

CITY OF BONITA SPRINGS, FLORIDA

ORDINANCE NO. 16-10

AN ORDINANCE AMENDING ORDINANCE NO. 14-13, THE OUTDOOR FLEA MARKET ORDINANCE; AMENDING LOCATION AND PERMITTING REQUIREMENTS AND REMOVING THE SUNSET PROVISION; AMENDING §12-322; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, INCLUSION IN CODE, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, the 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 adopted ordinance no. 14-13, to allow for temporary open markets for purchasing produce or new or used merchandise; and

WHEREAS, while the Land Development Code has regulations for farmer's markets, its zoning regulations for flea markets is limited when it comes to temporary open air markets; and

WHEREAS, City Council finds that with the continuing increase in population and overall growth of Bonita Springs, the necessity of amending its supplemental special event permit requirements for outdoor flea markets is needed to regulate their usage, permitting their use to have greater frequency than a one day special event, and provide reasonable conditions, with the right to revocation and providing a longer time period for them to be established, so that their use does not create a nuisance; 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.

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

SECTION ONE: SECTION ONE: AMENDMENTS

The City of Bonita Springs Outdoor Flea Market Permit Regulations Ordinance is amended by showing strikethroughs of deleted text and by underlining new text, as set forth below:

Sec. 12-322. - Outdoor flea market regulations.

(a) *Location and permitting requirements.*

- (1) An outdoor flea market shall be permitted to operate upon approval of a special event permit on either Bonita Beach Road or U.S. 41 only. No outdoor flea market may be operated in any other area of the city boundaries.
- (2) ~~Only one permit will be issued annually for either road segment, even when the outdoor flea market is a seasonal activity.~~ Council is not required to issue a permit for either road segment if council determines the use would be detrimental to the surrounding area.

- (3) A maximum of two outdoor flea market permits may be issued in one calendar year by city council regardless of whether the permit is for a seasonal or annual application.
- (4) The outdoor flea market will be permitted to operate a maximum of one day per week, as specified in the permit. A change in the day operated must be approved by city council.
- (5) A person cannot apply for an outdoor flea market if their purpose is not an outdoor flea market, but for substantially a specific use, such as (1) antiques; (2) arts and craft items; or (3) car shows. These items are regulated under the special events permits.

(b) *Application requirements.*

- (1) The permits may be applied for annually for a period not to exceed seven months in a given year but will expire on September 30 at the end of each year.
- (2) A proposed site plan must be provided with the special event application depicting the area for the market, vendor location, parking, traffic plan, etc.
- (3) A for-profit outdoor flea market operator will pay a fee of \$750.00 per year for the special event permit, payable within ten days upon council approval and prior to operation.
- (4) Local non-profit outdoor flea market operators providing services to the local community will pay a fee of \$100.00 per year for the special event permit payable within ten days upon council approval and prior to operation.
- (5) Liability insurance of \$1,000,000.00 in general commercial coverage naming the City of Bonita Springs as an additional insured will be maintained by the outdoor flea market operator for the duration of the flea market permit. Failure to maintain the insurance will require the outdoor flea market to be closed until such time the insurance is re-issued, with proof on file with the city clerk.
- (6) The owner or operator of the outdoor flea market shall obtain a notarized letter from the property or business owner stating that the market has permission to operate an outdoor flea market on the property.

(c) *Operating requirements.*

- (1) The following is a list of prohibited items that may not be sold at the outdoor flea market:
 - a. Any item, novelty or material that is considered sexually oriented, as defined in F.S. § 847.001.
 - b. Live animals (except for animal non-profit and/or foundation rescue adoptions), including the showing or display of animals for a fee (e.g., pictures with a parrot, alligator or snake).
 - c. Fireworks.
 - d. Alcoholic beverages.
 - e. Paraphernalia associated with drug and/or tobacco use.
 - f. Counterfeit or copyright-infringing items.
 - g. Food processed, packed or prepared at a home or other source not approved by federal, state or municipal health authorities or inspected by federal, state or municipal health authorities.
 - h. No mobile food vendors unless they have a mobile food vendor permit consistent with Land Development Code §4-3061.
- (2) Sales shall be made from booths and tables and not directly from motor vehicles. The flea market owner or operator shall coordinate with the fire district for any tent over ten feet x ten feet, as well as any additional fire issues to ensure safe ingress and egress at both the market and parking area, prior to issuance by city council of the special event permit for this use. Any tent over ten feet x ten feet needs to be properly permitted by community development prior to its use.
- (3) Signage will need to be permitted by community development in accordance with the sign ordinance.

- (4) The flea market owner or operator shall, on a regular basis, inspect the merchandise offered for sale by all flea market vendors operating on the premises and items are subject to inspection at all times by the sheriff's office and/or any authorized member of city staff.
 - (5) Food vendors: No person shall vend fresh fruits, vegetables, or other produce without a valid food establishment permit issued by the state department of agriculture and consumer services. Fresh fruits or vegetables shall be confined to the tables that are at least six inches above the ground.
 - (6) An outdoor flea market may only be operated during daytime hours (no lighting of any kind is permitted). Hours of operation will be established during the special event approval. Vendors may arrive one hour prior for setup and may remain one hour after for breakdown. All vendors participating must be permitted through the outdoor flea market operator. Owner or operator of the outdoor flea market is responsible for maintaining current license verification for all vendors.
 - (7) All trash, refuse and garbage must be removed from the site at the end of each day. The premises occupied by the outdoor flea market shall be kept clean and free of accumulated trash, refuse or garbage during and after the hours of operation. All discarded fresh fruits, vegetables, produce or other items will be removed by vendor so that by the end of the day the property shows no indication that an outdoor flea market was at the site. Vendors agree to protect market organizers from any legal or financial liability in case of accidents or incidents at the market.
- (d) *Revocation/private property rights of owners.*
- (1) The flea market operator may not allow the flea market to become a public nuisance. The city manager or designee may request city council to revoke the special event permit for that time period should the following conditions exist during the operation of the flea market. The existence of any of the following conditions is hereby declared to constitute a public nuisance:
 - a. Accumulation of any garbage or rubbish.
 - b. Any condition that may threaten the health, safety or economic welfare of abutting or adjacent property owners or occupants.
 - c. If the outdoor flea market presents a visual blight upon neighborhoods.
 - d. Significant deviation(s) from the site plan or any other item in the special event permit. Any permit modification must be approved by city council.
 - e. If the outdoor flea market becomes a public safety hazard, including, but not limited to, fire and flood hazards, or creates a situation where the use interferes with parking or traffic, both vehicular and pedestrian.
 - f. If there is a finding of one or more violations of any of the regulations in section 12-322 of this article.
 - (2) As with every special event, city council reserves the right to deny any special event permit for an outdoor flea market if there has been a revocation or alternatively, there are documented complaints that justifies city council's determination that the operation of the outdoor flea market by its operator or any other operator constitutes a nuisance or will be incompatible with the surrounding area or disrupts the operation of the City of Bonita Springs, its citizens or business community.
 - (3) Nothing contained within this article is intended to, nor shall be construed as, interfering with or superseding in any way the continuing right of any property owner to prohibit at any time the operation of an outdoor flea market upon that property owner's private property, regardless of whether or not a permit has been obtained and is still current with city council.
 - (4) ~~Subsequent review and sunset provision. The outdoor flea market permit regulations contained within this article is being added in support of the local economy until there is greater demand for property on U.S. 41 and Bonita Beach Road. This article will sunset on October 1, 2020, unless further extended by city council by ordinance.~~

(Ord. No. 14-13, § 1, 6-4-2014)

SECTION TWO: SEVERABILITY

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 THREE: CONFLICTS OF LAW

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.

SECTION FOUR: 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 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 3rd day of August, 2016.

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 | Absent | | |

Date filed with City Clerk: 8/10/16