

CITY OF BONITA SPRINGS, FLORIDA

BONITA SPRINGS ORDINANCE NO. 07- 22

AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA; AMENDING AND RESTATING BONITA SPRINGS ORDINANCE NO. 05-14, THE BONITA SPRINGS RENTAL PERMIT ORDINANCE; RELATING TO PERMITS FOR RENTAL OF CERTAIN SPECIFIED DWELLINGS; PROVIDING LISTED EXEMPTIONS; SETTING FORTH REQUIREMENTS FOR OBTAINING A PERMIT; ESTABLISHING A PERMIT FEE; PROVIDING FOR INSPECTIONS, RE-INSPECTIONS AND COMPLAINTS; SETTING FORTH AN ENFORCEMENT PROCEDURE; PROVIDING PROCEDURES FOR DENIAL OR REVOCATION OF PERMITS; PROVIDING FOR CONFLICT, SEVERABILITY, INCLUSION IN CODE AND AN EFFECTIVE DATE.

WHEREAS, City Council is the governing body in and for the City of Bonita Springs, a municipal corporation in the State of Florida; and

WHEREAS, the City of Bonita Springs found itself in the situation where there are many single-family and duplex dwellings that are non-owner occupied; and

WHEREAS, City Council adopted Bonita Springs Ordinance No. 05-14 to address concerns and complaints raised by owner-occupants of houses in single-family neighborhoods about nuisance complaints at the non-owner occupied dwellings, such as, noise, parking, property maintenance and overcrowding; and

WHEREAS, City Council further found that Ordinance No. 05-14 assisted in cases where owners of rental dwellings who do not reside in the City and/or were not responsive to Code Enforcement efforts to obtain voluntary compliance with the City's current regulations; and

WHEREAS, Chapter 166, Florida Statutes, authorizes City Council acting for the City of Bonita Springs, Florida, to adopt Ordinances and Resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of Ordinances in accordance with law; and

WHEREAS, City Council finds it necessary to amend its rental permit ordinance to assist in the elimination of nuisances caused by non-owner occupied rental dwellings in single-family neighborhoods, by amending and restating Bonita Springs Ordinance No. 05-14 with strike-through identifying deleted language and underline identifying additional language

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

SECTION ONE: TITLE AND CITATION

This Ordinance shall be known and cited as the "Bonita Springs Rental Permit Ordinance".

SECTION TWO: PURPOSE AND EXEMPTIONS

The purpose of this Ordinance is to protect the comfort, health, repose, safety, and general welfare of residents of the City of Bonita Springs by establishing minimum permitting requirements for the rental of single-family, duplex and multi-family dwelling units within the City of Bonita Springs. This ordinance does not apply to the following:

1. Any properties with more than six dwelling units that are required by state law to have a property manager, including, but not limited to those properties regulated under Florida Statutes Ch. 718, Condominiums, Ch. 719, Co-operatives and Ch. 720, Homeowners Associations. This provision does not apply to landlords owning more than six units of property individually rented, which are not under a form of a homeowner association formed in perpetuity to maintain the property.
2. Units owned by religious organizations, when used by clergy (e.g., parsonages).
3. Apartment complexes with on-site management open during regular operating hours.
4. Any state regulated and sanctioned housing.

~~(excluding any properties with more than six dwelling units that are regulated under Florida Statutes Ch. 718, Condominiums or Florida Statutes Ch. 719, Homeowners Associations)~~

The City Manager or designee is authorized to may exempt an applicant from requiring a rental unit permit in the following circumstances:

1. ~~when the~~ If tourist development tax is collected pursuant to Florida Statutes §125.0104 and the applicant can provide sufficient proof that the rental unit is regulated as a lodging establishment and is inspected by the State of Florida.
2. If the landlord/tenant relationship is due to the tenant being an incapacitated (e.g., physically or developmentally disabled) or elderly person.
3. If the dwelling unit is being maintained by a caretaker or house sitter who is maintaining the property but not otherwise paying rent for occupation of the unit.

The requirements of this ordinance are supplemental to standards that are found in other portions of the Bonita Springs Land Development Code and in other ordinances adopted by the City of Bonita Springs.

SECTION THREE: APPLICATION AND ISSUANCE OF PERMIT

- 1) Every owner of a property in the City of Bonita Springs who is otherwise not exempt in Section Two rents a non-owner occupied single-family, duplex or multi-family (excluding any properties with more than six dwelling units that are regulated under Florida Statutes Ch. 718, Condominiums or Florida Statutes Ch. 719, Homeowners Associations) and rents a dwelling, regardless of the term of the lease being transient (short term under six months) or a long term rental, is required to get an annual a rental permit from the City Manager or designee prior to leasing, subleasing, renting or allowing the occupancy of such unit to another natural person or other natural persons, regardless of relationship to the owner (except incapacitated persons exemption). In the case of multiple owners of any such dwelling unit, it shall be sufficient for any one of the owners to have obtained a permit on the unit. The application shall be in writing and on a form provided by the City. Such annual permit shall be valid from October 1 through September 30 for a three year period of each year and shall be issued and not revoked if:
 - (a) ~~An annual~~ Permit fee of one hundred dollars (\$100.00) per rental unit is paid.
 - (b) The applicant and the applicant's property is ~~are~~ not in violation of this ordinance ~~article~~.
 - (c) The mandatory annual inspection (every three years, unless re-inspections are deemed necessary because violations were found) has been conducted by Code Enforcement or a city-outsourced qualified inspector ~~the City of Bonita Springs~~ for the rental unit prior to issuance or renewal of the permit for that rental unit, unless waived by the City Manager or designee upon good cause that the applicant (same owner only) has not been in violation of this ordinance for that rental unit during the three (3) year period.
 - (d) The applicant provided the correct street address for all parcels or property covered by this ordinance ~~article~~.
- 2) If the City Manager or designee has reasonable cause to believe that a dwelling unit is being leased, subleased, rented or occupied without a permit in violation of this ordinance ~~article~~, the owner of the property shall be given notice that a permit is required and that an application must be filed with the City within thirty (30) days of the notice. Failure to apply or

provide evidence that a permit is not required shall subject the owner to enforcement citation for violation of this ordinance ~~article~~ and proceedings before the Hearing Examiner.

SECTION FOUR: REQUIREMENTS OF PERMITTEE

- 1) Any owner, who resides outside the Twentieth Judicial District (Charlotte, Lee, Collier, Glades and Hendry Counties) ~~City of Bonita Springs or within two miles of its corporate boundaries~~, either at the time of procuring a permit or after having procured a permit, shall appoint an agent who resides or maintains an office within Lee or Collier County ~~the City~~ for the purpose of receiving notices from the City concerning the permit. The owner shall notify the City in writing of the name, address, and telephone number of the agent. Failure to provide the City with a local agent shall subject the owner to citation for violation of this Ordinance and proceedings before the Hearing Examiner. If no local agent is provided in the application and the owner resides outside the Twentieth Judicial District Lee or Collier County, it is presumed that the owner has agreed to constructive notice of a violation of this Ordinance by publication as posted at City Hall and on Cable Access 12. ~~in a newspaper of countywide circulation in Lee County.~~
- 2) No permit shall be issued or renewed until the applicant or permit holder has provided the name and phone number of a natural person eighteen (18) years of age or older who can be contacted 24 hours a day, seven days a week, regarding the rental unit. This contact person may be the owner, the owner's agent, or any other person other than a resident of the rental unit who has agreed to be the contact person.
- 3) The permittee and appointed agent, if any, shall maintain a list of the names of tenants in each dwelling unit. Such lists shall be available to the City upon reasonable notice for inspection.
- 4) The City shall provide the permittee or agent with copies of pamphlets containing information on living in a residential neighborhood. The permittee or agent shall provide a pamphlet to at least one tenant of each dwelling unit covered by this ordinance before executing a lease for the unit.
- 5) Rental units where there are repeated violations of ordinances that adversely affect the rights of nearby residents to the quiet enjoyment of their property shall constitute a public nuisance. To this end, adjudication of guilt or plea of no contest (including, but not limited to, payment of fine) of the City's noise ordinance, animal control ordinances, solid waste ordinances, property maintenance ordinances, minimum housing

ordinances, parking ordinances or the provisions of Bonita Springs Land Development Code concerning habitation by more than one family) where the violation takes place at a unit regulated by this Ordinance shall be grounds for the commencement of permit revocation proceedings under Section Seven of this Ordinance.

- 6) By applying for a permit, the owner agrees to allow inspection of the interior and exterior of the rental unit for violations of the housing code International Property Maintenance Code, 2006 Edition, as adopted by the City of Bonita Springs, and any amendments thereto, at any reasonable time (normal business hours, Monday through Friday); however, this provision shall not be interpreted as authorizing the City to conduct an inspection of an occupied rental unit without obtaining either the consent of an occupant or an administrative search warrant.

- 7) As to the exterior of each rental unit, the existence of any of the following conditions or conduct is hereby declared to constitute a public nuisance and must be corrected by the Landlord and Tenant immediately:
 - a. No parking area for residential use may be leased, rented or otherwise provided for consideration to someone not residing on the property.
 - b. Access to all driveway parking areas must be from an approved or existing legal driveway connection.
 - c. All unpaved parking areas must be graveled or covered with other erosion preventing material clearly defining the driveway parking area, and have side borders of plants, landscape ties, pressure treated wood, brick or concrete or similar border materials.
 - d. Failure to comply or maintain the following criteria for size and dimension for residential parking area:
 - i. The maximum width of the driveway parking area shall be eighteen (18') feet where the driveway enters the street, or the driveway parking area shall be limited to no more than thirty (30%) percent of the total front yard area, whichever is greater. The intent is to limit the area and retain at least seventy (70%) percent of the total front yard area to remain unpaved open greenspace (unless the eighteen foot entrance creates less open space), and such greenspace shall not be used for the parking of any vehicles.
 - ii. Circular driveway parking areas may be no more that forty percent (40%) of front yard open space provided the necessary driveway connections are allowed and that the circular drive extends to the right-of-way.

SECTION FIVE: INSPECTIONS, RE-INSPECTIONS AND COMPLAINTS

- 1) If there is cause to believe that a violation of this Ordinance exists, the City Manager or designee is hereby authorized to make inspections of any premises at reasonable times (normal business hours, Monday through Friday) with 72 hours notice to the owner or agent at the address provided in the application for the permit for the premises or, if no permit has been applied for, to the owner as shown on the latest tax rolls, and one occupant (if any), to determine if a violation exists. Upon refusal to allow entry into the dwelling, the City may apply for an administrative search warrant from a court of competent jurisdiction for authorization to enter the dwelling.
- 2) All ~~e~~Complainants shall may be requested to state their names and addresses and give a statement of the facts giving rise to the complainant's belief that the provisions of this ordinance ~~article~~ are being violated. Such information may be obtained orally or in writing.
- 3) Any rental unit found not in compliance with this Ordinance shall be subject to re-inspection until compliance is achieved. The cost for each re-inspection is \$50.00. Nothing in this ordinance shall require Code Enforcement to continue re-inspections when compliance can be better achieved through a code enforcement hearing.

SECTION SIX: ENFORCEMENT PROCEDURE

- 1) After the first occurrence of one of the above violations, the City Manager or designee shall send a written warning to the permittee or agent. The warning will specify the ordinance that has been violated, and will state that any further violations of the above-enumerated ordinances may result in revocation of the permit for that unit.
- 2) The second occurrence of one of the above violations within one (1) year of sending of the written warning provided in paragraph (1) shall constitute a violation of this section, and may subject the owner to revocation of the permit for that unit.
- 3) Failure to respond to Code Enforcement citations or failure to attend Code Enforcement proceedings may subject the owner to the revocation of the permit for that unit.
- 4) The Hearing Examiner is qualified to act as Hearing Officer, to conduct hearings pursuant to this subsection.
- 5) Prior to the issuance of an order by the Hearing Examiner, the City shall give written notice of violation, and opportunity for a hearing to the permittee or agent of the unit and the tenant wherein the public nuisance is being conducted, maintained or permitted.

- 6) Service of the written notice of violation shall be deemed complete if personally delivered upon the permittee or agent, and if the same cannot be delivered personally within the City, then service shall be deemed complete upon sending same by certified mail, return receipt requested, to the last known address of the owner or agent.
- 7) Any officer authorized by law to serve process or a duly appointed law enforcement officer of the Lee County (or ~~Collier County~~ applicable Sheriff's Office within the Twentieth Judicial Circuit if applicable) Sheriff's Office may make service of process. The person serving process shall promptly make proof of service by affidavit or in any event, within the time period during which the person served must respond to the process. Failure to make proof of service shall not affect the validity of the service.
- 8) The Hearing Examiner shall conduct a hearing within thirty (30) days after service is deemed complete.
- 9) The lack of knowledge of, acquiescence, or participation in, or responsibility for, a public nuisance on the part of the permittee or agent shall not be a defense by such permittee or agent. However, proof that the permittee or agent has commenced the process of terminating the lease and recovering possession of the rental unit under state law and is diligently pursuing completion or has completed the process shall be a defense to public nuisance as described by state or local law. However, the vacation of the premises or rental unit shall not be deemed to constitute abatement of a violation when the unit can be rented again, therefore a finding of violation may be imposed upon a permittee and/or agent for purposes of being treated as a repeat violator.
- 10) If after notice and opportunity for a hearing, the Hearing Examiner finds no public nuisance to exist, the Hearing Examiner will dismiss the revocation action with leave to the City to refile should the City have additional or new evidence giving reasonable cause to believe that a violation exists.
- 11) If after notice and opportunity for a hearing, the Hearing Examiner finds the existence of a public nuisance, the Hearing Examiner shall issue a final order.
- 12) The Hearing Examiner shall have all the powers to this end, including power to subpoena and the authority to revoke a permit for the rental unit for a period not to exceed six (6) months, including costs awarded to the City in an amount not-to-exceed \$500.00 for documented costs of prosecution.

- 13) Orders of the Hearing Examiner issued pursuant to this section shall be posted at the rental unit, and shall be mailed to the permittee, agent and the rental unit within seven (7) ~~three (3)~~ business days of the Hearing Examiner's decision.
- 14) If the permit is revoked under these procedures, the permittee shall have ten (10) days from the day the order is mailed to commence proceedings to terminate the lease and recover possession of the rental unit under state law. The permittee shall diligently pursue the process to completion. The permittee shall provide copies of all documents provided to the tenants or filed with the court concerning the process.
- 15) In addition to other procedures, the City may file for injunction to abate the public nuisance or other remedies as permitted by law.

SECTION SEVEN: DENIAL OR REVOCATION OF PERMIT

- 1) The City Manager or designee may deny issuance of, or revoke, any permit(s) applied for under this section if it is determined either that the applicant or holder has made material misrepresentations about the condition of his/her property, or that the occupancy of the property is, or at any time subsequent to the issuance of the permit becomes, in excess of occupancy by a single-family as defined in the Bonita Springs Land Development Code, or that the owner has otherwise violated a provision of this ordinance article.
- 2) If the City Manager or designee determines there is reasonable cause to believe that there are grounds to revoke or deny a permit applied for or held a written notice shall be sent by registered mail to the owner or agent whose address was provided in the application for such permit. If the dwelling unit in question is occupied, a copy of the notice shall be mailed to at least one tenant. Such written notice shall state the alleged grounds for revocation or denial. For revocation of a permit, such written notice shall also state that the revocation will become effective thirty (30) days from the date of the notice unless, within the thirty (30) days, the alleged grounds for revocation are remedied (or legal action to do so is begun) to the satisfaction of the City Manager or designee.
- 3) Within thirty (30) days of the date the notice of revocation or denial is mailed, a holder of or applicant for a permit or the appointed agent may request in writing to the City Manager a hearing before the Hearing Examiner on the revocation or denial. The City Manager or designee shall schedule the hearing to occur within thirty (30) days after receiving the request for hearing and shall notify the permit holder or applicant at least

five (5) days in advance. The hearing may be postponed if mutually agreed to by all parties.

- 4) The hearing shall be conducted informally and adherence to the rules of evidence normally followed by the courts shall not be required. Any person may present testimony, documents or other evidence as deemed relevant by the Hearing Examiner. Any person may be represented by counsel.
- 5) The Hearing Examiner shall consider all evidence presented, and if the preponderance of the evidence supports the allegation of violation the permit shall be denied or revoked. If the preponderance of the evidence does not support the allegation of violation, the permit shall be issued or allowed to continue. The decision of the Hearing Examiner may be appealed to the County Court of Lee County.
- 6) The City Manager or designee may waive the revocation requirement as to any permit if it is determined that the owner has attempted in good faith to comply with this ordinance article. In determining asserted good faith as required for a waiver, the City Manager or designee may consider, but not be limited to, the owner's having remedied the violation, and the owner's past history of violations of the conditions of the landlord permit.
- 7) If a permit is revoked under this section, the owner whose permit was revoked shall not be issued another permit for any premises for a period of six (6) months after the date of revocation.

SECTION EIGHT: CONFLICTS OF LAW, SEVERABILITY

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted City of Bonita Springs Ordinance or Florida Statutes, the more restrictive shall apply.

The provisions of this Ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any Court of competent jurisdiction shall hold any of the provisions of this Ordinance unconstitutional, the decision of such Court shall not affect or impair any remaining provisions of this Ordinance. It is hereby declared to be the legislative intent of the City Council for the City of Bonita Springs that this Ordinance would be adopted had such unconstitutional provision not been included herein.

SECTION NINE: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS

It is the intention of the City Council for the City of Bonita Springs that the provisions of this ordinance shall become and be made a part of the Bonita

Springs City Code; and that sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the City Manager, or the City Manager's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

SECTION TEN: EFFECTIVE DATE

The effective date of this ordinance shall be thirty (30) days from its adoption date.

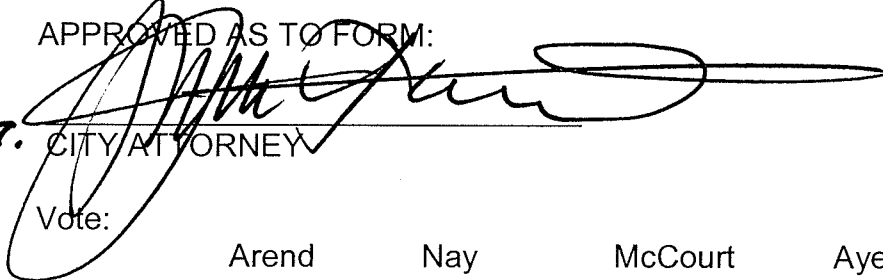
DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Florida this 5th day of December, 2007.

AUTHENTICATION:


MAYOR


CITY CLERK

APPROVED AS TO FORM:


Asst. CITY ATTORNEY

Vote:

Arend	Nay	McCourt	Aye
Ferreira	Aye	Nelson	Aye
Grantt	Aye	Simons	Aye
Joyce	Nay		

Date filed with City Clerk: 12-10-07