration of the following standards:
- a. An affirmative determination of vested rights may be made by the development review committee only upon sufficient demonstration by the applicant that:
    1. A legally valid, unexpired act or omission of the county had approved or authorized the proposed development which is the subject of the determination;
    2. Substantial expenditures or obligations were made or incurred in developing the subject proposal; "substantial" shall be considered relative to the total estimated cost of the project/phase being reviewed, and the applicant's typical or ordinary business practice;
    3. The expenditures and obligations made in Subsection (b)(4)a.2, above were incurred in good-faith reliance on the acts or omissions of Subsection (b)(4)a.1, above;
    4. A denial of the application, destroying those rights which would otherwise be acquired, would be highly unfair and unjust because there are no other reasonable uses permitted for the expenditures and obligations of Subsection (b)(4)a.2, above, under the land development regulations now in effect; to demonstrate that denial would be highly unfair and unjust, the applicant must show that the expenses or obligations incurred are unique to the proposed development such that a reasonable return on these expenses or obligations would have been made under preexisting regulations, but could not be made under the regulations now in effect; and that
    5. The applicant was without actual or record knowledge of the changes made in the regulations prior to the expenditures and obligations of Subsection (b)(4)a.2, above, unless considerable doubt can be shown to have existed about the actual adoption of the regulation, or about the actual prohibition of the proposed development.
  - b. A negative determination would not be highly unfair or unjust if substantial, competent evidence in the record demonstrates that construction has not commenced or that the expenditures and obligations incurred are not unique to the otherwise approved development or that the public cost outweighs the private injury or that the expenses or obligations were incurred with notice of a change in regulations or that the applicant's development can make a reasonable return on the expenditures and obligations incurred under the present regulation.
  - c. In addition to the factors in Subsections (b)(4)a and (b)(4)b of this section, the development review committee should also consider the following factors when it appears from the plans or documents submitted by an applicant that the proposed project would or reasonably could be completed in discrete phases:
    - i. The extent to which the plans or documents submitted are more conceptual master plans or final site plan/construction drawings derived from detailed surveying, engineering or architectural work;

- ii. The extent to which infrastructure, such as streets, sidewalks, utilities or other facilities, has been constructed for the entire project; and
  - iii. The extent to which infrastructure already constructed would be unsuitable for use as part of any uncompleted phases if such phases were built out in conformity with existing regulations; "unsuitable" should be considered relative to the applicant's investment loss resulting from the manner, location, or scale of constructed infrastructure which could not be utilized due to the change in regulations.
- (c) Forms of relief available. The three forms of relief deemed appropriate for applications are special exemptions, conditional relief, and denial without prejudice, and are described as follows:
  - (1) Special exemptions. With respect to those issues which can be reasonably characterized as being clearly, completely and specifically documented provisions of a final local development order, a form of special exemption, as referenced in article III of this chapter, may be issued to the extent that such a vesting would prevent the limitation or modification of the applicant's right to complete its development. An applicant may be said to have vested rights in the provisions of its development order to the extent that no non-environmental or health related land development provisions may deprive him of those rights. This form of special exemption may be broad-based and complete, depending upon the terms of the development order and the relief necessary to protect any rights under the development order.
  - (2) Conditional relief. The Comprehensive Plan prohibits special exemption status against the application of environmental and health related land development regulations. The form of relief available, rather than a blanket special exemption, should be reviewed on a factually intensive basis for the possibility that conditional variances or other forms of conditional relief may be available. Any such relief must be analyzed to determine if the conditions under which it is granted are consistent with the purpose and intent of the various land development regulations, the provisions of the Comprehensive Plan and the statutory and case law governing vested rights. Conditions may be initial, after satisfaction of which the right becomes vested, or may be ongoing. Conditional variances will address the appropriateness of relief, allowing the county to fashion that form of relief necessary to equitably address the legitimate concerns of the applicant while at the same time protecting the legitimate interests of the citizens of the county.
  - (3) Denial without prejudice. The applicant may reserve or be entitled to reserve the right to address other land development regulations at such time as they become an issue. Such a reservation of rights is an appropriate mechanism to address future questions that may arise from the applicant's development status.
- (d) Appeal of vested rights determinations.
  - (1) Any applicant denied any claimed vested rights must file, in writing, a request for an appeal with the board of adjustment and appeals within ten days of the applicant's notification of the development review committee's decision.
  - (2) Upon receipt of a timely filed appeal, the board of adjustment and appeals shall schedule and properly notice a public hearing to be held before the board of adjustment and appeals as soon as practicable.
  - (3) At the public hearing, the board of adjustment and appeals may consider the record developed from Subsections (a) and (b) of this section, as well as all testimony and evidence presented.

- (4) The board of adjustment and appeals shall make its determination based upon this record in light of the standards and factors outlined in Subsections (b)(4)a to (b)(4)c of this section, and such other factors as the board of adjustment and appeals may deem relevant.
- (5) An applicant denied claimed vested rights may seek judicial review of the board of adjustment and appeals determination by timely filing an action in a court of competent jurisdiction.

**Section 134-161. - Divestiture of certain vested rights.**

- (a) Whenever protection of the public's health or safety from new perils may so require, or upon a showing that a holder of vested development rights has failed to continue in good faith, the county administrator or designee, upon proper showing, may divest otherwise proper development rights. Divestiture under these circumstances may also apply to any certificates of concurrency issued for development proposed within the area affected.
- (b) Any change or modification to a development plan that is inconsistent with the county plan or would result in increased or greater development impacts sufficient to degrade a level of service below that provided for by the county plan creates a rebuttable presumption that the developments rights causing the impact are divested.

Notwithstanding this provision, changes or modifications to development plans, orders or permits that are consistent with the county plan, and do not increase impacts or degrade a level of service provided for by the county plan, are presumed to retain any preexisting development rights so long as all other development review requirements are complied with.

- (c) Upon a finding that a holder of vested development rights has continued in good faith but has filed for an extension of time because of a failure to fully comply with time limitations associated with those rights, the county administrator or designee may grant reasonable extensions of time to exercise those development rights. Extensions of time up to six months may be issued without the need for a public hearing. Also, under circumstances where the development rights have not been timely exercised because of a bona fide legal challenge or permitting issue, the county administrator or designee may, without the need for a public hearing, issue further extensions of time commensurate with the schedule associated with the legal challenge or permitting issue. All other extensions of time are to be considered at a public hearing of the development review committee.
- (d) Persons adversely affected by an alleged divestiture of development rights under subsection (a), (b) or (c) of this section may seek administrative review thereof through the procedures outlined in subsection (c), above.

**Section 134-162. - Legal effect of vested rights determinations.**

- (a) Vested rights resulting from determinations made pursuant to this article shall have the same legal effect as rights otherwise acquired under a validly issued development order or permit that most closely resembles the governmental act the applicant relied upon as part of its vested rights determination.
- (b) Vested rights determinations arising from Subsection 134-159(a)(3), pertaining to development agreements, shall be considered valid for a period of one year from the date of the determination.

**Section 134-163. - Exhaustion of administrative remedies required.**

Any development order, permit or agreement that provides vested rights as the result of a court or quasi-judicial proceeding challenging the denial of a development order or permit as the

abrogation of vested rights shall not be deemed a final order unless the administrative remedies provided for by this article have been exhausted.

**Secs. 134-164—134-195. - Reserved.**

## **ARTICLE VI. - CONCURRENCY SYSTEM**

### **DIVISION 1. - GENERALLY**

**Secs. 134-196—134-220. - Reserved.**

### **DIVISION 2. - CONCURRENCY MANAGEMENT**

#### **Section 134-221. – Definitions.**

*Acceptance of or accepted application for development* means that an application for development contains sufficient information, pursuant to existing regulations, to allow continuing review under this division or other regulatory ordinances, unless otherwise provided by state law.

*Application for development* means any formal documentation which contains a specific plan for development, including the densities and intensities of development, where applicable, that is presented by any person for the purpose of obtaining a development order or development permit by the county. An application shall also include any and all forms and documentation created by or on behalf of the county that require completion and submittal by the applicant.

*Approved final site plan* means any site plan, as defined in Chapter 138 Article II Division 5, and as it may be further defined in other county regulations, that has been accepted, reviewed, and approved by the county.

*Backlogged roadways* means roads not designated as constrained that are operating at peak hour level of service E or F and/or a volume-to-capacity of 0.9 or higher and scheduled or planned for construction after the first three years of either the Florida Department of Transportation (FDOT) adopted work program or the six-year schedule of improvements within the county capital improvements element.

*Certificate of concurrency* means that document issued by the county administrator, or his designee, that is a prerequisite for the issuance of any development order or development permit, except that certificates of concurrency for re-zonings shall only be issued such that further development in the rezoned parcel is conditioned upon the availability of sufficient capacity of those public facilities and services required for any project which may be subsequently proposed for that rezoned parcel, or any portion thereof. At a minimum, the certificate of concurrency shall provide information on the following:

- (1) Type of proposal;
- (2) Effective date of the concurrency test statement utilized in the comparison;
- (3) Date of issuance of the certificate of concurrency;
- (4) Status of each public facility and service after comparison with the current concurrency test statement; and
- (5) Whether or not the development proposal is subject to development limitations, pursuant to application of the transportation management plan for properties located within a concurrency management corridor and any other limitations that may be identified in an adopted concurrency test statement. "

*Concurrency* means that the necessary public facilities and services to maintain the adopted level of service standards are available when the impacts of development occur.



*Concurrency management monitoring system* means the data collection, processing and analysis performed by the county to determine levels of service for public facilities and services. Data maintained by the concurrency management monitoring system shall be the most current information available to the county.

*Concurrency test statement* means a public facility and service status report, approved and adopted by ordinance, which, at a minimum, establishes for each public facility and service the following:

- (1) The existing and committed development in each service area;
- (2) The existing levels of service for each public facility and service;
- (3) Updates of items (1)—(2), above, based upon the most recently adopted six-year schedule of capital improvements from the capital improvements element; and
- (4) The methods used in determining the nature of projected development impacts on public facilities and services.

*Currently available revenue sources* means an existing source and amount of revenue available to the County.

*Deficient facility* means a road operating at peak hour level of service E or F and/or a volume-to-capacity (v/c) ratio of 0.9 or higher with no mitigating improvements scheduled within three years.

*Development order* means any order granting, denying, or granting with conditions, an application for development.

*Development permit* means any approved final site plan, building permit, zoning clearance, rezoning, special exception, variance, conditional use, or any other official action of the county having the effect of permitting the development of land.

*Final local development order* means, for the purposes of this division, that last approval necessary to carry out the development requested, provided that the proposed project has been precisely defined. The last approval for a given type of development activity shall be as provided in article III of this chapter. Terms used in that definition shall be as further defined in this Code.

*Level of service (LOS)* means a measure of performance and/or of demand versus available capacity of public services and facilities.

*Public facilities and services* means those necessary public facilities and services covered by a Comprehensive Plan element for which level of service standards have been adopted by the county. The necessary public facilities and services are: roads, sanitary sewer, solid waste, drainage, potable water, recreation, and mass transit.

**Section 134-222. - Purpose and intent.**

- (a) It is the purpose of this division to establish a concurrency management system to ensure that facilities and services needed to support development are available concurrent with the impacts of such development. Prior to the issuance of a development order and/or development permit, this concurrency management system shall ensure that the adopted level of service standards required for potable water, wastewater, solid waste, stormwater, recreation, and mass transit shall be maintained.
- (b) The concurrency management system is intended to serve the long-term interests of the citizens of the county by implementing a managed growth perspective that preserves the capacity of important infrastructure facilities and services.

**Section 134-223. - Areas embraced.**

The provisions of this division shall apply to any property within the unincorporated areas of the county. The provisions of this division shall also apply to incorporated areas of the county that are

provided service by a county facility or service evaluated in this division and may apply to incorporated areas provided service by a state facility or service evaluated in this division.

**Section 134-224. - Concurrency management system; procedure.**

- (a) Application for development. The concurrency management system is accessed by the property owner, or his/her representative, when an application for development containing the required documentation for the given development order or permit is submitted to the county. A county representative shall then ascertain the completeness of the documentation, in a timely manner, to ensure that the required information is sufficient to accept the application for development for review.
- (b) Review of application for development.
  - (1) When the application for a development order or permit has been accepted, it shall be processed and reviewed in accordance with adopted procedures. These procedures shall include a review of the application for development for the public facilities and services identified in this division, as they may apply.
  - (2) If the application for development is not reviewable as submitted, then the application for development shall be returned to the property owner or representative clearly stating what the deficiencies are and why the application for development cannot be further reviewed.
- (c) Concurrency test statement applied.
  - (1) After an application for development is accepted, it will be compared to the most recently completed concurrency test statement. The county shall compare the application for development to the public facilities and services on the current concurrency test statement, as they may apply to the location described on the application for development.
  - (2) If the application for development being proposed is found to be exempt from the formal concurrency review, a certificate of concurrency, or its functional equivalent, is not required.
  - (3) If the application for development is found by the latest concurrency test statement to fall within an area with a deficient level of service for a facility or service, then a certificate of concurrency or its functional equivalent shall state that development shall either not be authorized or be authorized with conditions to be identified in the concurrency test statement.
  - (4) A certificate of concurrency or its functional equivalent shall be issued concurrently with final a development order. This may be waived by the county administrator, with additional time granted, based upon the circumstances of the situation.
- (d) Certificate of concurrency determination—Continued validity.
  - (1) The certificate of concurrency or its functional equivalent shall indicate the date of issuance and will be valid for purposes of the issuance of development orders or permits for 12 months from the date of issuance.
  - (2) Any development order or permit that is issued within the effective period of a validly issued certificate of concurrency or its functional equivalent shall be vested, for the purposes of concurrence, until the expiration of that development order or development permit, provided that development commences within the validity period of the development order or permit and continues in good faith, except that for purposes of a development order or development permit that authorizes construction, the validity period shall be limited to six months from the date of approval of the development order or development permit. Under no circumstances shall the validity period for a development order or permit or

application for development under an existing certificate of concurrency or its functional equivalent be extended by action on a subsequent development order or permit for the same project or proposal, except when review of the subsequent development order or permit or application for development is based upon a more recently adopted or amended concurrency test statement, or subsection (d)(3), below, applies.

- (3) For those certificates of concurrency or its functional equivalent issued for a development agreement entered into by the county, the duration of such certificate of concurrency, as issued, shall be for the time period stated within the development agreement.
- (e) *Same—Development order or development permit compliance.* All development orders and development permits issued and approved after the effective date of this division shall be based upon and in compliance with, the certificate of concurrency or its functional equivalent issued for that development proposal. A development order or development permit shall be in compliance with its underlying certificate of concurrency or its functional equivalent if the impacts associated with that development order or development permit are equal to or less than the allocations made in association with the underlying certificate of concurrency or its functional equivalent.
- (f) *Site plan requirements; Submittal of a new site plan.* Consistent with the county's comprehensive zoning ordinance, and as accepted by the county administrator or his designee, modifications may be made to an already submitted site plan.
- (1) This will constitute a revision to the existing certificate of concurrency documentation, and the county's records will reflect such revision.
  - (2) A revision will not result in any extension to the validity time frames associated with the certificate of concurrency or its functional equivalent issued for the initial site plan, and will not justify the issuance of a new certificate or functional equivalent.
  - (3) Modifications in demand on facilities will be reflected in the tracking mechanism.
  - (4) If the county administrator or his designee determines that such modifications constitute substantial deviation, as defined in the comprehensive zoning ordinance, from the original project proposal, submittal of a new site plan will be required.
  - (5) In such instances, the certificate of concurrency or its functional equivalent issued for the original site plan submittal will no longer be valid, and the site plan will be subject to a concurrency review against the most current adopted concurrency test statement and all provisions within.

**Section 134-225. - Concurrency test statement and monitoring system.**

- (a) On a regular basis the county administrator or designee shall maintain a concurrency test statement.
- (b) The county administrator or designee shall establish and maintain a concurrency management monitoring system for the purposes of monitoring the status of public facilities and services and establishing concurrency test statements.
- (c) The remaining capacity reported for each public facility and service on the annual concurrency test statement should be determined by calculating the existing demand as well as the committed impacts, including those associated with multi-year, phased development proposals or projects (including developments of regional impact, development agreements, etc.). These calculations are based upon data accumulated in the concurrency monitoring system, data supplied by individual county departments, as well as a reasonable projection for the progress of each proposal or project, population

growth projections, or such other considerations as good planning practices would deem appropriate.

- (d) A concurrency test statement shall be issued on a regular basis as determined by the county administrator. Nothing in this section precludes the issuance and effectiveness of amendments to the current concurrency test statement if updating or correction is deemed necessary by the Board of County Commissioners for, including, but not limited to, the following circumstances: Errors in preparation and adoption are noted; the impact of issued development orders or permits, as monitored by the planning department, indicate an unacceptable degradation to the adopted level of service; or where changes in the status of capital improvement projects, of the state or any local government, change the underlying assumptions of the current concurrency test statement.
- (e) Under no circumstances will an amended concurrency test statement divest those rights acquired, pursuant to subsection 134-225(d), under the concurrency test statement as it existed prior to amendment, except where a divestiture of such rights is clearly established by the Board of County Commissioners to be essential to the health, safety or welfare of the general public.
- (f) The concurrency test statement may be prepared in a format that is deemed appropriate by the county administrator; a concurrency test statement shall include, at a minimum, the following:
  - (1) For potable water, wastewater, solid waste, and stormwater, that the following are minimum standards that, when met, will satisfy the concurrency requirement:
    - a. The necessary facilities and services are in place at the time a development order or permit is issued;
    - b. A development order or permit is issued subject to the condition that, at the time of issuance of a certificate of occupancy or its functional equivalent, the necessary facilities and services are in place of and available to serve the new development;
    - c. At the time the development order, or permit is issued, the necessary facilities and services are guaranteed in an enforceable development agreement that includes the provisions of subsections (f)(1)a, and b of this section. An enforceable development agreement may include, but is not limited to, development agreements pursuant to F.S. §§ 163.3220 et seq., or an agreement or development order issued pursuant to F.S. ch. 380.
  - (2) For recreation, the county shall satisfy the concurrency requirement by complying with the following standards:
    - a. At the time the development order or permit is issued, the necessary facilities and services in place or under actual construction; or
    - b. A development order or permit is issued subject to the condition that, at the time of the issuance of a certificate of occupancy or its functional equivalent, the acreage for the necessary facilities and services to serve the new development is dedicated or acquired by the local government, or funds in the amount of the developer's fair-share are committed; and
    - c. A development order or permit is issued subject to the conditions that the necessary facilities and services needed to serve the new development are scheduled to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent as provided in the adopted six-year schedule of capital improvements in the Pinellas County Capital Improvements Element; or

- d. At the time the development order or permit is issued, the necessary facilities and services are the subject of a binding executed agreement which requires the necessary facilities and services to serve the new development to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent; or
- e. At the time the development order or permit is issued, the necessary facilities and services are guaranteed in an enforceable development agreement, pursuant to F.S. § 163.3220, or an agreement or development order issued pursuant to F.S. ch. 380, to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent.

**Section 134-226. - Recognition of the establishment of levels of service in the county Comprehensive Plan.**

The county shall recognize those adopted levels of service, as defined in the Comprehensive Plan-

**Section 134-227. - Intergovernmental coordination.**

- (a) Provision of public facilities or services to other governmental entities. The county shall provide service to other local governmental entities within the county in accordance with the policies included in the Comprehensive Plan. The county shall administer this division such that development in those areas shall be consistent with the Comprehensive Plan and implementing ordinances, and actions of the county.
- (b) Receipt of public facilities or services from other governmental entities. Concerning those services that are provided by other governmental entities, the county shall recognize the level of service provided by such entities in accordance with the policies of the Comprehensive Plan. The county shall ensure that all development within its area shall be in accordance with such policies as identified in the Comprehensive Plan.

**Section 134-228. - Appeals, reviews, and variances.**

- (a) Eligibility for review of an administrative decision. Any applicant who has been aggrieved by an administrative decision in the application or interpretation of the provisions of this division to his particular application for development may apply for a concurrency review and variance.
- (b) Variances to the concurrency standards may only be granted to the extent necessary to relieve the hardship. Upon granting concurrency variances, additional safeguards and conditions may be required to ensure proper compliance with the general spirit, purpose and intent of this division and of the Comprehensive Plan.
- (c) Concurrency variance criteria: The reviewing authority shall consider all technical evaluations, all relevant factors, standards specified in other sections of this division or in the Comprehensive Plan, and shall utilize the following generalized guidelines and criteria:
  - 1. That the variance, review, or decision on appeal will not confer on the applicant any special privilege that is otherwise denied by this division to other similarly situated lands;
  - 2. That any variance, review, or decision on appeal is the minimum increase in intensity or density that will make possible the reasonable use of the land, building, or structure, consistent with the need to protect public facilities or services;
  - 3. That the variance, review, or decision on appeal is not inconsistent with the general intent, purpose, and spirit of this division, or with the county Comprehensive Plan;

4. That the variance, review, or decision on appeal will not be injurious to the area involved or otherwise detrimental to the public welfare;
  5. That the variance, review, or decision on appeal shall not authorize a development in conflict with any other county ordinance or the county Comprehensive Plan; and
  6. That the variance, review, or decision on appeal is based upon evidence submitted by the applicant that factually supports the variance, review, or decision on appeal.
- (d) Administrative concurrency variance review procedure.
1. The concurrency review and variance shall be reviewed as a Type 1 – Path A Department Review pursuant to Chapter 138 Article II.
  2. The applicant shall submit a formal applicant and provide any supplemental information as required by the county administrator.
  3. The county administrator or designee shall issue letter of the final decision. The decision shall include findings of fact and a determination to approve, approve with conditions, or deny the request.
- (e) Appeals procedure. The applicant may appeal the administrative concurrency variance decision to the Board of Adjustment and Appeals as a Type 2 review pursuant to Chapter 138 Article II. Any subsequent appeals shall be conducted by the circuit court.

**Secs. 134-229—134-255. - Reserved.**

### **DIVISION 3. - ANNUAL CONCURRENCY TEST STATEMENT**

#### **Section 134-256. - Purpose and intent.**

- (a) The concurrency test statement is a status report on the ability of public services and facilities to meet the demands of existing and committed development and provide an acceptable level of service. For the purpose of determining the ability of a municipal service or facility to provide an acceptable level of service for unincorporated areas within a municipal service area, the county will rely upon information from the applicable jurisdiction indicating capacity availability.
- (b) If the existing level of service equals or exceeds the adopted level of service standard, and all other level of service conditions are met, then that facility or service is considered to be providing an acceptable level of service.

#### **Section 134-257. - Applicability.**

- (a) The provisions of this division shall apply to any property within the unincorporated areas of the county. The provisions of this division shall also apply to incorporated areas of the county that are provided service by a county facility or service evaluated in this division and may apply to incorporated areas provided service by a state facility or service evaluated in this division.
- (b) This division will not divest those rights acquired under a previous approval pursuant to the previous concurrency test statement as it existed prior to repeal, unless the county can demonstrate that substantial changes in conditions underlying the approval have occurred or the approval was based on substantially inaccurate information or that divestiture is essential to the public health, safety, or welfare.

#### **Section 134-258. - Same—for public services and facilities.**

The level of service conditions for public services and facilities are those adopted in the Comprehensive Plan and/or within inter local agreements.

**Section 134-259. - Methodology used to determine the level of service conditions.**

- (a) Since the level of service standards for recreation/open space, wastewater, potable water and solid waste/resource recovery facilities and services are partially based on per capita standards, information on the existing and projected populations for the service areas are used to evaluate existing and future impacts on services and facilities.
- (b) An additional consideration in determining the existing level of service for recreation/open space, wastewater, and solid waste/resource recovery facilities and services is the impact of anticipated near term population growth. The impact of projected population growth over the next year (obtained by multiplying the projected increase in population for each service area by the existing level of service) is added to the actual demand (e.g., annual average flow) for the facilities.
- (c) For potable water supply, the existing levels of service and level of service standard is based upon Tampa Bay Water being able to meet the needs of the Pinellas County Water Demand Planning Area. For informational purposes, however, estimates of the Pinellas County Water Demand Planning Area population are applied to average daily flow figures to arrive at an estimate of existing per capita use.

**Secs. 134-260—134-290. - Reserved.**

## **ARTICLE VII. - PROCEDURAL REQUIREMENTS FOR ENTERING INTO DEVELOPMENT AGREEMENTS**

**Section 134-291. - Statutory definitions.**

For the purposes of this article, the definitions set forth in F.S. § 163.3221 shall apply and control all development agreements entered into by the county.

**Section 134-292. - Legislative intent and findings of fact.**

The Board of County Commissioners finds and declares that each of the following statements are true and correct, and hereby adopts these statements as the legislative findings of the board, which shall be considered as further justification and authority for the adoption of this article.

- (a) The provisions of F.S. §§ 163.3220—163.3243 set forth the local government development agreement act (the "act").
- (b) The provisions of F.S. § 163.3223 provide that local governments may, by ordinance, establish procedures and requirements, as provided by the act, to consider and enter into development agreements with any person having a legal or equitable interest in real property within its jurisdiction.
- (c) The act recognizes that the lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to Comprehensive Planning.
- (d) The act recognizes that assurance to a developer that upon receipt of his development permit he may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation in Comprehensive Planning, and reduces the economic costs of development.
- (e) In conformity with, in furtherance of, and in order to implement the local government Comprehensive Planning and land development regulation act (F.S. § 163.3161 et seq.)

and the state Comprehensive Planning act of 1972 (F.S. § 186.001 et seq.), it was the intent of the state legislature in adopting the act to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

- (f) The act authorizes local governments to enter into development agreements with developers, subject to the procedures and requirements of the act.
- (g) The act provides that the act shall be regarded as supplemental and additional to the powers conferred upon local governments by other laws and shall not be regarded as in derogation of any powers now existing.
- (h) The provisions of Ordinance No. 89-32, attachment B, adopting the county Comprehensive Plan, in b), referencing the concurrency management system, minimum requirements for concurrency, Subsections A)4. and B)2., and Section 134-225(d)(3) specifically anticipate the use of development agreements to satisfy concurrency requirements for necessary facilities and services.
- (i) The provisions of F.S. § 125.01(1)(t), (1)(w), provide authority for the county to adopt ordinances which are in the common interest of the people of the county and not specifically prohibited by law.
- (j) It is the intent of this article to encourage a strong commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development concurrent with the impacts of development, encourage the efficient use of resources, and reduce the economic cost of development.
- (k) It is the intent of this article to encourage Comprehensive Planning by developers by affording greater predictability and reducing risks in order to lessen the costs of providing major infrastructure and public benefits.

**Section 134-293. - Authority.**

- (a) This article sets forth the procedural requirements that the county shall consider and implement in order to enter into development agreements. Specific authority for adoption of this article is found in F.S. § 163.3223. In general, the provisions of this article comply with and are authorized by the provisions set forth in the local government development agreement act.
- (b) This article is adopted pursuant to the constitutional and home rules powers of Fla. Const. art. VIII, § 1(g), F.S. § 125.01(1)(t), (1)(w), and Article II of the County Charter.
- (c) In approving a development agreement, the Board of County Commissioners shall have the authority to grant, without limitation, variances, special exceptions, conditional uses or other forms of approvals otherwise delegated to other authorities in the ordinary course of approvals outside of the development agreement process.

**Section 134-294. - Development agreement requirements.**

- (a) All development agreements shall, at a minimum, include the following:
  - (1) A legal description of the land subject to the agreement;
  - (2) The duration of the agreement, which shall meet the terms set forth in section 134-295
  - (3) The development uses permitted on the land, including population densities, and building intensities and height;



- (4) The land use designation under the future land use plan element of the Comprehensive Plan for all property included within the terms of the proposed agreement;
  - (5) The current zoning classification of the property;
  - (6) A description of public facilities that will service the development, including who shall provide such facilities;
  - (7) The date any new facilities, if needed, will be constructed;
  - (8) A schedule to assure public facilities are available concurrent with impacts of the development;
  - (9) A description of any reservations or dedications of land for public purposes;
  - (10) A description of all local development permits approved or needed to be approved for the development of the land;
  - (11) A finding that the development permitted or proposed is consistent with the Comprehensive Plan and land development regulation, as required by F.S. § 163.3231;
  - (12) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the county for the public health, safety, or welfare of its citizens;
  - (13) A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the developer of the necessity of complying with the law governing such permitting requirements, condition, term, or restriction; and
  - (14) A statement identifying the legal and equitable interest of all persons having any interest in the property described in Subsection (a)(1), above. The statement of ownership interests of any joint ventures, partnerships or corporations shall reveal all principals or directors and officers, as appropriate. Such statements shall be certified by a title company or an attorney-at-law licensed to practice in the state.
- (b) A development agreement may provide that the entire development or any phase thereof be commenced or concluded within a specific period of time.

**Section 134-295. - Duration of development agreements.**

The term of a development agreement shall not exceed five years or such time as the act may provide. A development agreement may only be extended by mutual consent of the Board of County Commissioners and the developer, subject to public hearings in accordance with section 134-296. No extension shall exceed five years or such time as the act may provide.

**Section 134-296. - General requirements for notices and hearings.**

- (a) Before entering into, amending, modifying, canceling, or revoking a development agreement, the county shall conduct at least two public hearings, one of which shall be held by the local planning agency prior to a final public hearing before the Board of County Commissioners.
- (b) The day, time and place at which the next scheduled public hearing under this article will be held shall be announced at the prior public hearing.
- (c) Notice of intent to consider a development agreement at a scheduled public hearing under this article shall be provided:
  - (1) By advertising the required notice in a newspaper of general circulation and readership in the county approximately seven days before each public hearing on the application;

- (2) By mailing the required notice to all property owners of record listed in the county property appraiser's office records as abutting or lying within 250 feet of the subject property; these notices shall be mailed approximately seven calendar days prior to the first scheduled public hearing; and
  - (3) In writing, to adjacent or affected local governments or their agencies pursuant to the intergovernmental coordination element of the county Comprehensive Plan.
- (d) Required notice of intent to consider a development agreement shall specify:
- (1) The time, place, and location of the scheduled hearing(s);
  - (2) The location of the land subject to the development agreement;
  - (3) The development uses proposed on the property, including the proposed population densities and proposed building intensities and height; and
  - (4) Instructions for obtaining further information, including the place(s) where a copy of the proposed agreement can be obtained.

**Section 134-297. - Development agreement procedures.**

- (a) Submission of development agreement packages; fees.
  - (1) Applications requesting consideration by the county of a developer's proposed or amended development agreement shall be submitted on such forms as may be provided by the county. In addition to the information required by Section 134-294 which can be provided, the county may require an applicant to submit such information as is reasonably necessary to process and fully consider the application.
  - (2) Application packages shall be accompanied by such fees and charges as may be imposed by the Board of County Commissioners, or its designee, for proper filing and processing.
  - (3) Payment of application fees, submission of applications, engineering plans, surveys, or any other expenditures shall not vest any rights to complete development or to obtain any requested zoning or land use classification amendments.
- (b) Negotiation of development agreements.
  - (1) The county administrator and staff personnel shall review the developer's application package and negotiate such further terms and conditions as the county administrator shall deem to be appropriate and necessary to protect the public's interest, safety, health or welfare.
  - (2) Once a tentative agreement has been reached as to the terms and conditions of a development agreement, or further negotiations are not anticipated or will not reach a consensus on the development agreement's terms or conditions, the county administrator and staff personnel shall draft a report, including any recommendations, for consideration by the local planning agency at a properly noticed public hearing.
  - (3) The local planning agency shall review the proposal and make their findings and recommendations, receive public testimony, and make their recommendation at the public hearing, which will be subsequently considered by the Board of County Commissioners at a public hearing.
  - (4) The existence of a tentative agreement, staff report or recommendation shall not be sufficient governmental acts upon which reliance may be placed, such that further expenditures by a developer would vest any right to continue development; nor shall such actions constitute partial performance entitling the owner to a continuation or extension of the development agreement.
- (c) Adoption, amendment, extension, modification, revocation and cancellation procedures.

- (1) Following such notice and public hearings as may be otherwise required, the Board of County Commissioners, by majority vote, may act to adopt, amend, extend, modify, revoke, or cancel any proposed or existing development agreement.
- (2) Where mutual consent is required by law, the Board of County Commissioners may act to authorize such consent prior to all other parties so doing only upon the condition that the act is not complete or official until a binding agreement is contemporaneously signed by the board's chairperson and the representatives of all other parties.

**Section 134-298. - Recordation.**

- (a) Within 14 days after the county enters into, extends, amends, modifies, revokes, or cancels a development agreement, the clerk to the Board of County Commissioners shall have the agreement or the action on the agreement recorded with the clerk of the circuit court in the official records of the county.

**Section 134-299. - Periodic review.**

- (a) The county administrator or designee shall review the land and development subject to the development agreement at least once every 12 months.
- (b) If, as part of its review, the county administrator or designee finds that the developer has, in good faith, complied with the terms and conditions of the agreement during the period under review, the agreement shall continue in force as is, pending the next review.
- (c) If as part of its review the county makes a finding on the basis of substantial competent evidence that there has been a failure to comply with the terms of the development agreement, the Board of County Commissioners, following the notice and hearing provisions of section 134-296, may:
  - (1) Modify the agreement as necessary to obtain and ensure compliance with the terms of the agreement; or
  - (2) Revoke the agreement in order to protect the public's interest, health, safety or welfare.

**Section 134-300. - Amendment, modification, extension, revocation and cancellation of agreements.**

- (a) In addition to being extended pursuant to Section 134-295, development agreements may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest upon proper notice and hearing as set forth in Section 134-296
- (b) If state or federal laws are enacted after the execution of a development agreement which are applicable to and preclude the parties' compliance with the terms or conditions of a development agreement, then such agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws upon proper notice and hearing set forth in Section 134-296

**Section 134-301. - Legal status of development agreements.**

- (a) The burdens of a development agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.
- (b) The county's laws and policies governing the development of land in effect at the time of execution of a development agreement, including, but not limited to, Articles III and VI of this chapter, and all other ordinances comprising land development regulations under F.S. § 163.3202, as amended, shall govern the development of all land specified in the development agreement for its stated duration.

- (c) The county may only apply subsequently adopted laws and policies to then existing development agreements if, after a duly noticed public hearing, the Board of County Commissioners:
  - (1) Determines that such laws and policies are specifically anticipated and provided for in a development agreement;
  - (2) Determines that such laws and policies are not in conflict with the prior laws and policies governing existing development agreements; and do not prevent development of the land uses, intensities, or densities set forth in existing development agreements;
  - (3) Determines that such laws and policies are essential to the public health, safety or welfare, and expressly state that they shall apply to existing development agreements;
  - (4) Determines and demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of certain development agreement; or
  - (5) Determines that certain development agreements were based upon substantially inaccurate information supplied by the owner/developer.
- (d) The provisions set forth in subsections (b) and (c) of this section do not abrogate any development rights that may vest pursuant to common law, as such rights may be determined through application of Article V of this chapter.

**Section 134-302. - Enforcement.**

Any aggrieved or adversely affected person as defined in F.S. § 163.3215(2) may file an action for injunctive relief in the Circuit Court of the County to enforce the terms of a development agreement, or to challenge compliance of the agreement with the provisions of F.S. §§ 163.3220—163.3243:

**Secs. 134-303—134-331. - Reserved.**

**ARTICLE VIII. - PROPERTIES OF COUNTYWIDE IMPORTANCE**

**Sec. 134-332. - Legislative findings.**

- (a) The Florida Constitution, Article VIII, Section 1(g) provides that the charter of charter counties "shall provide which shall prevail in the event of conflict between county and municipal ordinances"; and
- (b) Section 2.04 of the Pinellas County Charter, s. 1, as adopted by the Florida Legislature and approved by a vote of the Pinellas County electorate on October 7, 1980, as amended ("Charter"), provides for all special and necessary powers of the county to provide certain enumerated services and regulatory authority; and
- (c) Section 2.04 of the Charter provides, "when directly concerned with the furnishing of the services and regulatory authority [in certain specifically enumerated areas], county ordinances shall prevail over municipal ordinances when in conflict"; and
- (d) Section 2.04 of the Charter provides for countywide control over the development and operation of county owned facilities and properties that relate to the provision of the following governmental services and regulatory authority:
  - (1) Development and operation of 911 emergency communication system.
  - (2) Development and operation of solid waste disposal facilities, exclusive of municipal collection systems.

- (3) Development and operation of regional sewage treatment facilities in accordance with federal law, state law, and existing or future interlocal agreements, exclusive of municipal sewage systems.
  - (4) Acquisition, development and control of county-owned parks, buildings, and other county-owned property.
  - (5) Development and operation of public health or welfare services or facilities in Pinellas County.
  - (6) Operation, development and control of the St. Petersburg-Clearwater International Airport.
  - (7) Implementation of animal control regulations and programs.
  - (8) Development and implementation of civil preparedness programs.
  - (9) Production and distribution of water, exclusive of municipal water systems and in accordance with existing and future interlocal agreements.
  - (10) All coordination and delivery of municipal services in the unincorporated areas of the county.
- (e) The Local Government Comprehensive Planning and Land Development Regulation Act ("Act"), specifically F.S. § 163.3171, reserves to charter counties authority for planning and land development regulation to the extent provided for in the county charter; and
- (f) In order to limit any disruptive effects of a county exercise of this existing charter authority, the county herein declares its policy in regard to those properties of countywide importance it wishes to continue preemptively regulating and leaves other county-owned facilities to county regulation by interlocal agreement with the applicable municipality, where appropriate, or as otherwise provided by law.

**Sec. 134-333. - Definitions.**

*Development* as used in this article means shall have the meaning ascribed to it in sections 163.33164 and 380.04, Florida Statutes.

*Properties of countywide importance* as used in this article means county-owned parks, buildings and other properties developed and operated in furtherance of those special countywide powers enumerated in subsection 134-332.

**Sec. 134-334. - County regulation of development.**

The development of properties of countywide importance shall be governed by county ordinances, permits and approvals and municipal ordinances shall not control or regulate the development of properties of countywide importance, unless otherwise agreed to by the county by interlocal agreement. All permits or approvals for development, except for placement of an actual zoning or future land use designation on a particular parcel, that are related to properties of countywide importance shall be reviewed, issued, and enforced by the county. To the extent any municipal ordinance conflicts with the development policy set forth herein, this county ordinance shall prevail.

**Sec. 134-335. - Intergovernmental coordination.**

It is the intention of the Board of County Commissioners to coordinate consideration of the particular effects of county regulation of properties of countywide importance as provided herein upon the development and community character of affected municipalities. Prior to the review and issuance of any permit or approval, the county shall notify affected municipalities of development plans, provide said municipality an opportunity to comment, and thereafter provide copies of county permits and approvals issued for development. The county will comply with any alternate process agreed to pursuant to interlocal agreement.

**Sec. 134-336. - Areas embraced.**

Pursuant to Sections 2.01 and 2.04 of the Pinellas County Charter, this ordinance [Ordinance No. 11-42] shall be effective within the boundaries of Pinellas County.