

ORDINANCE NO. 2023 – 16

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, AMENDING ORDINANCE NUMBER 04-41, AS AMENDED, THE COLLIER COUNTY LAND DEVELOPMENT CODE, WHICH INCLUDES THE COMPREHENSIVE LAND REGULATIONS FOR THE UNINCORPORATED AREA OF COLLIER COUNTY, FLORIDA, TO PROVIDE THAT COMPARABLE USE DETERMINATIONS ARE SITE SPECIFIC AND ADD CRITERIA; BY PROVIDING FOR: SECTION ONE, RECITALS; SECTION TWO, FINDINGS OF FACT; SECTION THREE, ADOPTION OF AMENDMENTS TO THE LAND DEVELOPMENT CODE, MORE SPECIFICALLY AMENDING THE FOLLOWING: CHAPTER TWO ZONING DISTRICTS AND USES, INCLUDING SECTION 2.03.00 ZONING DISTRICTS, PERMITTED USES, ACCESSORY USES, AND CONDITIONAL USES; AND CHAPTER TEN APPLICATION, REVIEW, AND DECISION-MAKING PROCEDURES, INCLUDING SECTION 10.02.06 REQUIREMENTS FOR PERMITS, AND SECTION 10.03.06 PUBLIC NOTICE AND REQUIRED HEARINGS FOR LAND USE PETITIONS; SECTION FOUR, CONFLICT AND SEVERABILITY; SECTION FIVE, INCLUSION IN THE COLLIER COUNTY LAND DEVELOPMENT CODE; AND SECTION SIX, EFFECTIVE DATE. [PL20220000207]

**Recitals**

WHEREAS, on October 30, 1991, the Collier County Board of County Commissioners adopted Ordinance No. 91-102, the Collier County Land Development Code (hereinafter LDC), which was subsequently amended; and

WHEREAS, the Collier County Board of County Commissioners ("Board") on June 22, 2004, adopted Ordinance No. 04-41, which repealed and superseded Ordinance No. 91-102, as amended, the Collier County Land Development Code, which had an effective date of October 18, 2004; and

WHEREAS, on March 18, 1997, the Board adopted Resolution 97-177 establishing local requirements and procedures for amending the LDC; and

WHEREAS, all requirements of Resolution 97-177 have been met; and

WHEREAS, the Collier County Planning Commission, sitting as the land planning agency, did hold an advertised public hearing on August 18, 2022, and reviewed the proposed amendments for consistency with the Comprehensive Plan and did recommend approval; and

WHEREAS, the Board of County Commissioners, in a manner prescribed by law, did hold an advertised public hearing on January 24, 2023 and February 28, 2023, and did take

action concerning these amendments to the LDC; and

WHEREAS, the subject amendments to the LDC are hereby determined by this Board to be consistent with and to implement the Collier County Growth Management Plan as required by Subsections 163.3194 (1) and 163.3202 (1), Florida Statutes; and

WHEREAS, this ordinance is adopted in compliance with and pursuant to the Community Planning Act (F.S. § 163.3161 *et seq.*), and F.S. § 125.01(1)(t) and (1)(w); and

WHEREAS, this ordinance is adopted pursuant to the constitutional and home rule powers of Fla. Const. Art. VIII, § 1(g); and

WHEREAS, all applicable substantive and procedural requirements of the law have otherwise been met.

NOW, THEREFORE BE IT ORDAINED by the Board of County Commissioners of Collier County, Florida, that:

**SECTION ONE: RECITALS**

The foregoing Recitals are true and correct and incorporated by reference herein as if fully set forth.

**SECTION TWO: FINDINGS OF FACT**

The Board of Commissioners of Collier County, Florida, hereby makes the following findings of fact:

1. Collier County, pursuant to § 163.3161, *et seq.*, F.S., the Florida Community Planning Act (hereinafter the "Act"), is required to prepare and adopt a comprehensive plan.
2. After adoption of the Comprehensive Plan, the Act and in particular § 163.3202(1), F.S., mandates that Collier County adopt land development regulations that are consistent with and implement the adopted comprehensive plan.
3. Section 163.3201, F.S., provides that it is the intent of the Act that the adoption and enforcement by Collier County of land development regulations for the total unincorporated area shall be based on, be related to, and be a means of implementation for, the adopted comprehensive plan.
4. Section 163.3194(1)(b), F.S., requires that all land development regulations enacted or amended by Collier County be consistent with the adopted comprehensive plan, or element or portion thereof, and any land regulations existing at the time of adoption which are

not consistent with the adopted comprehensive plan, or element or portion thereof, shall be amended so as to be consistent.

5. Section 163.3202(3), F.S., states that the Act shall be construed to encourage the use of innovative land development regulations.

6. On January 10, 1989, Collier County adopted the Collier County Growth Management Plan (hereinafter the "Growth Management Plan" or "GMP") as its comprehensive plan pursuant to the requirements of § 163.3161 *et seq.*, F.S.

7. Section 163.3194(1)(a), F.S., mandates that after a comprehensive plan, or element or portion thereof, has been adopted in conformity with the Act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such comprehensive plan or element shall be consistent with such comprehensive plan or element as adopted.

8. Pursuant to § 163.3194(3)(a), F.S., a development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development are compatible with, and further the objectives, policies, land uses, densities, or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

9. Section 163.3194(3)(b), F.S., states that a development approved or undertaken by a local government shall be consistent with the comprehensive plan if the land uses, densities or intensities, capacity or size, timing, and other aspects of development are compatible with, and further the objectives, policies, land uses, densities, or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

10. On October 30, 1991, Collier County adopted the Collier County Land Development Code, which became effective on November 13, 1991. The Land Development Code adopted in Ordinance 91-102 was recodified and superseded by Ordinance 04-41.

11. Collier County finds that the Land Development Code is intended and necessary to preserve and enhance the present advantages that exist in Collier County; to encourage the most appropriate use of land, water and resources consistent with the public interest; to overcome present handicaps; and to deal effectively with future problems that may result from the use and development of land within the total unincorporated area of Collier County and it is intended that this Land Development Code preserve, promote, protect and improve the public health, safety, comfort, good order, appearance, convenience and general welfare of Collier County; to prevent the overcrowding of land and avoid the undue concentration of population; to

facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing and other requirements and services; to conserve, develop, utilize and protect natural resources within the jurisdiction of Collier County; to protect human, environmental, social and economic resources; and to maintain through orderly growth and development, the character and stability of present and future land uses and development in Collier County.

12. It is the intent of the Board of County Commissioners of Collier County to implement the Land Development Code in accordance with the provisions of the Collier County Comprehensive Plan, Chapter 125, Fla. Stat., and Chapter 163, Fla. Stat., and through these amendments to the Code.

**SECTION THREE: ADOPTION OF AMENDMENTS TO THE LAND DEVELOPMENT CODE**

\* \* \* \* \*

**SUBSECTION 3.A. AMENDMENTS TO SECTION 2.03.00 ZONING DISTRICTS; PERMITTED USES, ACCESSORY USES, AND CONDITIONAL USES**

Section 2.03.00, Zoning Districts; Permitted Uses, Accessory Uses, and Conditional Uses, of Ordinance 04-41, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

**2.03.00 Zoning Districts; Permitted Uses, Accessory Uses, And Conditional Uses**

In order to carry out and implement the Collier County GMP and the purposes of this LDC, the following zoning districts, district purposes, and applicable symbols are hereby established:

1. Rules for Interpretation of Uses. In any zoning district, where the list of permitted uses contains the phrase "any other use which is comparable in nature with the foregoing uses and is consistent with the permitted uses and purpose and intent statement of the district" or any similar phrase which provides for a use which is not clearly defined or described in the list of permitted uses, which requires the discretion of the County Manager or designee as to whether or not it is permitted at a site specific location in the district, then the determination of whether or not that use is permitted in the district shall be made through the process outlined in LDC section 10.02.06.K.

\* \* \* \* \*

**SUBSECTION 3.B. AMENDMENTS TO SECTION 10.02.06 REQUIREMENTS FOR PERMITS**

Section 10.02.06, Requirements for Permits, of Ordinance 04-41, as amended, the Collier

County Land Development Code, is hereby amended to read as follows:

**10.02.06 Requirements for Permits**

\* \* \* \* \*

K. Comparable Use Determination.

1. The following Comparable Use Determination (CUD) shall be used to determine whether a use at a site-specific location is comparable in nature with the list of permitted uses and the purpose and intent statement of the zoning district, overlay, or PUD. Approval of a CUD made at one location shall not be construed to mean the use is entitled in a different location.
2. To be effective, the Comparable Use Determination shall be approved by the Hearing Examiner by decision, or Board of Zoning Appeals by resolution after CCPC recommendation to the BZA, at an advertised public hearing based on the following standards, as applicable:
  - a. The proposed use possesses similar characteristics to other permitted uses in the zoning district, overlay, or PUD, including but not limited to the following:
    - i. Operating hours;
    - ii. Traffic volume generated/attracted;
    - iii. Type of vehicles associated with the use;
    - iv. Number and type of required parking spaces; and
    - v. Business practices and activities.
  - b. The effect of the proposed use would have on neighboring properties in relation to the noise, glare, or odor effects shall be no greater than that of other permitted uses in the zoning district, overlay, or PUD.
  - c. The proposed use is consistent with the GMP, meaning the applicable future land use designation does not specifically prohibit the proposed use, and, where the future land use designation contains a specific list of allowable uses, the proposed use is not omitted.
  - d. The proposed use shall be compatible and consistent with the other permitted uses in the zoning district, overlay, or PUD.
  - e. The proposed use shall be compatible with the surrounding neighborhood.
  - ~~f.~~ e. Any additional relevant information as may be required by County Manager or Designee.

3. The Administrative Code shall establish the process and application submittal requirements to obtain a Comparable Use Determination.

**SUBSECTION 3.C. AMENDMENTS TO SECTION 10.03.06 PUBLIC NOTICE AND REQUIRED HEARINGS FOR LAND USE PETITIONS**

Section 10.03.06, Public Notice and Required Hearings for Land Use Petitions, of Ordinance 04-41, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

**10.03.06 Public Notice and Required Hearings for Land Use Petitions**

This section shall establish the requirements for public hearings and public notices. This section shall be read in conjunction with LDC section 10.03.05 and Chapter 8 of the Administrative Code, which further establishes the public notice procedures for land use petitions.

\* \* \* \* \*

O. Approval of a Comparable Use Determination pursuant to LDC section 10.02.06 K.

1. The following advertised public hearings are required:

- a. One CCPC or Hearing Examiner hearing.
- b. If heard by the Planning Commission, one BZA hearing.

2. The following notice procedures are required:

- a. Newspaper Advertisement prior to the advertised public hearing in accordance with F.S. § 125.66.

\* \* \* \* \*

**SECTION FOUR: CONFLICT AND SEVERABILITY**

In the event that any provisions of this ordinance should result in an unresolved conflict with the provisions of the Land Development Code (LDC) or Growth Management Plan (GMP), the applicable provisions of the LDC or GMP shall prevail. In the event this Ordinance conflicts with any other Ordinance of Collier County or other applicable law, the more restrictive shall apply. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

**SECTION FIVE: INCLUSION IN THE COLLIER COUNTY LAND DEVELOPMENT CODE**

The provisions of this Ordinance shall become and be made a part of the Land Development Code of Collier County, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

**SECTION SIX: EFFECTIVE DATE**

This Ordinance shall become effective upon filing with the Florida Department of State.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida, this 28<sup>th</sup> day of February, 2023.

ATTEST:  
CRYSTAL K. KINZEL, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF COLLIER COUNTY, FLORIDA

By: Jenny Lawson D.C.  
Deputy Clerk

By: [Signature]  
Rick LoCastro, Chairman

Attest as to Chairman's signature only.

Approved as to form and legality:

[Signature]  
Heidi F. Ashton-Cicko  
Managing Assistant County Attorney

22-LDS-00160/213  
2-8-2023

This ordinance filed with the Secretary of State's Office the 6 day of March 2023 and acknowledgement of that filing received this 6 day of March 2023  
By: Jenny Lawson  
Deputy Clerk



**FLORIDA DEPARTMENT *of* STATE**

**RON DESANTIS**  
Governor

**CORD BYRD**  
Secretary of State

March 6, 2023

Martha Vergara, BMR & VAB  
Senior Deputy Clerk  
Office of the Clerk of the Circuit Court  
& Comptroller of Collier County  
3329 Tamiami Trail E, Suite #401  
Naples, FL 34112

Dear Martha Vergara,

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of the Collier County Ordinance No. 2023-16, which was filed in this office on March 6, 2023.

If you have any questions or need further assistance, please contact me at (850) 245-6271 or [Anya.Owens@DOS.MyFlorida.com](mailto:Anya.Owens@DOS.MyFlorida.com).

Sincerely,

Anya C. Owens  
Program Administrator  
Florida Administrative Code and Register

ACO/rra