

ORDINANCE 2023 - 10

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 REMOVE THE \$25,000 MINIMUM VALUE OF THE TRANSFER OF DEVELOPMENT RIGHTS (TDR) BASE CREDIT IN THE RURAL FRINGE MIXED USE DISTRICT 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 2 ZONING DISTRICTS AND USES INCLUDING SECTION 2.03.07 OVERLAY ZONING DISTRICTS; SECTION FOUR, CONFLICT AND SEVERABILITY; SECTION FIVE, INCLUSION IN THE COLLIER COUNTY LAND DEVELOPMENT CODE; AND SECTION SIX, EFFECTIVE DATE. [PL20200002482]

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WHEREAS, the Collier County Board of County Commissioners (Board) on June 22, 2004, adopted Ordinance No. 04-41, which repealed and superseded Ordinance No. 91-102, as amended the Collier County Land Development Code which had an effective date of October 18, 2004; and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 November 3, 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 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 is fully set forth.

SECTION TWO: FINDINGS OF FACT

The Board of County 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 governmental 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

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SUBSECTION 3.A. AMENDMENTS TO SECTION 2.03.07 – OVERLAY ZONING DISTRICTS

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D. Special Treatment Overlay (ST).

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4. Transfer of Development Rights (TDR)

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f. Procedures applicable to the severance and redemption of TDR credits and the generation of TDR Bonus credits from RFMU sending lands.

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ii. In order to facilitate the County's monitoring and regulation of the TDR Program, the County shall serve as the central registry for all TDR severances, transfers (sales) and redemptions, as well as maintain a public listing of TDR credits available for sale along with a listing of purchasers seeking TDR credits. No TDR credit generated from RFMU sending lands may be utilized to increase density in any area unless the following procedures are complied with in full.

* * * * *

a) TDR credits shall not be used to increase density in either non-RFMU Receiving Areas of RFMU receiving lands until severed from RFMU sending lands. TDR credits shall be deemed to be severed from RFMU sending lands at such time as a TDR credit Certificate is obtained from the County. TDR credit Certificates shall be issued only by the County and upon submission of the following:

* * * * *

~~v) a statement identifying the prices, or value of other remuneration, paid to the owner of the RFMU sending lands from which the TDR credits were generated and that the value of any such remuneration is at least \$25,000 per TDR credit, unless such owner retains ownership of the TDR credits after they are severed, unless the RFMU or non-RFMU receiving lands on which the TDR credits will be redeemed and the RFMU sending lands from which the TDR credits were generated are owned by the same persons or entities or affiliated persons or entities; and~~

vi) a statement attesting that the TDR credits are not being severed from RFMU sending lands in violation of subsection 2.03.07 D.4.c.vi.b) of the Code.

vii) documented evidence that, if the property from which TDRs are being severed is subject to a mortgage, lien, or any other security interest; the mortgagee, lien holder, or holder of the security interest has consented to the recordation of the Limitation of Development Rights Agreement required for TDR severance; transfer (sale) of TDR credit; and redemption of TDR credit.

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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 24th day of January, 2023.

ATTEST:
CRYSTAL K. KINZEL, CLERK


BOARD OF COUNTY COMMISSIONERS
OF COLLIER COUNTY, FLORIDA

By: 
Deputy Clerk


By: 
Rick LoCastro, Chairman

**Attest as to Chairman's
signature only**

Approved as to form and legality:


Heidi Ashton-Cicko
Managing Assistant County Attorney

04-CMD-01077 (/ /)
22-CPS-02267/56

This ordinance filed with the
Secretary of State's Office the
30 day of JAN, 2023
and acknowledgement of that
filing received this 31 day
of JAN, 2023
By: 
Deputy Clerk



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

January 31, 2023

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

Dear Merline Fogue,

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of the Collier County Ordinance No. 2023-10, which was filed in this office on January 30, 2023.

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

Sincerely,

Anya C. Owens
Program Administrator
Florida Administrative Code and Register

ACO/rra