

**ORDINANCE NO. 19 – 08**

**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 ALLOW COMMUNICATIONS TOWERS AS A CONDITIONAL USE IN THE RURAL FRINGE MIXED USE SENDING LANDS AND CONSERVATION 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 TWO – ZONING DISTRICTS AND USES, INCLUDING SECTION 2.01.03 ESSENTIAL SERVICES AND SECTION 2.03.08 RURAL FRINGE ZONING DISTRICTS, AND SECTION 2.03.09 OPEN SPACE DISTRICT; SECTION FOUR, CONFLICT AND SEVERABILITY; SECTION FIVE, INCLUSION IN THE COLLIER COUNTY LAND DEVELOPMENT CODE; AND SECTION SIX, EFFECTIVE DATE. [PL20180003474]**

**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WHEREAS, the Collier County Board of County Commissioners (Board) on June 22, 2004, adopted Ordinance No. 04-41, which repealed and superseded Ordinance No. 91-102, as amended, the Collier County Land Development Code, which had an effective date of October 18, 2004; and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 February 28, 2019, 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 advertised public hearings on May 14, 2019, and June 11, 2019, 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 (herein after 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 2.01.03 ESSENTIAL SERVICES**

Section 2.01.03 Essential Services, of Ordinance 04-41, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

Section 2.01.03 Essential Services

Essential services are hereby defined as services designed and operated to provide water, sewer, gas, telephone, electricity, cable television or communications to the general public by providers which have been approved and authorized according to laws having appropriate jurisdiction, and government facilities. Essential services are allowed in any zoning district subject to the following conditions:

\* \* \* \* \*

G. Conditional uses. The following uses require approval pursuant to section 10.08.00 conditional uses:

\* \* \* \* \*

2. Conditional essential services in RFMU sending lands, NRPAs, CON districts, and RLSA designated HSAs and FSAs. Within RFMU District Sending Lands, NRPAs, CON districts, and the RFLA designated HSAs and FSAs subject to the limitations set forth in LDC section 4.08.08 C.2. 4.08.05 H.3, ~~in addition to the essential services identified as allowed conditional uses in subsection 2.01.03 G.1. above,~~ the following additional essential services are allowed as conditional uses:
  - a. Sewer lines and lift stations necessary to serve a publicly owned or privately owned central sewer system providing service to urban areas; or the Rural Transition Water and Sewer District, as delineated on the Urban-Rural Fringe Transition Zone Overlay Map in the Future Land Use Element of the GMP, when not located within already cleared portions of existing rights-of-way or easements;
  - b. Safety Services limited to law enforcement, fire, and emergency medical services; and
  - c. Oil and gas field development and production, as defined and regulated in this Code, remains a conditional use on or beneath Conservation Collier lands established in the CON zoning district subject to subsection 2.03.09 B.1.c.i.
  
3. Additional conditional uses in residential, and estate zoned districts, and in RFMU receiving and neutral lands. In residential, agricultural, and estate zoned districts and in RFMU Receiving and neutral lands, in addition to those essential

services identified as conditional uses in section 2.01.03 G.1. above, the following essential services shall also be allowed as conditional uses:

- a. Regional parks and community parks;
- b. Public parks and public library facilities;
- c. Safety service facilities;
- d. Other similar facilities, except as otherwise specified herein.

4. Additional conditional uses in the RFMU sending lands and CON districts. The following essential services shall be allowed as conditional uses:

- a. Communications towers, subject to all applicable provisions of LDC section 5.05.09.

4. 5. Conditional uses that include the installation of structures:

- a. Where structures are involved other than structures supporting lines or cables, such structures shall comply with the regulations for the district in which they are located, or as may be required on an approved site development plan under section 10.02.03. In addition, the structures shall conform insofar as possible to the character of the district in which they are located as to development standards, as well as architecture and

landscaping, with utilization of screening and buffering to ensure compatible with the surrounding and nearby existing and future uses.

- b. Within the RFMU district sending lands, NRPA's, Conservation Districts, and the RLSA HSAs and FSAs, structures supporting the conditional use shall be located so as to minimize any impacts on native vegetation and on wildlife and wildlife habitat.
  
- c. Essential services shall not be deemed to include the erection of structures for commercial activities such as sales or the collection of bills in districts from which such activities would otherwise be barred. Unstaffed billing services, which are accessory uses to the normal operations of the essential service, may be permitted.

\* \* \* \* \*

**SUBSECTION 3.B. AMENDMENTS TO SECTION 2.03.08 RURAL FRINGE ZONING DISTRICTS**

Section 2.03.08 Rural Fringe Zoning Districts, of Ordinance 04-41, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

**2.03.08 Rural Fringe Zoning Districts**

\* \* \* \* \*

- A. Rural Fringe Mixed-Use District (RFMU District).

\* \* \* \* \*

4. RFMU sending lands. RFMU sending lands are those lands that have the highest degree of environmental value and sensitivity and generally include significant wetlands, uplands, and habitat for listed species. RFMU sending lands are the principal target for preservation and conservation. Density may be transferred from RFMU sending lands as provided in LDC section 2.03.07 D.4.c. All NRPAs within the RFMU district are also RFMU sending lands. With the exception of specific provisions applicable only to NBMO neutral lands, the following standards shall apply within all RFMU sending lands:

\* \* \* \* \*

a. Allowable uses where TDR credits have not been severed.

\* \* \* \* \*

(3) Conditional Uses.

(a) Those essential services identified in LDC section 2.01.03 G.2 and 4.

\* \* \* \* \*

b. Uses allowed where TDR credits have been severed.

\* \* \* \* \*

(2) Conditional uses:

(a) Those Essential Uses identified in LDC section 2.01.03 G.2 and 4.

\* \* \* \* \*

**SUBSECTION 3.C. AMENDMENTS TO SECTION 2.03.09 OPEN SPACE ZONING DISTRICTS**



Section 2.03.09 Open Space Zoning Districts, of Ordinance 04-41, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

### 2.03.09 Open Space Zoning Districts

\* \* \* \* \*

B. Conservation District "CON". The purpose and intent of the conservation district "CON" is to conserve, protect and maintain vital natural resource lands within unincorporated Collier County that are owned primarily by the public. All native habitats possess ecological and physical characteristics that justify attempts to maintain these important natural resources. Barrier islands, coastal bays, wetlands, and habitat for listed species deserve particular attention because of their ecological value and their sensitivity to perturbation. All proposals for development in the CON district must be subject to rigorous review to ensure that the impacts of the development do not destroy or unacceptably degrade the inherent functional values. The CON District includes such public lands as Everglades National Park, Big Cypress National Preserve, Florida Panther National Wildlife Refuge, portions of the Big Cypress Area of Critical State Concern, Fakahatchee Strand State Preserve, Collier-Seminole State Park, Rookery Bay National Estuarine Sanctuary Research Reserve, Delnor-Wiggins State Park, and the National Audubon's Corkscrew Swamp Sanctuary (privately owned), and C.R.E.W. It is the intent of the CON District to require review of all development proposed within the CON District to ensure that the inherent value of the County's natural resources is not destroyed or unacceptably altered. The CON District corresponds to and implements the conservation land use designation on the future land use map of the Collier County GMP.

1. Allowable uses. The following uses are allowed in the CON District.

\* \* \* \* \*

c. Conditional uses. The following uses are permitted as conditional uses in the CON, subject to the standards and procedures established in section 10.08.00 and further subject to: 1) submission of a plan for development as part of the required EIS that demonstrates that wetlands , listed species and their habitat are adequately protected; and 2) conditions which may be imposed by the Board of County Commissioners, as deemed appropriate, to limit the size, location, and access to the conditional use.

\* \* \* \* \*

2. Those essential services set forth in subsection 2.01.03 G.2. and 4.

\* \* \* \* \*

**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 11<sup>th</sup> day of June, 2019.

ATTEST:  
CRYSTAL K. KINZEL, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF COLLIER COUNTY, FLORIDA

By: *Aimee J. Kinzel*  
Deputy Clerk

By: *William L. McDaniel, Jr.*  
WILLIAM L. MCDANIEL, JR., Chairman

Attest as to Chairman's  
signature only.

Approved as to form and legality:

*Heidi F. Ashton-Cicko*  
Heidi F. Ashton-Cicko  
Managing Assistant County Attorney

04-CMD-01077/1805 (6/11/19)  
18-LDS-00061

This ordinance filed with the  
Secretary of State's Office the  
12<sup>th</sup> day of June, 2019  
and acknowledgement of that  
filing received this 12<sup>th</sup> day  
of June, 2019  
By: *Aimee J. Kinzel*  
Deputy Clerk



## FLORIDA DEPARTMENT *of* STATE

**RON DESANTIS**  
Governor

**LAUREL M. LEE**  
Secretary of State

June 12, 2019

Ms. Ann Jennejohn, Senior Deputy Clerk  
Office of the Clerk of the Circuit Court  
& Comptroller of Collier County  
3299 Tamiami Trail, Suite #401  
Naples, Florida 34112-5324

Dear Ms. Jennejohn:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Collier County Ordinance No. 19-08, which was filed in this office on June 12, 2019.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb