

CITY OF BONITA SPRINGS, FLORIDA

ORDINANCE NO. 17-09

AN AMENDMENT TO THE BONITA SPRINGS LAND DEVELOPMENT CODE CHAPTER 4 (ZONING); AMENDING SECTION 4-303, DURATION OF RIGHTS CONFERRED BY ADOPTED MASTER CONCEPT PLAN, PROHIBITING APPLICATIONS OF REINSTATEMENT OF EXPIRED MASTER CONCEPT PLANS; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, INCLUSION IN CODE AND AN EFFECTIVE DATE.

WHEREAS, the City of Bonita Springs, Florida is the governing body of Bonita Springs; and

WHEREAS, Florida Statutes §166.021 authorizes the City of Bonita Springs to establish, coordinate and enforce laws that are necessary for the protection of the public; and

WHEREAS, many communities do not permit applications for reinstatement of an expired master concept plan, but instead, require the developer to recommence with the zoning process; and

WHEREAS, City Council recognizes that if a developer permits their MCP to expire, they are not actively paying attention to Bonita Springs, given that MCP's may be extended because of legislative and / or State of Emergency extensions, which are above and beyond the five years granted by right and the extension process in LDC §4-303; and

WHEREAS, City Council finds that the concern of Bonita Springs not knowing what MCP's that have expired that could be reinstated outweighs the benefit of permitting applications for reinstatement of an expired master concept plan.

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

SECTION ONE: BONITA SPRINGS LAND DEVELOPMENT CODE CHAPTER 4

Section 4-303, duration of rights conferred by adopted master concept plan, of the Bonita Springs Land Development Code is hereby amended to read as follows, with strike-through identifying deleted language and underline identifying additional language:

Sec. 4-303. - Duration of rights conferred by adopted master concept plan.

(a) *Duration of rights for planned developments.*

- (1) All development rights conferred by an adopted master concept plan are valid for five years from the date the planned development was approved by the city council, unless a greater time is approved for a development of regional impact (DRI). A master concept plan that is approved as part of a (DRI) is valid from the date the planned development was approved by the city council until the initial build out date provided in the DRI development order.

- (2) An applicant must acquire a development order for a substantial portion of the project within five years of the date of the approval of the planned development, unless a greater time is approved in accordance with the provisions below. The development order must be submitted before the master concept plan expires. A substantial portion of the project is defined as no less than 20 percent of the lots, dwelling units, square feet, or other applicable measurements of intensity as applicable, unless a lesser percentage is approved by the city council.
  - (3) Master concept plans for planned developments that do not require development orders pursuant to chapter 3 are not subject to the time frames in this section.
  - (4) The duration of a master concept plan that is part of a development of regional impact DRI will be automatically extended if the DRIs phasing or build-out dates are extended. The MCP duration extension is limited to the length of the extension of the build-out date granted in the DRI.
- (b) *Status of expired master concept plans.* When a master concept plan expires the property will remain zoned planned development, but no additional development can occur or be approved until a new master concept plan is approved in compliance with section 4-295 et seq.; the original master concept plan is reinstated in accordance with subsection (d) of this section; or the property is rezoned.
- (c) *Extensions of master concept plans through public hearing process.*
- (1) An approved master concept plan that is not vacated may be extended by the city council at a public hearing for one additional extension not to exceed four years; provided that:
    - a. The applicant submits a completed application form for extension (on a form provided by the community development) not more than one year and not fewer than 120 days prior to the date the current master concept plan vacates as provided in subsection (a) of this section together with the appropriate fee. The application must include, unless waived by the city council, at a minimum:
      1. All submittal requirements for a public hearing pursuant to sections 4-193 and 4-194;
      2. A copy of the approved master concept plan amended in accordance with section 4-299(b)(6) to reflect the uses, deviations and other modifications set forth in the approving ordinance (no changes may be made to the master concept plan);
      3. A copy of the approved planned development zoning ordinance and all approved amendments;
      4. A written statement describing how the criteria listed in subsection (c)(1)b. of this section have been met;
      5. A current traffic impact statement (TIS) pursuant to section 4-295(a)(7); and
      6. A detailed narrative explaining why the required development order is not approved and a chronology documenting that the required development order has been diligently pursued.

7. The director may require additional information as described in section 4-295 if necessary to review the request.
- b. The city council, after reviewing the recommendation of the staff, determines that:
1. The master concept plan is consistent with the Bonita Plan;
  2. The master concept plan is compatible with existing and approved development;
  3. There will be sufficient capacity for potable water, sanitary sewer, surface water management, solid waste disposal, parks and recreation, roadway facilities and public schools to serve the development at the time the impacts of the development will occur without causing these facilities and services to function at a level of service below the minimum regulatory levels established in the Bonita Plan; and
  4. The reason the required development order is not approved is reasonably beyond the control of the applicant and the applicant is diligently pursuing approval of the required development order.
- (2) Prior to granting any extension, the city council will review uses for compatibility with existing and approved development, and may remove uses or add conditions to make the use consistent with the Bonita Plan. The city council may approve, deny, or limit the requested extension to a period less than the applicant's request. The decision of the city council is discretionary. A master concept plan that has not received a development order and diligently pursued construction, prior to the master concept plan extension expiration, may not receive a second extension but must be reviewed in accordance with section 4-295 et seq.
- (d) *Reinstatement of master concept plans not permitted.*
- (1) An expired master concept plan or a phase of a master concept plan may only not be reinstated by the city council; unless an application was submitted to Community Development prior to August 1, 2017. Any application submitted before such date must meet former 4-303 (d) and will be processed in accordance with said section. The director may require additional information as described in section 4-295 if necessary to review the request. ~~provided the city council finds:~~
    - ~~a. The request meets the considerations listed in section 4-53(b)(2);~~
    - ~~b. There are no changes to the original approved master concept plan, with the exception of changes that bring the development into compliance with current regulations; and~~
    - ~~c. The request meets the criteria listed in subsection (c)(1)b. of this section.~~
  - (2) ~~Before preparing a recommendation to the city council on a reinstatement, the zoning board must find that:~~
    - ~~a. The applicable criteria set forth in section 4-131(d)(2) are satisfied; and~~
    - ~~b. The criteria listed in subsection (c)(1)b of this section are satisfied.~~
  - (3) ~~An application for reinstatement of a master concept plan may be filed at any time after it expires and must consist of the following:~~

- a. ~~A completed application form provided by community development that will include, at a minimum:~~
    - 1. ~~All submittal requirements for a public hearing pursuant to sections 4-193 and 4-194;~~
    - 2. ~~The following submittal requirements as set forth section 4-295(a)(4):~~
      - (i) ~~A boundary survey unless the original application included one and there has been no change to the property;~~
      - (ii) ~~A map showing current zoning and uses within 500 feet;~~
      - (iii) ~~A current aerial photograph; and~~
      - (iv) ~~A FLUCCS map.~~
    - 3. ~~The submittal requirements as set forth in section 4-295(a)(6) only if they are required to indicate a reduction of uses or a decrease in the density or intensity of the development;~~
    - 4. ~~A current traffic impact statement (TIS) pursuant to section 4-295(a)(7);~~
    - 5. ~~A schedule of uses keyed to the master concept plan only if previously approved uses are being removed; and~~
    - 6. ~~A schedule of deviations keyed to the master concept plan only if previously approved deviations are being removed;~~
  - b. ~~A legible copy of the approved master concept plan (where applicable, the master concept plan must be amended to reflect the uses, deviations and other modifications set forth in the approving ordinance). See section 4-299(b)(6);~~
  - c. ~~Legible copies of the applicable zoning ordinance and all approved amendments;~~
  - d. ~~A written statement describing how the criteria listed in subsection (c)(1) of this section are satisfied; and~~
  - e. ~~The appropriate fee.~~
- (4) ~~A request for an extension or reinstatement may not include new uses or increase the density or intensity of the development proposed under the expired master concept plan. If an applicant wants to include new uses or increased density or intensity, the request must be submitted and reviewed in accordance with section 4-295 et seq.~~
- (5) ~~Prior to reinstatement, the city council may remove uses or decrease the density or intensity of the master concept plan.~~

(Ord. No. 11-02, § 3(4-381), 1-19-2011; Ord. No. 12-13, § 1(4-381), 8-15-2012)

## **SECTION TWO: CONFLICTS**

Whenever the requirements or provisions of this amending ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statutes, the most restrictive requirements shall apply.

**SECTION THREE: SEVERABILITY**

If any part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reasons, such part, section, subsection, or other portion of the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision application.

**SECTION FOUR: CODIFICATION, INCLUSION IN CODE & 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 part of the Bonita Springs Land Development 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 or public hearing, by filing a corrected or recodified copy of same with the City Clerk.

**SECTION FIVE: 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, Lee County, Florida, this 21<sup>st</sup> day of June, 2017.

AUTHENTICATION:

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:   
\_\_\_\_\_  
City Attorney

Vote:

DeWitt	Aye	Quaremba	Aye
Forbes	Aye	Simmons	Aye
Gibson	Aye	Slachta	Aye
O'Flinn	Aye		

Date filed with City Clerk: 6/27/17