

ORDINANCE NO. 19 – 13

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 ADD STANDARDS AND REQUIREMENTS FOR PERMANENT EMERGENCY GENERATORS FOR SINGLE FAMILY AND TWO FAMILY DWELLINGS, 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 FOUR – SITE DESIGN AND DEVELOPMENT STANDARDS, INCLUDING SECTION 4.02.01 DIMENSIONAL STANDARDS FOR PRINCIPAL USES IN BASE ZONING DISTRICTS; CHAPTER FIVE – SUPPLEMENTAL STANDARDS, ADDING SECTION 5.03.07 PERMANENT EMERGENCY GENERATORS; SECTION FOUR, CONFLICT AND SEVERABILITY; SECTION FIVE, INCLUSION IN THE COLLIER COUNTY LAND DEVELOPMENT CODE; AND SECTION SIX, EFFECTIVE DATE. [PL20180003486]

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WHEREAS, the Collier County Board of County Commissioners (Board) on June 22, 2004, adopted Ordinance No. 04-41, which repealed and superseded Ordinance No. 91-102, as amended, the Collier County Land Development Code, which had an effective date of October 18, 2004; and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 advertised public hearings on February 7, 2019, March 7, 2019, and May 16,

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 an advertised public hearing on June 25, 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

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SUBSECTION 3.A. AMENDMENTS TO SECTION 4.02.01 DIMENSIONAL STANDARDS FOR PRINCIPAL USES IN BASE ZONING DISTRICTS

Section 4.02.01 Dimensional Standards for Principal Uses in Base Zoning Districts, of Ordinance 04-41, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

4.02.01 Dimensional Standards for Principal Uses in Base Zoning Districts

* * * * *

D. Exemptions and exclusions from design standards.

* * * * *

13. Permanent emergency generators may be placed within the rear yard with a 10-foot rear yard setback. Permanent emergency generators may encroach into side yards up to 36 inches. Generators are not permitted to encroach into required front yards. For single-family and two-family dwelling units, see LDC section 5.03.07 for exceptions and requirements. Above-ground fuel tanks for the generators are subject to the same setbacks; however, underground tanks are not subject to setback requirements. In order to reduce noise during required routine exercising of the generators, this exercising is restricted to operating the generator for no more than 30 minutes, ~~weekly~~ once every seven days, during

the hours of 9:00 a.m. to 5:00 p.m. and shall not exceed sound level limits for Manufacturing and Industrial uses as set forth in Ordinance 90-17, the Noise Ordinance, as amended. All permanent emergency generators must be equipped with sound attenuating housing to reduce noise.

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SUBSECTION 3.B. ADDING NEW SECTION 5.03.07 PERMANENT EMERGENCY GENERATORS

Section 5.03.07 Permanent Emergency Generators, is hereby added to Ordinance 04-41, as amended, the Collier County Land Development Code, to read as follows:

5.03.07 Permanent Emergency Generators

A. Purpose and Intent. It is the purpose of this section to reduce noise, improve the aesthetics of mechanical equipment, and protect the public health and safety of homeowners from the risks associated with combustion engines and the entry of carbon monoxide gas to a dwelling unit. It is the intent to improve the resiliency of homeowners who seek shelter at home during periods of electrical power outages.

B. Applicability. Permanent emergency generators for single-family and two-family dwellings shall be permitted as an accessory use and located in accordance with LDC section 5.03.07 Table 1.

C. Standards and Requirements.

1. Permanent emergency generators shall adhere to all generator manufacturer's locational specifications and applicable federal, state, and local code requirements. The manufacturer's locational specifications shall be concurrently reviewed with the applicable electrical, structural, mechanical, gas piping, and storage tank permits.

2. Submittals. At a minimum, the applicant's site plan shall indicate the location and dimension of the proposed generator, generator exhaust direction and permanent fuel tank(s) in proximity to the dwelling unit and lot line, and all

easements burdening the property, including but not limited to drainage easements, lake maintenance easements, and/or access easements. The site plan shall be provided with the building permit application. The written approval of an easement holder for placement in an easement is required and must be included with the submittal.

3. Location and Distances. Permanent emergency generators may be located in the required front, side and rear yard setback in accordance with the following in Table 1. All distance setback and separation requirements shall be measured from the most restrictive of the generator's enclosure or exhaust outlet and adhere to the following:

a. When located underneath the dwelling unit, the exhaust outlet shall be vented outside of the dwelling unit above the roof line.

b. Generators may be allowed in the front yard, at a distance no greater than six feet from the dwelling unit in zoning districts with 35 feet front yard setback or greater and shall require a vegetative screen. For corner lots, the generator may be allowed in the front yard which has the longest street frontage utilizing the side yard generator setback standards in Table 1.

c. Generators located in the rear yard of a waterfront lot shall require a vegetative screen.

TABLE 1 Generator Setback and Separation Standards (feet)

<u>Principal Structure Setback</u>		<u>Generator Distance to Lot Line</u>
<u>Side Yard</u>	<u>5 or less</u>	<u>1</u>
	<u>Greater Than 5 and Up To 7.5</u>	<u>2</u>
	<u>Greater Than 7.5 and Up To 20</u>	<u>4</u>
	<u>Greater Than 20</u>	<u>10</u>
<u>Rear Yard</u>		<u>10 waterfront</u>
		<u>5 non-waterfront</u>
<u>Separation</u>		
<u>Distance to Public and Private Road Right-Of-Way</u>		<u>10</u>
<u>Between Mechanical Air Intake Equipment or Other Generator</u>		<u>10</u>
<u>Distance from Windows, Soffit Vent, Eaves To the Dwelling, Shrubs and Trees</u>		<u>5</u>
<u>Distance from Gas and Electrical Meters, Pool Pumps, Water and Water Softener Systems, AC Compressors and Landscape Plantings</u>		<u>3</u>

4. Carbon Monoxide Detector. If any exterior wall openings are within 10 feet of the generator's exhaust outlet, at least one carbon monoxide detector shall be installed inside the structure near the exterior wall openings and on each floor level.

5. Generator Noise and Testing. Generator noise and routine testing shall be in compliance with LDC section 4.02.1 D.13.

6. Drainage Flow. Maintenance of stormwater drainage shall be as required in LDC section 6.05.03.

D. Additional Requirements for Diesel and Gasoline Engines. Notwithstanding the foregoing, diesel or gasoline powered generators shall be set back a minimum of 15 feet from any lot line.

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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

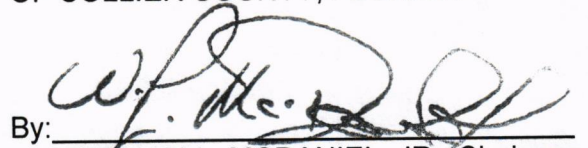
This Ordinance shall become effective upon filing with the Florida Department of State.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida, this 25th day of June, 2019.

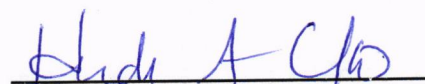
ATTEST:
CRYSTAL K. KINZEL, CLERK

BOARD OF COUNTY COMMISSIONERS
OF COLLIER COUNTY, FLORIDA

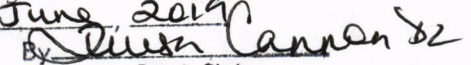
By: 
Attest as to Chairman's Deputy Clerk
signature only.

By: 
WILLIAM L. MCDANIEL, JR., Chairman

Approved as to form and legality:


Heidi F. Ashton-Cicko
Managing Assistant County Attorney

04-CMD-01077/1810 (6/25/19)
18-LDS-00064

This ordinance filed with the Secretary of State's Office the 27th day of June 2019 and acknowledgement of that filing received this 27th day of June 2019
By: 
Deputy Clerk



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

June 27, 2019

Ms. Teresa L. Cannon, BMR Senior Clerk II
Office of the Clerk of the Circuit Court
& Comptroller of Collier County
3299 Tamiami Trail, Suite #401
Naples, Florida 34112-5324

Dear Ms. Cannon:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Collier County Ordinance No. 19-13, which was filed in this office on June 27, 2019.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb