

**CITY OF BONITA SPRINGS, FLORIDA**

**BONITA SPRINGS ORDINANCE NO. 16-14**

**AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA; AMENDING THE BONITA SPRINGS RENTAL PERMIT ORDINANCE; AMENDING SECTIONS 12-107 THROUGH 12-111; REVISING ORDINANCE TO REFLECT CURRENT PRACTICES; 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**, a demand for, and presence of, many non-owner occupied single-family and duplex dwellings exists in the City of Bonita Springs; and

**WHEREAS**, City Council adopted the initial rental ordinance in 2005 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**, City Council amended Ordinance No. 05-14 by adopting Ordinance No. 07-22; 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 to further 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, as amended by Ordinance 07-22, with strike-through identifying deleted language and underline identifying additional language.

**THE CITY OF BONITA SPRINGS HEREBY ORDAINS:**

**SECTION ONE: BONITA SPRINGS CODE OF ORDINANCES CHAPTER 12, ARTICLE IV, SECTIONS 12-106 THROUGH 12-112**

The City of Bonita Springs Code of Ordinances Sections 12-106 through 12-112 are hereby amended by strikethroughs to delete existing text and by underlining new text, as indicated below:

**ARTICLE IV. RESIDENTIAL RENTALS**

Sec. 12-106. Title and citation.

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

Sec. 12-107. Purpose and exemptions.

- (a) The purpose of this article is to protect the comfort, health, repose, safety, and general welfare of residents of the city by establishing minimum permitting requirements for the rental of single-family, duplex and multifamily dwelling units within the city. This article 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 F.S. chs. 718, 719 and 720. 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.
- (b) The city manager or designee is authorized to exempt an applicant from requiring a rental unit permit in the following circumstances:
- (1) If tourist development tax is collected pursuant to F.S. § 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~~
  - (2) ~~If the landlord/tenant relationship is due to the tenant being an incapacitated (e.g., physically or developmentally disabled) or elderly person.~~

(23) 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. For the purposes of this section, unless context clearly indicates differently, the term caretaker or house sitter shall mean

a person designated and recognized by the legal property owner as one caring for and having responsibility for the maintenance of the property.

- (c) The requirements of this article are supplemental to standards that are found in other portions of the Land Development Code and in other ordinances adopted by the city.

Sec. 12-108. Application and issuance of permit.

- (a) Every owner of a property in the city who is otherwise not exempt in section 12-107 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 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. Once issued, such permit shall be valid from October 1 through September 30 for a three-year period commencing on the date of application submittal, and shall be issued and not be revoked if so long as:

- (1) ~~A Permit fee determined on a per rental unit basis, the amount of which is on file in the city clerk's office, per rental unit is paid.~~
- (2) The applicant and the applicant's property is not in violation of this article.
- (3) The mandatory inspection (every three years, ~~unless reinspections are deemed necessary because violations were found~~) has been conducted by code enforcement or a city-outsourced qualified inspector 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 article for that rental unit during the three-year period.
- (4) The applicant provided the correct street address for all parcels or property covered by this article.

- (b) 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 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 30 days of the notice. Failure to apply or provide evidence that a permit is not

required shall subject the owner to enforcement for violation of this article and proceedings before the hearing examiner.

Sec. 12-109. Requirements of permittee.

- (a) Any owner who on either a full-time or seasonal basis, resides outside the Twentieth Judicial District (Charlotte, Lee, Collier, Glades and Hendry Counties), 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 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 article and proceedings before the hearing examiner. If no local agent is provided in the application and the owner resides outside the Twentieth Judicial District, it is presumed that the owner has agreed to constructive notice of a violation of this article by publication as posted at city hall, ~~and on Cable Access channel BSTV98.~~
- (b) No permit shall be issued or renewed until the applicant or permit holder has provided the name and phone number of a natural person 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.
- (c) 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.
- (d) 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 article before executing a lease for the unit.
- (e) 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) to violation of applicable provisions of the city's noise ordinance, animal control ordinances, solid waste ordinances, property maintenance codes (either the City Property Maintenance Code codified as sections 10-91 through 10-105 or the International Property Maintenance Code codified as, and adopted by, sections 10-75 through 10-77) ~~property maintenance ordinances~~, minimum housing ordinances, parking ordinances, or the provisions of the Land Development Code concerning habitation by more than one family, where the violation takes place at a unit regulated by this article, shall be grounds

for the commencement of permit revocation proceedings under section 12-112 ~~seven of this article.~~

- (f) By applying for a permit, the owner agrees to allow inspection of the interior and exterior of the rental unit for conditions amounting to public nuisance and/or for violations of the ordinances or codes provided in subsection 12-109(e) International Property Maintenance Code, as adopted in chapter 10 of this Code by the city, 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.
- (g) 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:
- (1) No parking area for residential use may be leased, rented or otherwise provided for consideration to someone not residing on the property.
  - (2) Access to all driveway parking areas must be from an approved or existing legal driveway connection.
  - (3) 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.
  - (4) Unless exempted pursuant to section 34-171, ~~F~~failure to comply or maintain the following criteria for size and dimension for residential parking area:
    - a. The maximum width of the driveway parking area shall be 18 feet where the driveway enters the street, or the driveway parking area shall be limited to no more than 30 percent of the total front yard area, whichever is greater. The intent is to limit the area and retain at least 70 percent of the total front yard area to remain unpaved open greenspace (unless the 18 foot entrance creates less open space), and such greenspace shall not be used for the parking of any vehicles.
    - b. Circular driveway parking areas may be no more than 40 percent of front yard open space provided the necessary driveway connections are allowed and that the circular drive extends to the right-of-way.

Sec. 12-110. ~~Inspections, r~~Re-inspections and complaints.

- (a) ~~If there is cause to believe that a violation of this article 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.~~

~~(b) Complainants 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 article are being violated. Such information may be obtained orally or in writing.~~

~~(ae) Any rental unit found not in compliance with this article shall be subject to reinspection until compliance is achieved. The cost for each reinspection is \$50.00. Nothing in this article shall require code enforcement to continue reinspections when compliance can be better achieved through a code enforcement hearing.~~

#### Sec. 12-111. Enforcement procedure.

(a) ~~After the first occurrence of one of the above~~ of a violations of this article, the city manager or designee shall send a written warning to the permittee or agent. The warning will specify the ordinance or code provision ~~that has been violated,~~ upon which the public nuisance or violation is based and will state that any further public nuisances or violations of the above-enumerated ordinances or codes may result in revocation of the permit for that unit.

(b) A ~~The~~ second occurrence of a public nuisance or one of the above violations within one year of sending of the written warning provided in subsection (a) of this section shall constitute a violation of this section, and may subject the owner to revocation of the permit for that unit.

(c) 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.

(d) The hearing examiner is qualified to act as hearing officer to conduct hearings pursuant to this section.

(e) 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 to any tenant of the particular unit wherein the public nuisance is being conducted, ~~maintained or permitted.~~

(f) 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.

- (g) Any officer authorized by law to serve process or a duly appointed law enforcement officer of the county (or applicable sheriff's office within the Twentieth Judicial Circuit) 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.
- (h) The hearing examiner shall conduct a hearing within 30 days after service is deemed complete.
- (i) ~~The~~ Lack of knowledge of, acquiescence ~~to,~~ or participation in, or responsibility for, a public nuisance or other violation 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.
- (j) If, after notice and opportunity for a hearing, the hearing examiner finds no public nuisance or violation 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.
- (k) If, after notice and opportunity for a hearing, the hearing examiner finds the existence of a public nuisance or other violation, the hearing examiner shall issue a final order.
- (l) 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 months, including costs awarded to the city in an amount not to exceed \$500.00 for ~~documented~~ costs of prosecution.
- (m) 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 business days of the hearing examiner's decision.
- (n) If the permit is revoked under these procedures, the permittee shall have ten 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.

- (o) In addition to other procedures, the city may file for injunction to abate the public nuisance or other violation, or utilize other remedies as permitted by law.

Sec. 12-112. Denial or revocation of permit.

- (a) The city manager or designee may deny issuance of, or revoke, any permits applied for under this section if it is determined either that the applicant or holder has made material misrepresentations about the condition of his 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 land development code, or that the owner has otherwise violated a provision of this article.
- (b) 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 30 days from the date of the notice unless, within the 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.
- (c) Within 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 30 days after receiving the request for hearing and shall notify the permit holder or applicant at least five days in advance. The hearing may be postponed if mutually agreed to by all parties.
- (d) 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.
- (e) 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.
- (f) 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 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.

- (g) 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 months after the date of revocation.

### **SECTION THREE: 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 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, Florida this 17th day of August, 2016.

AUTHENTICATION:

  
MAYOR

  
CITY CLERK

APPROVED AS TO FORM:

  
Asst. CITY ATTORNEY

Vote:

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

Date filed with City Clerk: 8/19/16