

CITY OF BONITA SPRINGS, FLORIDA

ORDINANCE NO. 17-11

AN AMENDMENT TO THE BONITA SPRINGS LAND DEVELOPMENT CODE CHAPTER 4 (ZONING); AMENDING SECTION 4-53, FUNCTIONS AND AUTHORITY OF CITY COUNCIL; REQUIRING AN AFFIRMATIVE VOTE OF FIVE OR MORE COUNCIL MEMBERS FOR A DECISION BY CITY COUNCIL TO AMEND THE COMPREHENSIVE PLAN SPECIFICALLY RELATED TO BUILDING HEIGHTS OVER SEVENTY-FIVE (75') FEET FOR APPLICATIONS RECEIVED AFTER A SPECIFIED DATE; 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, Florida law permits a supermajority voting requirement in cases where there is a greater public interest in Florida, and reviewed a City survey showing that certain communities, including Cocoa Beach, Ponce Inlet and Anna Maria Island require a super majority of their elected board for land use decisions related to height or density increases; and

WHEREAS, the City of Bonita Springs City Charter already requires an affirmative vote of four or more Council members for any action, and when there are Councilmembers not in attendance, an affirmative vote of four could be a supermajority; and

WHEREAS, Bonita Springs also already requires a super majority for emergencies (2/3); removal beach renourishment reserves (5/7) and art in public places expenditures over \$100,000.00 for a single project; and

WHEREAS, on November 16, 2016 Council discussed further the use and gave guidance to limit use of a supermajority voting requirement when addressing height over seventy-five (75') feet for comprehensive plan changes only; and

WHEREAS, City Council finds that the adoption of this ordinance will require thoughtful and mindful voting before any significant development change is allowed within the City's corporate boundaries.

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

SECTION ONE: BONITA SPRINGS LAND DEVELOPMENT CODE CHAPTER 4

Section 4-53, Functions and authority of city council, 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. 4-53. - Functions and authority of city council.

(a) *Land use ordinance amendments or adoption.*

- (1) *Function.* The city council must hold public hearings on all proposed land use ordinance amendments or adoptions.
- (2) *Considerations.* When deciding whether to adopt a proposed land use ordinance or amendment, the city council must consider the same criteria, recommendations and issues as set forth in section 4-88(b), as well as the recommendation of the local planning agency, but are not required to accept these recommendations.
- (3) *Decisions and authority.* The decision of the city council on any proposed land use ordinance amendment or adoption is final.
- (4) *Appeals.* Appeals of any decision concerning land use ordinance amendments or adoption may be taken in accordance with applicable state law.
- (5) *Voting.* Any decision by City Council to amend its comprehensive plan, whether by a text or map amendment, which will allow a structure to be built at a height greater than seventy-five (75') feet, will require the affirmative vote of five (5) or more council members, provided that this requirement shall be subject to, and not contravene, the provisions of the City Charter, including, but not limited to Charter §26 thereof. This enhanced voting requirement will not be applicable to the processing of any comprehensive plan amendment applications that were filed before December 1, 2016.

(b) *Zoning actions.*

- (1) *Function.*
 - a. City council must hold public hearings (see sections 4-224 through 4-229) on all zoning applications, including variances and special exceptions, unless administrative decisions are authorized elsewhere in this Code.
 - b. All requests for variances, use of TDR or affordable housing bonus density units, and special exceptions which are part of an application for a rezoning must be considered by the city council with the application for rezoning and heard together with and at the same time as the rezoning.
- (2) *Considerations.* In rendering its decision, the city council must consider the following:
 - a. The considerations set forth in section 4-124 which are applicable to the case.

- b. The substantive recommendation of the zoning board when applicable.
- (3) *Findings.* Before granting any rezoning, special exception, or variance, the city council must find that:
- a. The applicant has proved entitlement to the rezoning or special exception by demonstrating compliance with the Bonita Plan, this Land Development Code, and any other applicable code or regulation;
 - b. The request will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request;
 - c. The request is consistent with the densities, intensities and general uses set forth in the Bonita Plan;
 - d. The request is compatible with existing or planned uses in the surrounding area;
 - e. Approval of the request will not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development;
 - f. Where applicable, the request will not adversely affect environmentally critical areas and natural resources;
 - g. In the case of a planned development rezoning, the decision of the city council must also be supported by the formal findings required by section 4-299(a) (2) and (4);
 - h. The city council must also find that public facilities and services, as defined in the Bonita Plan, are, or will be, available and adequate to serve the proposed land use; and
 - i. In the case of a recommendation pertaining to wireless communication facilities, the decision of the city council must also be supported by the formal findings set forth in sections 4-1219(b) and 4-1225, as applicable.
- (4) *Decisions and authority.*
- a. In exercising its authority, the city council:
 - 1. Must consider the recommendation of the zoning board, but may, in conformity with the provisions of this chapter, reverse, affirm or modify the recommendation of the zoning board, or remand the recommendation to afford due process.
 - 2. May not approve a rezoning other than the rezoning published in the newspaper unless the change is more restrictive than the proposed rezoning published.
 - 3. Has the authority to attach such conditions and requirements to any approval of a request for a special exception, development of regional impact, planned development, use of TDR or affordable housing bonus density units in conjunction with a rezoning request, or variance within their purview, deemed necessary for the protection of the health, safety,

comfort, convenience or welfare of the general public. These conditions and requirements must be reasonably related to the action requested.

4. In the case of a recommendation pertaining to wireless communication facilities, the city council must consider the decision as a recommendation only and may, in conformity with the provisions of this chapter, reverse, affirm or modify the decision of the zoning board, or remand the case to the zoning board.
 - b. The decision of the city council on any matter listed in this subsection (4) is final. If there is a tie vote, the matter considered will be continued until the next regularly scheduled meeting for decisions on zoning matters by the city council, unless four (4) a majority of the members present and voting agree by motion, before the next agenda item is called, to take some other action. Such other action may be moved or seconded by any member, regardless of his vote on any earlier motion.
 - c. Any denial by the city council is denial with prejudice, unless otherwise specified by the city council (see section 4-200).
 - (5) *Judicial review.* Judicial review of final decisions under this section must be in accordance with section 4-55.
 - (6) *Special master.* Final decisions under this section may be the subject of a request for relief under F.S. § 70.51, within 30 days after the decision has been rendered. For the purposes of computing the 30-day period, the date the decision has been rendered is the date of the public hearing at which the city council made such decision by oral motion. The request for relief must allege that a decision of the city council is unreasonable or unfairly burdens the use of the subject property. A request for relief will be heard by an impartial special master in accordance with the procedure set forth in the administrative code.
- (c) *Appeals resulting from acts of administration or city boards*
- (1) The city council will consider appeals resulting from decisions or acts of its community development department or city boards who have been delegated with final decision making powers, including the historic preservation board, tree advisory board, etc., where that board's decision has the right to appeal to the city council. Subject to this section, the city council will conduct hearings and make final decisions concerning appeals from administrative actions where it is claimed that there is an error in any order, requirement, decision, interpretation, determination or action of any administrative official (or board with final decision making powers) charged with the administration and enforcement of the provisions of the Land Development Code or any other ordinance that provides for a similar review.
 - (2) No appeal to the city council may lie from any act by an administrative official pursuant to:
 - a. An ordinance, resolution or directive of the city council directing the department of community development to perform such act;

- b. Any ordinance or other regulation or provision in this Land Development Code which provides a different appellate procedure;
 - c. Zoning verification letters;
 - d. An administrative official's determinations of state or federal statutes, state or federal codes, rules, or regulations. If the city council must interpret or apply state or federal statutes, state or federal codes, rules or regulations in reaching a decision on an appeal, the city council is not authorized to hear the appeal and the case must be dismissed; or
 - e. Appeals of administrative interpretations of the comprehensive plan will be processed in accordance with the administrative section of the comprehensive plan. Likewise, interpretations of the state building code and other technical codes will be processed in accordance with the rights to appeal in those specific codes.
- (3) No appeal may be considered by city council where it appears to be a circumvention of an established or required procedure. Specifically, in no case may an appeal be heard when the city council determines that the case should more appropriately be heard on a request for a special exception or variance.
 - (4) Unless there is a specific time limit specified in a controlling ordinance, applicants will have 30 days from the date of the specific decision or act of the community development department to appeal the decision, otherwise the use of an appeal is time-barred from consideration. The request must be filed with the city clerk, who will date stamp when filed in that office and transmit the appeal to the director of community development and the city attorney's office.
 - (5) Notices of hearings on appeals will be provided for in the agenda for regular city council meetings. No additional notices will be prepared to affected property owners or the public. Placement of appeals will be on the appeals portion of the agenda. The city attorney will schedule the item at a city council meeting, with the record consisting of the greensheet, application for the appeal, the actual record of the staff decision or act, and a staff response.
 - (6) The city council will not consider appeals for challenges to a development order controlled by F.S. § 163.3215. In cases of challenges to development orders controlled by F.S. § 163.3215, no suit may be brought or filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the director, or by virtue of its having been ordered by the city council on an appeal reversing the director's denial of the development permit or denial of a development order extension, or by the city council in cases where the city council has granted planned development zoning. Once a development order has been granted, the provisions of F.S. § 163.3215 will be the sole means of challenging the approval of a development order, as that term is defined in F.S. § 163.3164(6), when the approval of the development order is alleged to be inconsistent with the Bonita Plan, in which case an action brought pursuant to F.S. § 163.3215 will be limited exclusively to the issue of comprehensive plan consistency.

- (7) Except as may be required by F.S. § 163.3215, and then only pursuant to that statute, a third party will not have standing to appeal an administrative decision. Only the applicant or their agent will be permitted to appeal such administrative action as set forth in this section.
- (8) Considerations.
- a. In reaching a decision, city council must consider the following criteria, as well as any other issues that are pertinent and reasonable:
 1. Whether appeal is of a nature properly brought before the city council for a decision.
 2. The plain and ordinary meaning of all applicable ordinance or code provisions, unless the language is unclear or ambiguous; then the intent of the ordinance or code provision applied or interpreted may be considered.
 - b. Staff recommendations, the testimony of the parties and witnesses and testimony of the general public must also be considered.
 - c. All parties may present evidence and testimony as to laws or facts supporting their position in the case.
- (9) Findings. Before granting an appeal, the city council must determine if an error was made by the administrative official or advisory board.
- (10) Authority. The city council has the authority to reverse, affirm or modify the decisions or actions of the administrative official.

(Ord. No. 03-15, 8-6-2003; Ord. No. 11-02, § 3(4-83), 1-19-2011; Ord. No. 11-04, § 1(4-83), 3-16-2011; Ord. No. 12-06, § 1(4-83), 5-2-2012; Ord. No. 12-17, § 1(4-83), 12-19-2012)

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 21st 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