

ARTICLE I
GENERAL PROVISIONS

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ARTICLE I

GENERAL PROVISIONS

SECTION 21-01 TITLE

This Chapter shall be codified known and cited as the “Land Development Code of the City of Edgewater, Florida”.

SECTION 21-02 AUTHORITY & APPLICABILITY

This Land Development Code is enacted pursuant to the requirements and authority granted by the Florida Constitution and the Laws of the State of Florida of Chapter 163, Part II, Florida Statutes, (Growth Policy; County and Municipal Planning; Land Development Regulation) and the general powers in Chapter 166, Florida Statutes and Article VIII & II of the Florida Constitution. More specifically, Chapter 163.3161(5), Florida Statutes “... no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.” This statutory mandate is further amplified in Chapter 163.3202, Florida Statutes which states “...each municipality shall adopt or amend and enforce land development regulations that are consistent with and implement their adopted Comprehensive Plan...”

Upon adoption of this Code, the use of any parcel of land, water body, any structure, or any combination thereof, within the corporate limits of the City of Edgewater shall be in conformance with the requirements of this City Code. Failure to comply with the requirements of this Code may subject an alleged offender to the enforcement provisions of Article X as well as any other available enforcement remedies.

SECTION 21-03 PURPOSE AND INTENT

21-03.01 – Purpose

The purpose and intent of this Code is to promote and safeguard the health, safety, comfort and welfare of the public and to ensure that lands within the City of Edgewater are developed in a manner which is consistent with the policies and objectives of the City of Edgewater’s Comprehensive Plan. It is further the intent of this Code to implement the requirements of Chapter 163.3202, Florida Statutes (hereinafter referred to as FS) by adopting regulations which:

- a. Regulate the subdivision of land.
- b. Regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open space.

- c. Provide for the protection of potable water well fields.
- d. Regulate areas subject to seasonal and periodic flooding and provide for drainage and stormwater management.
- e. Ensure the protection of environmentally sensitive land designated in the comprehensive plan.
- f. The regulation of signage.
- g. Provide criteria and standards to regulate, protect and enhance unique areas of the City including but not limited to, the gateway highway corridor, such as Indian River Boulevard and Ridgewood Avenue.
- h. Establish procedures to ensure that policies and objectives of the Comprehensive Plan are enforced.
- i. Provide criteria and procedures to ensure that the level of service standards established in the Comprehensive Plan are met.
- j. Ensure safe and convenient on-site traffic flow and parking.

21-03.02 – Intent

The Land Development Regulations set forth herein are made in accordance with a Comprehensive Plan for the general public health, safety and welfare of the City. They are designed to lessen congestion in the streets; to secure safety; to provide adequate light and air; to prevent the overcrowding of land or buildings; to avoid undue concentration of population; to provide adequate public facilities and utilities; and to preserve the natural resources and community amenities of beauty and visual interest. They are made with reasonable consideration to the character of each district and its unique suitability for particular uses, and with a view of conserving the value of property and encouraging the most appropriate use of land throughout the City.

SECTION 21-04 CONSISTENCY WITH COMPREHENSIVE PLAN

This Code incorporates new authorization, requirements and regulations to implement the objectives and policies of the Comprehensive Plan, and to ensure that all land development activities within the City are consistent with and further the objectives, policies, land uses, densities and intensities in the City’s Comprehensive Plan.

It is recognized, however, that situations may arise in the daily administration and enforcement of this Code whereby strict interpretation and enforcement of the Code may be contrary to the

goals, objectives and policies of the Comprehensive Plan. Such situations may arise due to changes in land development priorities or economics, new issues which were not anticipated at the time this Code was drafted and adopted, or the inability to meet competing goals through a single action. In this situation, the goals and policies of the Comprehensive Plan shall take precedence, and the Code shall be interpreted and administered consistent with the overall goals, objectives and policies of the Comprehensive Plan as interpreted by the City Council, until such time that the Code and/or Comprehensive Plan can be amended to resolve any conflict.

SECTION 21-05 JURISDICTION

The provisions of this Code shall apply to all buildings, structures, uses and development of land within the corporate limits of the City of Edgewater, Florida, as now or hereafter defined, and all areas under the jurisdiction of the City for land use planning and development control as specified by law or in any applicable interlocal planning agreements.

SECTION 21-06 RULES OF INTERPRETATION

For the purpose of this Code, the following rules of interpretation shall apply unless such construction would be inconsistent with the Comprehensive Plan or the manifest intent of the City Council:

- a. In case of any difference of meaning or implication between the text and any caption, illustration, summary table, or illustrative table, the text shall control.
- b. The words “shall” or “must” are always mandatory and not discretionary. The words “may” or “should” are permissive.
- c. Words used in the present tense shall include the future, and words used in the singular number shall include the plural and the singular, unless the context clearly indicates the contrary.
- d. The term “building” or “structure” includes any part thereof.
- e. The phrase “used for” includes “arranged for,” “designed for,” “maintained for” or “occupied for.”
- f. The word “person” includes an individual, a corporation, a partnership, an incorporated association or any other similar entity.
- g. Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction “and”, “or”, or “either/or”, the conjunction shall be interpreted as follows:
 1. “And” indicates that all the connected items, conditions, provisions or events shall

- apply;
2. “Or” indicates that the connected items, conditions, provisions, or events may apply singly or in any combination;
 3. “Either.../or” indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
- h. The word “includes” shall not limit a term to the specified examples, but is intended to extend its meaning to all other instances or circumstances of like kind or character.
- i. Sites, or lot areas, herein is the minimum area required.
- j. The interpretation and application of the regulations and provisions of this Code by the City shall be reasonable and uniformly applied to all property within the jurisdiction of the City of Edgewater.
- k. Whenever the regulations and requirements of this Code are in conflict with the requirements of any other lawfully enacted and adopted rules, regulations, ordinances, or laws, the most restrictive shall apply.

21-06.01 – Appeal Procedure

In the event any person believes that a City official has made an interpretation or determination under the Land Development Code that adversely impacts such person to the extent that such person believes in good faith that such decision results in a deprivation of the reasonable and beneficial use of the land which is the subject of the adverse interpretation or determination, then such person may appeal such decision to the City Manager by submitting a written notice or appeal to the City Manager's office within fifteen (15) days of the adverse decision being communicated to such person. The City Manager shall review the decision of the city official and render a decision on the appeal within thirty (30) days of receipt of the written notice or appeal.

Any person may subsequently appeal the decision of the City Manager to the City Council. Any such appeal to the City Council must be filed with the City Clerk within fifteen (15) days of the adverse decision by the City Manager being communicated to such person. The City Council shall review the decisions of the city official and City Manager within sixty (60) days of the date of filing such appeal. The decision of the City Council shall be final and binding. An appeal of a decision made by any advisory board may be filed by any interested party.

SECTION 21-07 – VESTED RIGHTS DETERMINATIONS

21-07.01 – Findings and Determinations

- a. It is hereby found, determined and declared as follows:

1. Pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, Part II, Chapter 163, Florida Statutes (“the Act”), the City of Edgewater is authorized and required to adopt local land development regulations.
2. The City Council of the City of Edgewater adopted a local Land Development Code in accordance with the provisions of the Act on September 11, 2006.
3. Under the provisions of the Act, in some circumstances development that was approved prior to the adoption of the Land Development Code may be “vested” and not subject to the provisions of the Land Development Code.
4. The City Council of the City of Edgewater deems it necessary under the authority thus granted to it to adopt and enforce vested rights regulations for all development subject to the jurisdiction of the City.

21-07.02 – Definitions

For the purpose of this Section only, the following terms have the following meanings:

1. *Commencement Development* means that the developer of a project received a final development order prior to September 11, 2006.
2. *Continuing development in good faith* means that following the issuance of the final development order, the developer of a project diligently pursues the issuance of all permits necessary to begin development of the project, and once obtained commences and proceeds with development. Once development is commenced, no more than one hundred eighty (180) consecutive days may pass without the occurrence of development unless the developer can establish that the lapse was due to circumstances beyond his or her control.
3. *Manager* means the City Manager for the City of Edgewater or his or her designated representative.

21-07.03 – Existence of Vested Rights

- a. Notwithstanding its consistency, in whole or part, with this Land Development Code, a project or development shall be deemed to have vested rights if the project or development meets one (1) or more of the following criteria:
 1. The project or development has been issued a final development order and the developer has commenced development and is continuing development in good faith on September 11, 2006 and on the date of submittal of the application for a determination of vested rights.
 2. The person seeking to establish vested rights, with respect to such project or development, or their predecessors-in-interest (i) have relied in good faith and in reasonable reliance upon some clear and unequivocal act or promise by the City, and (ii) have made such a substantial change in position and incurred such extensive obligations that it would be highly inequitable or unjust to destroy the

rights which such person has acquired.

3. The City has entered into a development agreement prior to September 11, 2006 which expressly grants vested rights to all or a portion of a project or development.
- b. Nothing in the Land Development Code shall limit or modify the rights of any developer to complete a project or development that has vested rights; provided, however, the development of a vested project must occur in a manner consistent with the final development order or other actions forming a basis for the vested rights in order to maintain the vested status of the project or development. This Land Development Code shall not be construed or applied so as to result in an unconstitutional taking or private property or the abrogation of validly existing vested rights.
- c. A project or development which is found to have vested rights shall enable the owner of the subject property to undertake development addressed by the vested rights determination made pursuant to this Section, notwithstanding that the development may be inconsistent with this Land Development Code, or in violation of the concurrency requirements of the concurrency requirements of the Land Development Code, or both, as specified in the vested rights determination made pursuant to this Section, but only if the project or development complies with and is subject to all other applicable laws and regulations.

21-07.04 – Takings

This Land Development Code is not intended to constitute a taking without just compensation. No person claiming that this Land Development Code as applied to a particular property, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court or before a quasi-judicial body unless the person has first exhausted the administrative remedies provided in this Section by applying for a vested rights determination to the extent any such claim is based in part or completely on facts related to the criteria for establishing vested rights. In such event, it shall be the duty and responsibility of the person alleging a taking to demonstrate the legal requisites of a taking.

21-07.05 – Application for Vested Rights Determination

- a. *Application Period.* The developer or owner of a project may request a determination of vested rights by filing a complete application and paying the applicable fee.
- b. *Contents of Application.* The application shall contain the following information:
 1. The name, address, and phone number of the applicant;
 2. A legal description of the property;
 3. The name and address of each owner of the property, if the applicant is not the owner;

4. If the claim for vested rights is being asserted pursuant to Section 21-07.03 (a)(1) hereof:
 - a. Identification by specific reference to any Ordinance, Resolution, City Council action, approved final subdivision plan, building permit or other action demonstrating that the project was issued a final development order prior to September 11, 2006; and
 - b. A sworn statement of facts demonstrating that development of the project has continued in good faith.
 5. If the claim for vested rights is being asserted pursuant to Section 21-07.03 (a)(2) hereof;
 - a. A sworn statement setting forth the facts upon which the claim for vested rights is based.
 - b. Copies of all contracts, letters, appraisals, reports or any other documents, items or things upon which that applicant's claim is based.
 6. If the claim for vested rights is being asserted pursuant to Section 21-07.03 (a)(3) hereof:
 - a. A sworn statement setting forth the facts upon which the claim for vested rights is based.
 - b. A copy of the developer agreement or other document supporting the claim for vested rights.
 7. A sworn statement setting forth the specific vested rights claimed by the applicant and whether vested rights are claimed for purposes of consistency or concurrency, or both.
 8. Such other relevant information as the City Manager may request.
- c. *Application submittal.* The application and application fee shall be submitted to the City of Edgewater Development Services Department.

21-07.06 – Procedure for Determining Vested Rights

- a. *Application Review.* The City Manager shall review the application in consultation with the City Attorney and shall, within thirty (30) days after it is filed, determine if the application is complete. If it is not complete, the applicant shall be granted ten (10) days to provide additional information to make the application complete.
- b. *Vested Rights Determination*
 1. It shall be the applicant's burden to affirmatively allege and establish the existence of vested rights.
 2. Following receipt of a complete application, if the applicant does not request the opportunity to present additional evidence to the City Manager, the City Manager

shall issue a written vested rights determination (“the Vested Rights Determination”) within sixty (60) days of the date of determination that the application is complete.

3. The applicant may request the opportunity to present additional evidence to the City Manager, and any such request shall be granted. The City Manager, in consultation with the City Attorney, may conduct a hearing to evaluate the applicant’s evidence, and may require that all testimony be submitted under oath. In the event a hearing is conducted, a recording or transcript of the hearing shall be made. Within sixty (60) days following the conclusion of the hearing, the City Manager shall issue a written Vested Rights Determination.
 4. The Vested Rights Determination shall contain findings of fact and conclusions of law and shall include the legal description of the property to which it applies. The Vested Rights Determination shall set forth whether the project or development is vested, in whole or part, for consistency or concurrency, or both and whether the project or development is subject in whole or part to this Land Development Code. The Vested Rights Determination may contain reasonable conditions necessary to effect the purposes of this Land Development Code and the Comprehensive Plan. It shall state that the Vested Rights Determination is subject to expiration in accordance with this or subsequent ordinances. The City Manager may consult with the City Attorney in connection with the drafting and issuance of a Vested Rights Determination.
- c. *Appeal of Determination.* Any applicant may appeal to the City Council the City Manager’s Vested Rights Determination. The appeal shall be filed with the City Clerk within thirty (30) days following the rendering of the City Manager’s Vested Rights Determination. This time is jurisdictional. The City Council’s review of the Vested Rights Determination shall be based solely upon a review of the application and the evidence in support thereof submitted to the City Manager. The City Council shall take final action on the appeal within sixty (60) days from the date the appeal is filed with the City Clerk. The decision of the City Council shall be final, subject to judicial review.
- d. *Payment of Review Costs.* Notwithstanding any provision contained herein to the contrary, the Vested Rights Determination shall not be final until all review costs incurred by the City in connection herewith have been paid in full by the applicant.
- e. *Judicial Review.* Judicial review of the Vested Rights Determination made by the City Council is available and shall be by common-law certiorari to the circuit court.

21-07.07 – Health, Safety, and Welfare Consideration

Nothing contained herein shall preclude the City of Edgewater from requiring a project or development to comply with any Land Development regulations adopted subsequent to the

issuance of the Final Development Order or the obtaining of vested rights if the City Council deems such compliance essential to the protection of the health, safety, and welfare of the citizens of Edgewater.

SECTION 21-08 DELEGATION OF AUTHORITY

Whenever a provision appears requiring the administrative official, the head of a department or some other City officer or employee to perform an act or duty, it is to be construed to authorize delegation to subordinates to perform the required act or duty, unless the terms of the provision or section specify otherwise, or such delegation would be contrary to the spirit and intent of this Code.

SECTION 21-09 RELATIONSHIP OF SPECIFIC TO GENERAL PROVISIONS

More specific provisions of this Code shall be followed in lieu of more general provisions which may be more lenient than, or in conflict with the more specific provisions.

SECTION 21-10 CONFLICTING LANGUAGE OR PROVISIONS

In case of conflict within this Code or between this Code and the Code of Ordinances, the language or provision which is most appropriate shall apply.

SECTION 21-11 SEVERABILITY

If any section, subsection, paragraph, sentence, clause, or phrase of this Code is for any reason held by any court of competent jurisdiction to be unconstitutional or otherwise invalid, the validity of the remaining portions of this Code shall continue in full force and effect.

SECTION 21-12 REPEAL OF PRIOR PROVISIONS

Table I-1 lists the portions of the Code of Ordinances that are hereby superseded and expressly repealed upon the effective date of this Code.

**TABLE I-1
REPEALED ORDINANCES AND DOCUMENTS**

Ordinance No. 94-O-26	Existing Land Development Code
Appendix A	Existing Zoning Ordinance
Chapter 2-46 thru 2-59	Citizen Code Enforcement Board
Chapter 2-101 thru 2-105	Supplemental Code Enforcement
Chapter 3	Advertising Signs

Chapter 4.3	Alcoholic Beverages
Chapter 7, Article IX	Swimming Pools
Chapter 7, Article XII	Satellite Dishes
Chapter 11-29 thru 11-33	Junkyards
Chapter 14	Planning and Zoning Generally
Chapter 17, Article III	Parking Requirements
Chapter 18	Trailers, Mobile Homes, Recreation Vehicles, Parks and Parking
Chapter 19-111 thru 19-122	Wellfield Protection Areas
Chapter 20	Wetlands Protection

SECTION 21-13 EFFECTIVE DATE

These regulations shall be effective as of September 11, 2006.

Section 21-14 through 21-19 reserved for future use.