



AGENDA
PLANNING COMMISSION
CITY OF PORT ORANGE

Meeting Date: Thursday, October 26, 2023

Time: 5:30 PM

Location: Council Chambers, City Hall
1000 City Center Circle
Port Orange

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call

B. DISCUSSION/ACTION

3. Consideration of Minutes - September 28, 2023
4. APPLICATION: MDA AMENDMENT/ Second Amendment to the Restated First Amendment to the Master Development Agreement for the Nova Depot Planned Commercial Development
CASE NO.: PRZA-23-0006
APPLICANT: Jessica Gow, Cobb Cole
STAFF CONTACT: Gwen Perney, Principal Planner (386) 506-5673

A request by the applicant to approve the Second Amendment to the Restated First Amendment to the Master Development Agreement for the Nova Depot Planned Commercial Development to add motor vehicle service center as a permitted use on Lot 2A.

5. APPLICATION: LDC Amendment/Chapters 2, 3, 9, and 10
CASE NO.: DCAM-23-0002
APPLICANT: City of Port Orange
STAFF CONTACT: Penelope Cruz, Planning Manager (386) 506-5671

A request to approve amendments to Chapters 2, 3, 9, and 10 of the Land Development Code (LDC) that include clarifications and minor changes that are simple clean-up items that make the development review process more efficient.

C. OTHER BUSINESS

6. Commissioner Comments
7. Staff Comments

D. PUBLIC COMMENTS

E. ADJOURNMENT

NOTICES — PURSUANT TO SECTION 286.0105 OF THE FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE PLANNING COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY DOES NOT PREPARE OR PROVIDE SUCH A RECORD.



FOR SPECIAL ACCOMMODATIONS, PLEASE NOTIFY THE CITY CLERK'S OFFICE (PHONE: 386-506-5563) AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE.



HELP FOR THE HEARING IMPAIRED IS AVAILABLE THROUGH THE ASSISTIVE LISTENING SYSTEM RECEIVERS CAN BE OBTAINED FROM THE CITY CLERKS' OFFICE.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA), IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

REGULAR PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
SEPTEMBER 28, 2023

THE REGULAR PLANNING COMMISSION MEETING of the City of Port Orange was called to order by Chairman Lance Green at 5:30 p.m.

Pledge of Allegiance

Roll Call

Present:

Bo Bofamy
Thomas Jordan
John Junco
Newton White
Stan Schmidt
Maria Mills-Benat, Vice Chair
Lance Green, Chairman

Also Present:

Shannon Balmer, Assistant City Attorney
Tracee Cody, Deputy City Clerk
Meghan Meyer, Administrative Assistant

DISCUSSION/ACTION

3. Consideration of Minutes - August 24, 2023

Motion to approve the meeting minutes of August 24, 2023 was made by Vice Chair Maria Mills-Benat and seconded by Commissioner Newton White. Motion carried unanimously by roll call vote.

4. APPLICATION: Variance/ Chapter 17, Section 27 of the Land Development Code
CASE NO.: VARC-23-0007
APPLICANT: Dexter and Linda Copp
STAFF CONTACT: Gwen Perney, Planner (386) 506-5673

A request for variances from the Land Development Code to allow 1) a lot size less than 1 acre, 2) a lot width less than 150 feet, and 3) a side building setback less than 25 feet for a property located at 917 Boyte Street in the Agriculture (A) zoning district.

Motion to approve Case No. VARC-23-0007 was made by Commissioner Thomas Jordan and seconded by Commissioner John Junco.

Gwen Perney, Planner, explained staff received opposition letters late in the day and provided copies to the Commissioners. Ms. Perney provided further details of the request and answered questions from the Commissioners.

Applicant, Dexter Copp, spoke to the Commissioners about his reasoning for the request to allow his daughter to have a home on their property and provided pictures of the neighboring lots. Megan Kaczynski, the Applicant's daughter, mentioned that she has been shopping around for builders and that having a narrowing structure is what she can afford.

The Commissioners expressed concerns regarding property value for neighbors and long-term effects.

Dale Holdridge, neighbor, expressed his opposition to the request. He stated that the neighborhood has a country/agricultural style and did not want it to change to a smaller sideline.

Chairman Lance Green called for a recess at 6:02 p.m. for Commissioners to review the opposition letters they received. The Planning Commission reconvened at 6:06 p.m.

Commissioner John Junco asked Ms. Perney if the City has any Ordinance or rules regarding Airbnb's and she explained there is not an Ordinance and any house can be a short term rental.

Commissioner Bo Bofamy does not feel this request would disrupt the neighborhood; however majority of the Commissioners are concerned with non-conforming lots and stated it would be a disruption to the neighborhood.

*Motion failed 6-1 with Commissioners
Thomas Jordan, John Junco, Newton
White, Stan Schmidt, Vice Chair Maria
Mills-Benat, and Chairman Lance Green
voting no.*

5. APPLICATION: Variance / Chapter 17, Section 27 and Chapter 13,
Section 3(d)(1)(c) of the Land Development Code
CASE NO.: VARC-23-0009
APPLICANT: Robert T. Braun, Trustee, Fraternal Order of Eagles Port Orange Aerie
4089
STAFF CONTACT: Gwen Perney, Planner (386) 506-5673

A request for variances from the Land Development Code to reduce the rear building setback from 10' to 2.5' and landscape buffer along a right-of-way from 10' to 2.5'.

Motion to approve Case No. VARC-23-

0009 was made by Vice Chair Maria Mills-Benat and seconded by Commissioner Thomas Jordan.

Ms. Perney provided further details of the request and answered questions from the Commissioners.

Applicant, Robert Braun with the Eagles, mentioned to the commissioners that he has been a trustee for the Eagles Lodge for the last 15 years. The fundraisers and big events get overflowed to the back and when it rains the events get delayed because they need coverage.

Lisa McCarthy, property owner behind the Eagles, expressed that she is not in favor of this request due to noise, increased amount of traffic, and an increase to the feral cat situation.

Tim Burman, Community Development Director, explained if the variance was approved, the applicant would have to follow guidelines for drainage and water flow.

Basil Jaisingh, owner of 5160 Ridgewood Ave. apartment complex, asked the Commissioners if his tenants would be blocked from access and they confirmed tenants will not be blocked.

Motion carried unanimously by roll call vote.

OTHER BUSINESS

6. Commissioner Comments

Commissioner John Junco and Chairman Lance Green commented about former Commissioners that have passed recently.

7. Staff Comments

Penelope Cruz, Planning Manager, introduced employee Suzette Cameron, Senior Planner.

PUBLIC COMMENTS

There were none.

ADJOURNMENT - 6:46 p.m.

Chairman Lance Green



STAFF REPORT

Second Amendment to the Restated First Amendment to the Master Development Agreement for the Nova Depot Planned Commercial Development CASE NO. PRZA-23-0006

REQUEST:	To approve the Second Amendment to the Restated First Amendment to the Master Development Agreement for the Nova Depot Planned Commercial Development to add a motor vehicle service center as a permitted use to Lot 2A.
LOCATION:	3738 Nova Road (Figure 1)
PROPERTY OWNER:	Larry C Martin, Trustee of the Martin Grantor Trust
APPLICANT:	Jessica Gow, Cobb Cole
STAFF CONTACT:	Gwen Perney, Principal Planner (386) 506-5673
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	October 26, 2023

INTRODUCTION

The proposed Second Amendment to the Restated First Amendment for the Nova Depot Planned Commercial Development (PCD) Master Development Agreement (MDA) is to add motor vehicle service center as an allowed use on Lot 2A in the PCD. Lot 2A of the Nova Depot PCD is located on the west side of Nova Road, south of Samms Avenue.

Figure 1. Location Map



Map created by the City of Port Orange Community Development Department

The subject property is currently regulated by the Nova Depot MDA, as amended, and the Land Development Code (LDC). According to the applicant, if the requested amendment is approved, a Take 5 Oil Change is proposed to be constructed on Lot 2A. The proposed amendment does not change any of the current permitted uses or other development requirements for any other lots within the Nova Depot PCD.

MASTER DEVELOPMENT AGREEMENT AMENDMENT:

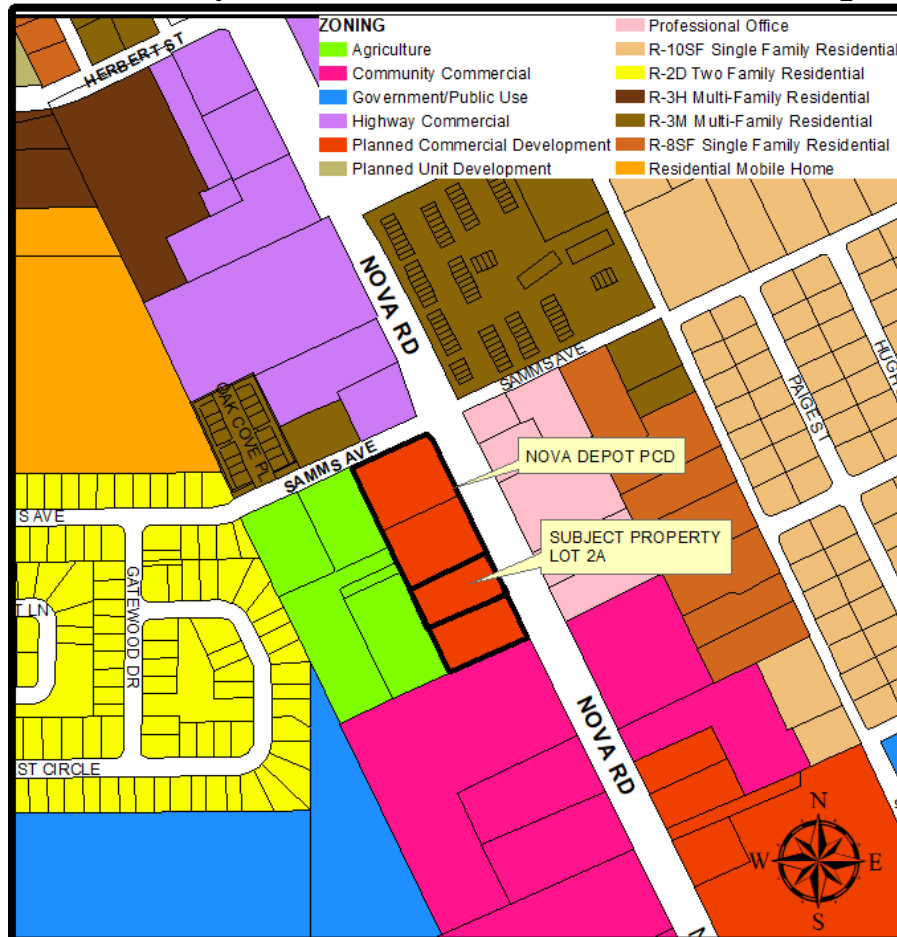
The current Nova Depot MDA was approved by the City in 2013 and established a mix of commercial, office, and institutional uses. In the Nova Depot MDA, the permitted uses for Lot 2A currently include retail sales and services, banks, health/exercise clubs, restaurants, office/medical offices, childcare centers, and veterinary clinics. The proposed amendment adds a motor vehicle service center as an allowed use on only Lot 2A. According to the Land Development Code (LDC), the proposed oil change business falls under the broad list of businesses listed in the definition of a motor vehicle service center use where motor vehicles are serviced within a building.

The properties adjacent to the PCD with commercial zoning include Highway Commercial (HC) to the north, Professional Office (PO) to the east, and Community Commercial (CC) to the south. The property to the west is zoned Agriculture (A) and has a storage yard directly behind Lot 2A. There is an existing screening wall along the west property line that will remain along with a required 25-foot landscaping buffer to buffer the use from any adjacent development.

Table 1. Nova Depot PCD Surrounding Land Uses and Zoning

Direction	Existing Land Use	FLU Designation	Zoning District
North	Commercial (Auto Service Center of Port Orange)	Commercial	Highway Commercial (HC)
South	Commercial (All Aboard Self Storage)	Commercial	Community Commercial (CC)
East	Commercial (Vacant)	Office/Residential Transition	Professional Office (PO)
West	Single-Family Residential (Don Clark's Land Clearing)	Office/Residential Transition	Agriculture (A)

Figure 2. Nova Depot PCD Lot 2A Location and Surrounding Zoning



The PCD currently allows several uses permitted in the Highway Commercial (HC) and Community Commercial (CC) zoning districts, which includes a motor vehicle service center in the HC zoning district. Adding the motor vehicle service center to the Nova Depot PCD would be consistent with the list of permitted uses within the PCD and compatible with the surrounding area.

The proposed amendment to add a motor vehicle service center as an allowed use on Lot 2A was evaluated based on the current commercial uses allowed within the PCD and the zoning of the properties adjacent to the PCD. The PCD is located along Nova Road, an arterial roadway that has commercially zoned areas adjacent to the PCD. Lot 2A is accessible to Nova Road with an existing driveway and connecting cross-access to the other lots within the PCD.

If the amendment is approved, a site plan to develop the proposed Take 5 Oil Change is required to be submitted to the city and reviewed and approved by the Staff Development Review Committee (SDRC). Any development on Lot 2A will be required to meet the standard commercial site requirements (landscape buffers, screening, tree preservation,

architecture, traffic concurrency, drainage and other infrastructure, parking, etc.) of the City's Land Development Code and the Nova Depot MDA and CDP.

CONSISTENCY WITH THE COMPREHENSIVE PLAN

The subject property is designated *Office/Residential Transition* on the City's Future Land Use Map. The original MDA was found to be consistent with the City's Comprehensive Plan and the City's Future Land Use (FLU) Map when it was originally approved in 2013. The proposed Second Amendment does not change the FLU designation for the property, and the proposed uses being added to the list of permitted uses of the PCD are consistent with the existing FLU designation of the property.

PUBLIC NOTICE

A Public Notice sign was posted on the site on August 25, 2023. At the time this agenda item was prepared, staff had not received any calls regarding the proposed amendment.

RECOMMENDATION

Staff recommends approval of the Second Amendment to the Restated First Amendment to the Master Development Agreement for the Nova Depot Planned Commercial Development, subject to the City Attorney's review of legal form and content.

ATTACHMENT

Exhibit 1 - Second Amendment to the Restated First Amendment to the Master Development Agreement for the Nova Depot Planned Commercial Development

Document Prepared By:

Michael Sznajstajler, Esquire
Cobb Cole
149 S. Ridgewood Ave. Suite 700
Daytona Beach, FL 32114

Return Recorded Document To:

City of Daytona Beach Records Clerk
P.O. Box 2451
Daytona Beach, FL 32115-2451

**SECOND AMENDMENT TO RESTATED FIRST AMENDMENT TO THE MASTER
DEVELOPMENT AGREEMENT
NOVA DEPOT PLANNED COMMERCIAL DEVELOPMENT**

THIS SECOND AMENDMENT TO RESTATED FIRST AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT NOVA DEPOT PLANNED COMMERCIAL DEVELOPMENT AGREEMENT ("Second Amendment") is made and entered into by and between **THE CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation located in Volusia County, Florida (the "City"), and **LARRY C. MARTIN, AS TRUSTEE OF THE MARTIN GRANTOR TRUST UNDER TRUST DATED OCTOBER 1, 2014** ("Owner").

WHEREAS, the Martin Grantor Trust is the Owner of approximately .67 acres of property ("Lot 2A Property"), more particularly described in Exhibit "A", attached hereto and made a part hereof by reference; and

WHEREAS, the City, All Aboard Storage, LLC, and R.K.M. Development Corp. previously entered into an agreement and covenant to bind their successors and assigns to the terms and provisions of a development agreement entitled Restated First Amendment to the Master Development Agreement - Nova Depot Planned Commercial Development ("Restated MDA"), recorded at Book 6929, Page 3542, Public Records of Volusia County, Florida, as amended by The First Amendment to the Restated First Amendment to the Master Development Agreement - Nova Depot Planned Commercial Development ("First Amendment"), recorded at Book 7547, Page 976, Public Records of Volusia County, Florida; and

WHEREAS, the Lot 2A Property is the only property impacted by this Second Amendment to the Restated MDA; and

WHEREAS, Owner proposes to amend the Agreement as set forth herein in order to clarify the allowable uses for Owners' Property; and

WHEREAS, the City is willing to grant Owner's request, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to amend the Agreement as follows:

Section 5.(b) of the Restated MDA is amended as follows: [additions shown in UNDERLINE, deletions shown in ~~STRIKETHROUGH~~]

(b) Commercial category.

- (1) Banks.
- (2) Health/exercise clubs*.
- (3) Office supplies.
- (4) Office/warehouse facilities*¹
- (5) Personal services.
- (6) Restaurants.
- (7) Retail sales and service.
- (8) Motor vehicle service center (Lot 2A only).

¹ Upon recording of this First Amendment to the Nova Depot Planned Commercial Development, office/warehouse shall by operation of law be deleted as a permitted use.

NO OTHER MODIFICATIONS

Except as otherwise expressly provided for herein, the Agreement shall continue in full force and effect.

[Remainder of Page Intentionally Left Blank. Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have set their hands, this ____ day of _____, 2023.

Signed, sealed and delivered in the presence of:

**THE CITY OF PORT ORANGE,
FLORIDA, a Florida municipal
corporation**

Witness 1

Print Name of Witness 1

By: _____
Donald Burnette, Mayor

Attest: _____
Robin L. Fenwick, MMC, City Clerk

Witness 2

Print Name of Witness 2

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [___] online notarization this _____ day of _____, 2023 by Donald O. Burnette, Mayor, and Robin L. Fenwick, City Clerk, both of the City of Port Orange, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public

Commission No: _____

Signed, sealed and delivered in the presence of:

THE MARTIN GRANTOR TRUST UNDER TRUST DATED OCTOBER 1, 2014

Witness 1

Print Name of Witness 1

Larry C. Martin, Trustee

Witness 2

Print Name of Witness 2

Date: _____

[Corporate Seal]

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this ____ day of _____, 2023, by **LARRY C. MARTIN, AS TRUSTEE OF THE MARTIN GRANTOR TRUST**, referred to in this agreement as “Owner.” He or she is [] personally known to me or [] produced as identification and did not take an oath.

Notary Public

Commission No. _____

Approved as to legal form:

By: _____
Shannon K. Balmer, Assistant City Attorney

EXHIBIT A

Legal Description of the Property

THE NORTHERLY ONE-HALF (1/2) OF THE EASTERLY ONE-HALF (1/2) OF LOT 1, BLOCK 25, MAP OF DUNLAWTON, EXCEPT THAT PART NOW IN NOVA ROAD S.R. NO. 5, AS RECORDED IN DEED BOOK "M", PAGE 187, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

TOGETHER WITH THE FOLLOWING DESCRIBED LAND:

THE SOUTHERLY ONE-HALF (1/2) OF THE EASTERLY ONE-HALF (1/2) OF LOT 1, BLOCK 25, MAP OF DUNLAWTON, EXCEPT THAT PART NOW IN NOVA ROAD S.R. NO. 5, AS RECORDED IN DEED BOOK "M", PAGE 187, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND:

A PORTION OF THE EASTERLY 1/2 OF LOT 1, BLOCK 25, MAP OF DUNLAWTON, AS RECORDED IN DEED BOOK M, PAGE 187, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE WESTERLY LINE OF THE EASTERLY 1/2 OF SAID LOT 1, BLOCK 25 WITH THE SOUTHERLY RIGHT OF WAY LINE OF SAMMS AVENUE, A 30 FOOT WIDE RIGHT OF WAY, PER SAID MAP OF DUNLAWTON; THENCE RUN N65°15'21"E, ALONG SAID SOUTHERLY RIGHT OF WAY LINE, 220.57 FEET TO THE WESTERLY RIGHT OF WAY LINE OF NOVA ROAD; THENCE S69°49'40"E, ALONG SAID WESTERLY RIGHT OF WAY LINE, 14.16 FEET TO A POINT THAT IS 10.00 FEET SOUTHERLY OF SAID SOUTHERLY RIGHT OF WAY LINE OF SAMMS AVENUE AS MEASURED PERPENDICULAR TO SAID SOUTHERLY RIGHT OF WAY LINE; THENCE S65°15'21"W, PARALLEL WITH SAID SOUTHERLY RIGHT OF WAY LINE, 230.50 FEET TO THE WESTERLY LINE OF THE EASTERLY 1/2 OF SAID LOT 1; THENCE N25°19'48"W, ALONG SAID WESTERLY LINE, 10.00 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND:

A PORTION OF THE EAST 1/2 OF LOT 1, BLOCK 25, MAP OF DUNLAWTON, AS RECORDED IN DEED BOOK "M", PAGE 187, AND RE-RECORDED AS A TRUE COPY IN MAP BOOK 14, PAGES 82 AND 83 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, IN SECTION 37, TOWNSHIP 33 SOUTH, RANGE 33 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE EAST 1/2 OF SAID LOT 1, BLOCK 25, MAP OF DUNLAWTON; THENCE RUN N25°19'48"W ALONG THE WEST LINE OF SAID EAST 1/2, A DISTANCE OF 445.10 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID WEST LINE N25°19'48"W, 191.01 FEET TO THE SOUTH RIGHT OF WAY LINE OF SAMMS AVENUE AS DESCRIBED IN OFFICIAL RECORDS BOOK 6896, PAGE 225, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE N65°15'21"E ALONG SAID SOUTH RIGHT OF WAY LINE, 230.50 FEET TO THE WEST RIGHT OF WAY LINE OF NOVA ROAD; THENCE S69°49'40"E ALONG SAID WEST

RIGHT OF WAY LINE, 16.11 FEET; THENCE CONTINUE ALONG SAID WEST RIGHT OF WAY LINE S26°00'33"E, 179.67 FEET; THENCE S65°15'21"W, 243.92 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND:

A PORTION OF THE EAST 1/2 OF LOT 1, BLOCK 25, MAP OF DUNLAWTON, AS RECORDED IN DEED BOOK "M", PAGE 187, AND RE-RECORDED AS A TRUE COPY IN MAP BOOK 14, PAGES 82 AND 83 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, IN SECTION 37, TOWNSHIP 16 SOUTH, RANGE 33 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF THE EAST 1/2 OF SAID LOT 1, BLOCK 25, MAP OF DUNLAWTON; THENCE RUN N25°19'48"W ALONG THE WEST LINE OF SAID EAST 1/2, A DISTANCE OF 141.02 FEET; THENCE N65°37'159"E, 247.57 FEET TO THE WEST RIGHT OF WAY LINE OF NOVA ROAD; THENCE ALONG SAID WEST RIGHT OF WAY LINE S26°00'33"E, 141.06 FEET TO THE SOUTH LINE OF SAID LOT 1; THENCE S65°37'59"W, 249.24 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND:

A PORTION OF THE EAST 1/2 OF LOT 1, BLOCK 25, MAP OF DUNLAWTON, AS RECORDED IN DEED BOOK "M", PAGE 187, AND RE-RECORDED AS A TRUE COPY IN MAP BOOK 14, PAGES 82 AND 83 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, IN SECTION 37, TOWNSHIP 16 SOUTH, RANGE 33 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE EAST 1/2 OF SAID LOT 1, BLOCK 25, MAP OF DUNLAWTON; THENCE RUN N25°19'48"W ALONG THE WEST LINE OF SAID EAST 1/2, A DISTANCE OF 259.25 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID WEST LINE N25°19'48"W, 185.85 FEET; THENCE N65°15'21"E, 243.92 FEET TO THE WEST RIGHT OF WAY LINE OF NOVA ROAD; THENCE S26°00'33"E ALONG SAID WEST RIGHT OF WAY LINE, 180.45 FEET; THENCE S63°59'22"W, 246.06 FEET TO THE POINT OF BEGINNING.

SAID PROPERTY ALSO DESCRIBED AS:

A PORTION OF THE EAST 1/2 OF LOT 1, BLOCK 25, MAP OF DUNLAWTON, AS RECORDED IN DEED BOOK "M", PAGE 187, AND RE-RECORDED AS A TRUE COPY IN MAP BOOK 14, PAGES 82 AND 83 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, IN SECTION 37, TOWNSHIP 16 SOUTH, RANGE 33 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE EAST 1/2 OF SAID LOT 1, BLOCK 25, MAP OF DUNLAWTON; THENCE RUN N25°19'48"W ALONG THE WEST LINE OF SAID EAST 1/2, A DISTANCE OF 141.02 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID WEST LINE N25°19'48"W, 118.23 FEET; THENCE N63°59'22"E,

246.06 FEET TO THE WEST RIGHT OF WAY LINE OF NOVA ROAD; THENCE S26°00'33"E
ALONG SAID WEST RIGHT OF WAY LINE, 125.32 FEET; THENCE S65°37'59"W, 247.57
FEET TO THE POINT OF BEGINNING.



STAFF REPORT

CASE NO. DCAM-23-0002

LDC Amendment/Chapters 2, 3, 9, and 10

REQUEST:	To amend Chapters 2, 3, 9, and 10 of the Land Development Code (LDC) that include clarifications and minor changes that are simple clean-up items that make the development review process more efficient.
APPLICANT:	City of Port Orange
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
PLANNING COMMISSION:	October 26, 2023

INTRODUCTION

Over the past several years, staff has been updating the Land Development Code (LDC) in phases. Prior amendments included updates to sign regulations, erosion control, floodplain management, updates to Building Code references, county-wide Traffic Impact Analysis standards, school concurrency, Construction Standards modifications, site plan, and subdivision regulations, removal of select uses from the Ridgewood Corridor zoning district, zero lot line homes in the R-2D zoning district, microbreweries, architecture requirements, economic development – Ridgewood targeted businesses, tree preservation, and others.

SUMMARY OF PROPOSED AMENDMENT

The proposed amendments are intended to improve and update the content of the existing code as part of an ongoing maintenance effort. The proposed amendments include clarifications and minor changes that are simple clean-up items that make the code more efficient to use, update information, or address problems or issues encountered when applying the code.

AMENDMENT #1: DEVELOPMENT REVIEW PROCESS (CHAPTER 3)

Major Development: The proposed amendment clarifies that a Master Development Agreement and Conceptual Development Plan (CDP) proposed for the Planned Community—Agricultural (PC-A) or Planned Community—Port Orange Riverwalk (PC-R) zoning districts and an amendment to an approved MDA and CDP, as well as the currently listed Planned Unit Development (PUD) or Planned Commercial Development (PCD) districts, is a major development. A major development is a development application that goes through the Staff Development Review Committee (SDRC) process and then through the public hearing process. A previously approved amendment allowed an MDA and CDP to be approved by the City Council for property zoned PC-A or PC-R, but it was not added to the list of development applications required to go through the public hearing process located in Chapter 3 of the LDC. The proposed amendment does not change the development applications that go before the Planning Commission and City Council;

it just codifies the development applications required to go before the Planning Commission and City Council in one location of the LDC.

Resubmittal Timeframes: The proposed amendment would extend the timeframes or number of days an applicant for a development applicant has to resubmit their application back to the city. Based on feedback from professional engineering firms that frequently submit development applications through the City's development review process, the current resubmittal timeframes do not adequately provide sufficient time to revise plans to address technical comments, especially if additional survey work or data analysis is required by other disciplines (Traffic Engineering, Biologist, Architects, etc.). Currently, the LDC allows a 60-day resubmittal timeframe to address comments provided at the SDRC meeting. Any resubmittal after the initial resubmittal must be made within 30 days of receiving the resubmittal comment letter. The proposed amendment would allow for a 120-day resubmittal timeframe after the initial application submittal and SDRC meeting technical comments are provided and a 60-day resubmittal timeframe for any resubmittal required after the initial resubmittal. The amendment also clarifies that the resubmittal timeframes are calendar days, and a project is considered withdrawn if the resubmittal deadline is not met without a written extension request. The proposed amendment also adds a limit of two (2) resubmittal deadline extensions but maintains language to approve additional extensions if warranted due to unforeseeable events. There is no change to the 60-day timeframe for each extension. Staff surveyed other cities within the County, and the proposed resubmittal deadlines are generally consistent with timeframes used by others.

Staff Development Review Committee: The LDC currently establishes the requirements for meetings and membership of the Staff Development Review Committee (SDRC). The SDRC consists of city staff from various city divisions or departments that provide technical reviews for development applications (site plans, subdivisions, amendments to a PUD or PCD, or a new PUD or PCD) to ensure compliance with the Land Development Code of Ordinances, Florida Building Code, and County-wide minimum standards.

Due to the recent reorganization of City divisions and departments, the proposed amendment clarifies what constitutes a quorum of the SDRC, updates the divisions and departments that make up the SDRC, and ensures the necessary city departments and divisions provide technical review of development applications and are present at SDRC Meetings.

AMENDMENT #2: MINOR ENGINEERING PERMIT (CHAPTERS 2, 9 AND 10)

Minor Engineering Permit (MEP): The LDC currently includes a reference to a Change of Grade Permit. According to the LDC, a Change of Grade Permit is limited to regrading a site. The proposed amendment renames the Change of Grade Permit as a Minor Engineering Permit (MEP) and establishes the work that can be approved under an MEP. An MEP can be used to permit limited site work other than site grading; it can be used for minor site work such as limited clearing and grubbing, filling and excavation, sidewalks, driveways, pavement repairs or overlays, minor drainage improvements (addition of or repair to swale, repair to berms, pipes, culverts, etc.), ADA parking improvements, and other minor site work that does not require a Site Plan. A MEP application requires the submittal of a survey, engineered design plans, and other construction details as appropriate based on the scope of work. There have been requests for this type of permit,

specifically related to redevelopment projects on the east side of the city, so businesses can make minor improvements on sites without the full expense of having a Site Plan prepared.

The LDC includes a reference to a Stormwater Management Permit and a Wetlands Alteration Permit. In a review of the past development permits submitted or approved over the last 20 years, there is no record of a Stormwater Management Permit or Wetlands Alteration Permit being received or issued by the city. The review of a stormwater management system or alterations of wetlands has historically been reviewed as part of a development permit for a site plan or subdivision, not a separate stand-alone permit. The proposed amendment does **not** change any current development requirements in the LDC related to permitting a stormwater management system or alternations to wetlands.

Therefore, to be in line with the current practice of permitting stormwater systems and alterations of wetlands, the proposed amendment states that these activities are addressed as part of the review for a site plan or subdivision development application, which the SDRC reviews for compliance with all applicable codes. The proposed amendment also includes language that a Minor Engineering Permit could be submitted if there is a need to review the design of a stormwater system or alterations of wetlands outside of a development application.

RECOMMENDATION

Approval of the amendments to Chapters 2, 3, 9, and 10 of the Land Development Code.

ATTACHMENT

Exhibit 1 – Proposed amendment to Chapters 2, 3, 9, and 10 of the Land Development Code.

EXHIBIT 1

Words ~~stricken~~ are deletions; words underlined are additions.

Chapter 2 - DEFINITIONS AND INTERPRETATIONS

Section 2: - Definitions.

Minor Engineering Permit. An application for minor site work such as clearing and grubbing, filling and excavation, sidewalks, driveways, pavement repairs or overlays, minor drainage improvements, and other minor site work that is not otherwise incorporated into a Building Permit or Site Construction Permit.

Chapter 3 – ADMINISTRATION

ARTICLE I: - CODE ADMINISTRATION

Section 3: - Development plan review process.

(a) *Designation of plans as major or minor development.* For purposes of review and approval under this code, all plans shall be designated as minor development or major development as outlined below.

(1) *Major development.* A development plan shall be designated as a major development if it meets one or more of the following criteria:

- (a) The plan includes the final plat for the subdivision of land.
- (b) The plan is a ~~required conceptual plan~~ for the rezoning to ~~GPU~~, PUD or PCD district and the establishment of a new Master Development Agreement (MDA) and Conceptual Development Plan (CDP), the establishment of a new MDA and CDP in the PC-A or PC-R district, an amendment to an approved MDA or CDP, or is so deemed a major development in the an existing approved MDA of the PUD or PCD.
- (c) The plan is part of a larger development proposal or poses special development issues that require the additional review of a major development, as determined by the administrative official.

(2) *Minor development.* A development plan shall be designated as a minor development if it fails to meet the criteria for major development and is not exempt from the requirement for a development order under section 2(b) above.

(b) *Pre-application conference.* Prior to submitting a development review application, the applicant shall meet with the administrative official or his/her designee(s), in order to verify the steps necessary for application and review and discuss potential issues regarding the development proposal. Comments made at the pre-application conference are intended to provide guidance and are nonbinding on the formal review of the development plans, except that an applicant may request a written confirmation of the designation of the proposal as a major or minor development.

(c) *Application for development plan review.* Applications for development plan review shall be made to the department utilizing the form provided by the department for that purpose, and accompanied by

the appropriate review fee, as adopted by resolution of the city council. Application shall be accompanied by the appropriate number of proposed plans, as determined by the administrative official based upon the size and scope of the proposed development. Plans shall be signed and sealed by a registered engineer, architect, landscape architect, where required by this code. Plans shall be prepared according to the standards of this code.

(1) *Review of application materials.* Within two working days of the receipt of an application, the department shall determine whether the submittal is complete. Incomplete submittals shall be returned to the applicant with the deficiencies noted in writing. ~~Re-application shall be accompanied by a re-application fee as adopted by resolution of the city council.~~

(2) *Initiation of development review.* Once a completed application is submitted, it shall be scheduled for the next staff development review committee (SDRC) meeting, but no earlier than one week from the date that the application is deemed complete. The administrative official may waive the required SDRC meeting for certain development applications based on the size and scope of the proposed development.

(d) *Development review process.*

(1) *Staff development review committee (SDRC).* All applications for MDA amendments, site plans, subdivisions, and the rezoning of property to PUD or PCD districts shall be reviewed by the SDRC, and members' comments shall be delivered and discussed at a regularly scheduled meeting. Formal comments of the SDRC shall be transmitted in writing to the applicant no later than three working days after the meeting.

(2) *Minor development review.* Minor development projects may resubmit plans in response to the SDRC comments no later than ~~60~~120 calendar days after the original SDRC meeting review, or the project shall be considered withdrawn. The resubmitted plans shall be reviewed by the appropriate SDRC members, based on the original findings, within ten working days of resubmittal. Based on the outcome of this second review, the administrative official shall take one of the following actions within 15 working days of resubmittal:

(a) If previous comments were not addressed, or the plan modifications result in additional code discrepancies, such comments shall be transmitted along with a reasonable deadline for resubmission based on the number and magnitude of outstanding issues. However, in no case shall resubmittal be accepted more than ~~30~~60 calendar days after the transmittal of comments, or the project shall be considered withdrawn.

(b) If all comments are satisfactorily addressed, a development order shall be issued.

(3) *Major development review.* Major development projects may resubmit plans in response to SDRC comments no later than ~~60~~120 calendar days after the original SDRC meeting review, or the project shall be considered withdrawn. The plans shall be reviewed by the appropriate SDRC members, based on the original findings, within ten working days of resubmittal. Based on the outcome of this second review, the administrative official shall take one of the following actions within 15 working days of resubmittal:

(a) If previous comments were not addressed, or the plan modifications result in additional code discrepancies, such comments shall be transmitted along with a reasonable deadline for resubmission based on the number and magnitude of outstanding issues. However, in no case shall resubmittal be accepted more than 60 calendar days after the transmittal of comments.

(b) Only projects with minor outstanding technical and procedural comments shall be submitted by the department to the planning commission for consideration.

(a1) *Planning commission action.* The planning commission shall consider the development plans at a regularly scheduled meeting and determine if they meet the requirements of this code. The applicant or an authorized agent thereof shall be present at the time of consideration by the planning commission. Upon consideration of the comments of the SDRC and public, the commission shall take one of the following actions:

(1a) Table or continue the consideration of the project until their next regularly scheduled meeting to allow for the resolution of outstanding issues.

(2b) Recommend that the proposed development plan be denied.

(3c) Recommend that the proposed development plan be approved.

(4d) Recommend that the proposed development plan be approved with conditions.

(5e) Approve or deny the proposed development plans in which the planning commission has final authority.

(b2) *City council approval.* The city council shall consider the development plans at a regularly scheduled meeting and determine if they meet the requirements of this code. Upon consideration of the comments of the department and public, and the recommendation of the planning commission, the city council shall take one of the following actions:

(1a) Table or continue the consideration of the proposed development plan to allow for the resolution of outstanding issues.

(2b) Deny the proposed development plan.

(3c) Approve the proposed development plan.

(4d) Approve the proposed development plan with conditions. Revised plans reflecting conditions of city council approval shall be submitted to the department within 30 days of the conditional approval. Plans and/or documents shall be reviewed by the department within ten working days of resubmittal to determine compliance with those conditions.

(5e) Refer the proposed development plan back to the planning commission for further review and recommendation based on new or additional information or circumstances.

(e3) *Issuance of development order.* The department shall issue a development order within five working days of unconditional city council approval, or verification that city council conditions for approval have been met.

(e) *Failure to provide timely plan resubmission.* Failure to meet any of the resubmission deadlines cited above shall require applicant to pay ~~late~~extension fees or file a new application including the appropriate review fees, whichever is deemed applicable by the administrative official when considering the amount of time elapsed, whether a change in scope is proposed for the project, or whether any unforeseeable events have caused delay.

(1) *Extension of resubmittal deadlines.* The administrative official may extend the deadlines cited above upon request when warranted by unforeseeable events. A request for extension shall be filed in writing with the department, accompanied by the appropriate fee, as adopted by resolution of the city council, explaining the circumstances justifying the extension. An applicant may request a maximum of (2) two 60 calendar day extensions. Additional extensions beyond the two provided for herein may be considered by the administrative official if warranted due to unforeseeable events.

[No changes to subsections (f) and (g)]

ARTICLE III: - BOARDS AND COMMISSIONS

Section 9: - Staff development review committee (SDRC).

There is hereby created the staff development review committee (SDRC) to provide technical review for all applications for development approval and grant final approval for development plans when authorized by this code.

(a) *Meetings.* The SDRC shall hold regularly scheduled meetings at least once a month unless there are no applications requiring review at that time. A schedule of regular meetings shall be made available in the department. A special meeting may be called by the ~~chairman~~chairperson to allow extra time for the review of large or complex applications that have been submitted by the appropriate deadline for the next regularly scheduled meeting. SDRC meetings shall be open to all interested persons for the review of formal development applications.

(1) Quorum. A quorum of the SDRC, necessary to conduct any business, shall consist of three members.

(2) Minutes. The SDRC shall keep minutes of all its meetings, as required by law. The minutes shall record the attendance of its members and shall be a public record.

(b) *Membership and organization.* The SDRC shall be chaired by the administrative official or his/her designated representative. In addition to the chairperson, the SDRC shall be composed of representatives from the following city departments or divisions: building, engineering, the planning division, public utilities, and the city attorney's office. When deemed appropriate required by the administrative official or his/her designated representative, the SDRC may expand to include the

following review by other city departments or divisions. : risk management, fire, police, and public works. The SDRC shall be chaired by the administrative official or his/her designated representative.

Chapter 9 - ENVIRONMENTAL PROTECTION

ARTICLE I: - WETLANDS PROTECTION

Section 2: - Permit requirements for wetland alteration.

It is hereby unlawful for any person to engage in any activity which will remove, fill, drain, dredge, clear, destroy, or alter any wetland or buffer, without obtaining a ~~wetlands alteration~~minor engineering permit or a development plan approval.

[No changes to subsections (a) and (b)]

(c) *Permit issuance.* All permits shall be deemed to incorporate the general and specific conditions of permits issued by federal, state or regional agencies that are within the substantive purview of this article. Where such permits are deemed to completely address the requirements of this article, there may be no additional conditions placed by the city. ~~The city may withhold issuance of a city permit until any or all such other permits are issued.~~ Issuance of a development permit pursuant to a development order shall be considered to include the issuance of the related wetlands alteration ~~permit~~. On applications not tied to development projects requiring development plan approval, the city shall have two weeks to determine the sufficiency of the application. The applicant shall be notified in writing of any discrepancies in the application. Once a complete application is accepted, the city shall have 30 days to review the application, and to approve, approve with conditions, or disapprove the permit.

Section 3: - Wetlands protection standards.

Application for a ~~wetlands alteration~~minor engineering permit shall meet the following wetlands protection standards:

[No changes to subsections (a) through (d)]

ARTICLE II: - TREE PRESERVATION

Section 10: Permit requirements for tree removal.

[No changes to subsection (a)]

(b) It is hereby unlawful for any person to change or modify the grade of any land without obtaining a ~~change of grade~~minor engineering permit in accordance with the provisions of chapter 10, article I. Where both clearing and changing of grades are proposed, the permit requirements of chapter 10, article I shall apply, in addition to the standards of this article.

ARTICLE III: - SHORELINE PROTECTION REGULATIONS

Section 26: - General shoreline development standards.

(a) New development or substantial improvements to existing development at a shoreline shall apply for a ~~wetlands alteration~~ permit from the city and receive approval of this application from the administrative official.

[No changes to subsection (b)]

Chapter 10 - CLEARING, GRADING, AND STORMWATER MANAGEMENT

ARTICLE I: - CLEARING AND GRADING

Section 2: - Permit requirements for change of grade.

It is hereby unlawful for any person to change or modify the grade of any land without obtaining a ~~change of grade~~ minor engineering permit in accordance with the provisions of this chapter ~~or development plan approval, as appropriate~~. The following procedure shall apply for unsubdivided property or subdivided lots with no approved development or building plan. However, the provisions of article II of this chapter shall supersede the following for those activities requiring a ~~stormwater management~~ minor engineering permit or development plan as reflected in article II of this chapter.

[No changes to subsections (3) or (4)]

Section 5: - Required erosion and sediment control measures.

[No changes to introductory text or subsections (a) through (c)]

(d) *Design requirements.* Erosion and sediment control plans (ESCPs) shall be designed according to the following provisions:

(1) Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria as set forth in the ~~2006 latest edition, as updated from time to time~~, of the Florida Stormwater Erosion and Sedimentation Control Inspector's Manual, available from the Florida Department of Environmental Protection, and the city's standard construction details. The ESCP shall be adequate to prevent transportation of sediment from the site to the satisfaction of the city. Cut and fill slopes shall not exceed a 4:1 slope ratio, except as approved by the city to meet other community or environmental objectives.

[No changes to subsections (2) through (8)]

ARTICLE II: - STORMWATER MANAGEMENT

Section 9: - Prohibitions and exemptions.

(a) *Prohibitions.* No person may develop or make any change in the use of land or construct a structure or change the size of a structure, except as exempted herein, without first obtaining a ~~stormwater management~~ development permit as provided herein. For the purpose of this article, the following development may potentially alter or disrupt existing stormwater runoff patterns, and as such, will, unless exempted below, require a permit prior to the commencement of construction:

[No changes to subsections (a)(1) through (8) or (b)]

Section 10: - Stormwater management ~~permit~~ review.

An application for a ~~stormwater management~~ minor engineering permit shall be filed, processed and approved in the following manner:

[No changes to subsections (a) or (b)]

(c) ~~Stormwater~~ Minor engineering permit application and review. Application shall be made directly to the department.

[No changes to subsections (1) through (3), or Section 11]

Section 12: - Issuance of development permits.

Upon notification by the city of the determination of the SDRC, the department will immediately notify the applicant of that determination.

(a) *Issuance of ~~stormwater management~~ development permit.* Upon the satisfaction of any approval conditions, and presentation of any other required county, regional, state, or federal agency permits required for the proposed construction, the department shall issue the ~~stormwater management~~ development permit.

[No changes to subsection (b), or Section 13]

Section 14: - Enforcement.

Any changes or amendments to the approved plans must be approved by the department. If the completed development appears to deviate from the approved plans the department may require the developer to submit as-built plans of the completed project. In consideration of the city's review and approval of plans, the owner or his agent shall grant city inspectors inspection rights and right-of-entry privileges in order to ~~insure~~ensure compliance with the requirements of this article.

ARTICLE III: - ILLICIT CONNECTIONS AND DISCHARGES TO THE CITY'S SEPARATE STORM SEWER SYSTEM (MS4)**Section 25: - Notification of spills.**

[No changes to subsections (a) or (b)]

(c) In the event of a release of nonhazardous materials, and in addition to all other legally required notices, the person shall notify the city's department designated by the City Manager ~~of community development in person or by phone or facsimile in writing~~ no later than the next business day. ~~Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the city's department Of community development within three business days of the phone notice.~~

[No changes to subsections (d) or (e)]

Section 26: - Violations, enforcement and penalties.

(d) *Immediate suspension due to illicit discharges in emergency situations.* The city's ~~community development engineer~~ department designated by the City Manager shall, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4, watercourses, or receiving waters. If the violator fails to comply with a suspension order issued in an emergency, the city shall take such further steps as deemed necessary to prevent or minimize damage to the MS4, watercourses or receiving waters, or to minimize danger to persons, with all costs and expenses thereof borne by the violator.