

ORDINANCE NO. 04- 13

AN ORDINANCE AMENDING ORDINANCE NUMBER 91-102, AS AMENDED, THE COLLIER COUNTY LAND DEVELOPMENT CODE, WHICH INCLUDES THE COMPREHENSIVE REGULATIONS FOR THE UNINCORPORATED AREA OF COLLIER COUNTY, FLORIDA, 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: ARTICLE 3, DIVISION 3.13, INCLUDING REVISIONS TO COASTAL CONSTRUCTION SETBACK LINE VARIANCE; SECTION FOUR, CONFLICT AND SEVERABILITY; SECTION FIVE, INCLUSION IN THE COLLIER COUNTY LAND DEVELOPMENT CODE; AND SECTION SIX, EFFECTIVE DATE.

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 has been subsequently amended; and

WHEREAS, the LDC may not be amended more than two times in each calendar year unless additional amendment cycles are approved by the Collier County Board of County Commissioners pursuant to Section 1.19.1., LDC; and

WHEREAS, this is the third amendment to the LDC, Ordinance 91-102, for the calendar year 2003; and

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

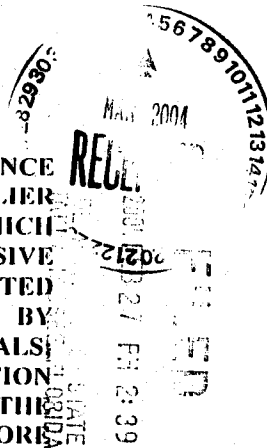
WHEREAS, all requirements of Resolution 97-177 have been met; and

WHEREAS, the Board of County Commissioners, in a manner prescribed by law, did hold advertised public hearings on February 11, 2004 and February 24, 2004, and did take action concerning this amendment 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, all applicable substantive and procedural requirements of the law have 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 County Commissioners of Collier County, Florida, hereby makes the following findings of fact:

1. Collier County, pursuant to Sec. 163.3161, et seq., Fla. Stat., the Florida Local Government Comprehensive Planning and Land Development Regulations 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 Sec. 163-3202(1). Fla. Stat., mandates that Collier County adopt land development regulations that are consistent with and implement the adopted comprehensive plan.

3. Sec. 163.3201, Fla. Stat., 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 as required by the Act.

4. Sec. 163.3194(1)(b), Fla. Stat., 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 development 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. Sec. 163.3202(3), Fla. Stat., 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 Sec. 1634.3161 et seq. Fla. Stat., and Rule 9J-5, F.A.C.

7. Sec. 163.3194(1)(a), Fla. Stat., 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 or portion thereof shall be consistent with such Comprehensive Plan or element or portion thereof.

8. Pursuant to Sec. 163.3194(3)(a), Fla. Stat., a development order or land development regulation shall be consistent with the Comprehensive Plan if the 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). Fla. Stat., requires 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 and may be amended twice annually.

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; encourage the most appropriate use of land, water and resources, consistent with the public interest; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within the total unincorporated are 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; prevent the overcrowding of land and avoid the undue concentration of population; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services, conserve, develop, utilize, and protect natural resources within the jurisdiction of Collier County; and protect human, environmental, social, and economic resources; and 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 DIVISION 3.13. COASTAL CONSTRUCTION SETBACK LINE VARIANCE OF THE LAND DEVELOPMENT CODE**

Division 3.13., Coastal Construction Setback Line Variance, of Ordinance 91-102, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

\* \* \* \* \*

**Sec. 3.13.8. Permits.**

The following activities seaward of the coastal construction setback line shall not require a hearing by the board of county commissioners, but shall require a coastal construction setback line permit. Such permit shall be reviewed and approved administratively by site development review environmental staff. The appropriate fee as set by county resolution shall be submitted with permit application.

\* \* \* \* \*

3.13.8.3. Beach Nourishment or maintenance dredging. Certain activities that may temporarily alter ground elevations such as artificial beach nourishment projects, excavation or maintenance dredging of inlet channels may be permitted seaward of the coastal construction setback line if said activity is in compliance with the Collier County Growth Management Plan and receives Federal and State agency approvals. Until such time as the fee schedule can be amended, the fee shall be \$400.00 for these Beach Nourishment permits.

\* \* \* \* \*

**Sec. 3.13.9. Penalty and civil remedies.**

\* \* \* \* \*

3.13.9.3.4- *Penalty for a violation of subsection 3.13.7.3.* Notwithstanding the penalties set forth elsewhere in this Code, the following violations of subsection 3.13.7.3, which occur during sea turtle nesting season:

\* \* \* \* \*

B) Beach front property owners who leave beach furniture unattended on the beach between 9:30 pm and the time of the next day's sea turtle monitoring, are subject to the following penalties:

*First violation:* Written notice of ordinance violation.

*Second violation:* Up to \$1,000.00 fine.

*Third ~~or more~~ violation:* \$2,500.00 fine.

*More than three violations:* \$5,000.00 fine.

\* \* \* \* \*

**SECTION FOUR: CONFLICT AND SEVERABILITY**

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 relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

**SECTION SIX: EFFECTIVE DATES**

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

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier

County, Florida, this 24 day of February, 2004.

ATTEST:  
DWIGHT E. BROCK, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF COLLIER COUNTY, FLORIDA

By: Rinda A. Houtz, DC  
Deputy Clerk  
Attest: as to Chairman's  
signature only.

By: Donna Fiala  
DONNA FIALA, CHAIRMAN

Approved as to form and  
legal sufficiency:  
Patrick G. White  
Patrick G. White  
Assistant County Attorney

This ordinance filed with the  
Secretary of State's Office the  
27 day of FEB, 2004  
and acknowledgement of that  
filing received this 4 day  
of March, 2004  
By: Rinda A. Houtz, DC  
Deputy Clerk