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ORDINANCE NO. 2023 - 08

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS BY CREATING A NEW CHAPTER 72, ARTICLE IV, LAGOON AND BEACH PROTECTION WITH DEVELOPMENT STANDARDS TO PROTECT THE INDIAN RIVER LAGOON AND BEACH DUNES; AMENDING CHAPTER 72, ARTICLE I, IN GENERAL TO ADD DEFINITIONS; AMENDING CHAPTER 64, ARTICLE I, DEVELOPMENT REVIEW; DELETING CHAPTER 74, BULKHEADS AND WATERWAYS; PROVIDING FOR CODIFICATION; PROVIDING FOR CORRECTION OF SCRIVENER'S ERROR; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council adopted the Vero Beach Comprehensive Plan on April 4, 2018; and

WHEREAS, the City's Comprehensive Plan, Land Use Element, Objective 3, Land Development Regulations and Administration, requires the City administer and maintain its Code in a manner consistent with the goals, objectives, and policies of the Comprehensive Plan and to revise the Code as needed and appropriate to improve their readability, clarity, conciseness, and ease of administration; and

WHEREAS, the City's Comprehensive Plan, Conservation Element policies require the City to include standards, procedures, and requirements in the City's land development regulations for a buffer zone of native upland vegetation on parcels adjacent to the Indian River Lagoon to reduce sediment, phosphorus, nitrogen, and other pollutants that negatively impact the lagoon resulting from new development; and

WHEREAS, the Planning and Zoning Board, serving as the local planning agency under Florida Statute 163.3174, after a public hearing held on November 3, 2022, finds that the Code amendments provided in this Ordinance are consistent with relevant goals, objectives and policies contained within the City's Comprehensive Plan; and

WHEREAS, notice was given as required by law that the text of the Land Development Regulations of the City of Vero Beach, Florida, be amended to revise the process to amend the Code and Comprehensive Plan; and

WHEREAS, an advertisement was placed in a newspaper of general circulation and provided the public with at least ten (10) days advance notice of this Ordinance's public hearings to be held by the Planning and Zoning Board and City Council in the City Council Chambers, located on the first floor of City Hall in the City of Vero Beach; and

WHEREAS, public hearings were held pursuant to the notices described above at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard; and

1 **WHEREAS**, the City Council, after providing legal notice and holding a public hearing,
2 finds that the Code amendments provided in this Ordinance serve a municipal purpose and promote
3 and protect the public health, safety, and welfare to revise the minimum landscape standards for
4 new development in the City.

5 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY**
6 **OF VERO BEACH, FLORIDA THAT:**

7 **Section 1 – Adoption of “Whereas” clauses.**

8 The foregoing “Whereas” clauses are hereby adopted and incorporated herein as forming the
9 legislative findings, purpose, and intent of this Ordinance.

10 **Section 2 – Amendment of Sec. 64.02(a) of Chapter 64, Article I, Development Review.**

11 Section 64.02(a) is hereby amended to read as follows. Except as amended herein, the remainder
12 of Section 64.02 remains in full force and effect.

13 **Sec. 64.02. - Applicability.**

14 (a) *Development review and approval required.* Except as expressly exempted, development
15 review and approval pursuant to this article shall be required prior to:

16 (1) Any work, construction, or other activity requiring a building permit under Cchapter
17 22, Bbuildings and Bbuilding Rregulations;

18 (2) Any change in the intensity, density or use of land; ~~or~~

19 (3) Any work, construction, or other activity proposing to dredge, fill, excavate, construct
20 improvements in any water areas, along shorelines, or on upland areas adjacent to
21 water areas; or

22 ~~(4)~~ Any other activity requiring a permit or development approval pursuant to Ppart III,
23 Land Development Rregulations of this Code.

24 **Section 3 – Amendment of Sec. 64.05(b) of Chapter 64, Article I, Development Review.**

25 Section 64.05(b) is hereby amended to read as follows. Except as amended herein, the remainder
26 of Section 64.05 remains in full force and effect.

27 **Sec. 64.05. - Code compliance certification.**

28 (b) *Applicability.* Code compliance certification by the Pplanning Director shall be required
29 for the following:

30 (1) Change of use not requiring additional parking.

31 (2) Construction, enlargement or structural alteration of docks and seawalls pursuant to
32 Ppart III, Cchapter 31, Bboats and Waterways, and other activities proposing to
33 dredge, fill, excavate, construct improvements in any water areas or in upland buffer
34 zones pursuant to Chapter 72, Article IV, Lagoon and Beach Protection chapter 74,
35 bulkheads and waterways of this Code.

- 1 (3) Siting of new attached wireless communication facilities, the collocation of antenna
2 on existing antenna-supporting structures and buildings, or the replacement and
3 modification of existing stealth and non-stealth attached wireless communication
4 facilities, except as exempted from the Ceity's Land Development Regulations by
5 F.S. § 365.172.
- 6 (4) Siting of new or replacement of existing antenna-supporting structures with an overall
7 height of 35 feet or less in residential zoning districts and 50 feet or less in
8 nonresidential zoning districts.
- 9 (5) Installation of new external emergency generators.
- 10 (6) Installation of new external heating, air conditioning, ventilation and electrical
11 equipment.
- 12 (7) Installation of new walls and fences.
- 13 (8) Certain uses of the public right-of-way pursuant to Part III, Chapter 62, Article X
14 of this Code.
- 15 (9) Changes to existing single family and duplex residential development or residential
16 development of three or less dwelling units located within multiple buildings that
17 involve any of the following:
- 18 a. Increase of less than 500 square feet of new impervious surface area;
- 19 b. New construction or additions to principal and accessory buildings of less than
20 500 square feet of floor area; or
- 21 c. Construction of new pools, spas, and decks.
- 22 (10) Changes to an existing multiple-family or residential development of four dwelling
23 units located within multiple buildings that involve any of the following:
- 24 a. Increase of 1,500 square feet or less of new impervious surface area;
- 25 b. New construction or additions to principal and accessory buildings of less than
26 500 square feet of floor area;
- 27 c. Modifications to existing required landscaped areas and approved parking layouts
28 and driveways involving less than 1,500 square feet of area; or
- 29 d. Construction of new pools, spas, and decks.
- 30 (11) Changes to existing nonresidential development that involve any of the following:
- 31 a. Increase of 1,500 square feet or less of new impervious surface area;
- 32 b. Modifications to existing required landscaped areas and approved parking layouts
33 and driveways involving less than 1,500 square feet of area;
- 34 c. New or additions to outdoor dining, retail display, or storage areas of less than
35 500 square feet;
- 36 d. Change in the number of hotel/motel rooms without any increase in floor area; or
- 37 f. Construction new pools, spas, and decks.

- 1 (12) Installation of new playground equipment, lighting, benches, or other improvements
2 not involving floor area within a public or privately-owned park.
- 3 (13) Improvements to enclosures below base flood elevation that are not a substantial
4 improvement as defined in Section 73.02 of this Code.
- 5 (14) Provision of accessory beach services to hotel patrons of oceanfront hotel properties.
- 6 (15) Any other modification to a building, structure, landscaping or impervious area that
7 is not specifically exempt from development approval by this Article or Code and
8 does not require site plan approval pursuant to Section 64.06.

9 **Section 4 – Amendment of Sec. 72.03 of Chapter 72, Article I, In General.**

10 The following definitions are added in Section 72.03 of the Land Development Regulations.
11 Except as amended herein, the remainder of Section 72.03 remains in full force and effect.

12 Mean high water: means the average height of the high waters over a 19-year period or as
13 defined in Florida Statutes.

14 Natural dune: means the natural or restored bluff of sand which is located landward of the
15 beach and which has sufficient vegetation, height, continuity, and configuration to offer
16 protective value.

17 Shoreline: means the horizontal distance between the intersections of the parcel lot lines
18 with the shore at mean high water.

19 **Section 5 – Creation of Chapter 72, Article IV, Lagoon and Beach Protection.**

20 The Chapter 72, Article IV is hereby created to read as follows:

21 **ARTICLE IV. – LAGOON AND BEACH PROTECTION**

22 **Sec. 72.40. - Title.**

23 This Article shall constitute and may be cited as the "Lagoon and Beach Protection Ordinance" of
24 the City of Vero Beach.

25 **Sec. 72.41. – Purpose and intent.**

26 The intent of this Article is to promote the public health, safety, and general welfare through the
27 protection of the environmental quality of the Indian River Lagoon and the coastal beaches by
28 establishing minimum development standards for properties adjacent to the Lagoon and Atlantic
29 Ocean within the corporate limits of the City. The requirements of this Article are designed to:

- 30 (a) Provide for sound ecological site design which preserves and incorporates native vegetation
31 in the site design and which responds to site-specific environmental factors along the
32 lagoon, thus insuring preservation of lagoon water resources; and
- 33 (b) Improve environmental quality by requiring landscape materials and areas which: improve
34 air and water quality through photosynthesis and the uptake of minerals and dust; maintain
35 permeable land areas essential to surface water management and aquifer recharge.

1 **Sec. 72.42. – Applicability.**

- 2 (a) General. The standards and requirements of this Article shall apply to all construction
3 proposed within the upland buffer zone or development proposed on properties adjacent to
4 the Indian River Lagoon or Atlantic Ocean.
- 5 (b) Review for compliance. Review for compliance with the standards of this Article shall occur
6 during review of an application for approval of a Code Compliance Certification (Section
7 64.05), Site Plan (Section 64.06), or Planned Development (Section 65.29), as appropriate.
- 8 (c) New development. All new development, requiring site plan approval pursuant to Section
9 64.06, shall comply with the minimum requirements of this Article.
- 10 (d) Expansion and enlargement of existing development. If an existing structure or site is
11 expanded, enlarged, or improved requiring site plan approval pursuant to Section 64.06, the
12 minimum requirements of this Article shall be met.
- 13 (e) Construction permits. Any code compliance certification or building permit for construction
14 of structures within the upland buffer zone shall comply with the minimum requirements of
15 this Article.

16 **Sec. 72.43. – Establishment of upland buffer zone.**

17 The following Upland Buffer Zones are established for parcels located adjacent to critical
18 waterways:

- 19 (a) Indian River Lagoon: Parcels located adjacent to the lagoon and connecting waterways shall
20 have an upland buffer zone with a minimum width of 10 feet from the edge of the shoreline
21 or seawall.
- 22 (b) Atlantic Coast: Parcels located adjacent to the Atlantic Ocean shall have an upland buffer
23 zone with a minimum width of 15 feet from the edge of the seawall or from the shoreline of
24 the beach to the western edge of the natural dune.

25 **Sec. 72.44. – Beach dune protections.**

26 The following beach dune protections shall apply the Upland Buffer Zone on properties adjacent
27 to the Atlantic Ocean:

- 28 (a) No land disturbance of the natural dune shall occur within the Atlantic Coast Upland Buffer
29 Zone, unless the property has an existing seawall.
- 30 (b) No reconstruction to existing seawall shall occur without a permit from the City of Vero Beach
31 and an applicable permit from Florida Department of Environmental Protection (FDEP). All
32 proposed construction shall be designed and constructed in accordance with a plan prepared
33 by a professional engineer registered in the State of Florida.
- 34 (c) Prior to any development, on a site with an Atlantic Coast Upland Buffer Zone, requiring a
35 site plan pursuant to Section, 64.06, and suspected to support listed endangered or potentially
36 endangered fauna or flora, the Planning Director may require the property to be surveyed and
37 documented for such species by a competent ecologist or environmental specialist.
- 38 (1) Listed species shall be those appearing in the most recent edition of "Official Lists of
39 Endangered and Potentially Endangered Fauna and Flora in Florida" published by the

1 Florida Game and Fresh Water Fish Commission (GFC).

2 (2) Prior to site plan approval, the applicant and/or property owner shall notify the GFC and
3 U.S. Fish and Wildlife Service (USFWS) and provide proper protection to such species
4 to the extent feasible, to the satisfaction of the Planning Director and wildlife agencies
5 by one of the following:

6 a. Development design modification to incorporate the preservation of listed plant
7 communities or animal nests/burrows into conservation areas;

8 b. Relocation of listed species to locations on or off-site conducive for supporting such
9 species; and/or

10 c. Satisfaction of jurisdictional regulatory agency requirements that apply to threatened
11 and endangered species protection, as applicable.

12 (d) Dune vegetation maintenance. The disturbance of dune vegetation in the Atlantic Coast
13 Upland Buffer Zone is prohibited, with the exception of dune walkover construction and other
14 similar minor structures that may be allowed subject to FDEP approval.

15 (1) It shall be unlawful and subject to the penalties of Chapter 72, Article III, Tree and Palm
16 Protection, for any person(s) to damage, alter, trim, remove or relocate any vegetation
17 without prior authorization and a dune vegetation maintenance permit from the Planning
18 and Development Department. Permits shall be issued under the provisions set forth in
19 Chapter 72, Article III, Tree and Palm Protection and in accordance with the following
20 criteria:

21 a. Pruning, trimming, removal or relocation of dune vegetation shall be prohibited
22 between December 1 and February 15;

23 b. All cuts shall be made cleanly and at the base of the branch or limb of the vegetation,
24 or at branch points of the stalk of the vegetation, except when done with respect to
25 the shaping of a hedge;

26 c. The planting of sod grass and ornamental landscaping shall be prohibited in the
27 Atlantic Coast Upland Buffer Zone with the exception of a five-foot wide pathway
28 from the access structure to the residence, as necessary. In no case shall the sod be
29 allowed to cross the primary dune area;

30 d. Grasses, shrubs, shrub trees, or other similar dune vegetation may be maintained or
31 trimmed up to four (4) feet above existing grade, provided such trimming does not
32 result in the death or destruction of the vegetation. On larger species, such as mature
33 seagrasses, palms, and other similar species, the removal of the lower branches or
34 limbs for view may be permitted, provided no such alteration results in significant
35 damage or death of the vegetation. Sea oats may not be altered;

36 e. All dead, decaying, injured or diseased vegetation may be trimmed without a permit,
37 provided that:

38 i. The trimming constitutes only dead or diseased vegetation, and no live portions
39 of vegetation are trimmed;

40 ii. No root material is to be trimmed or destroyed. No native dune vegetation may

1 be rooted or removed;

2 iii. No existing dune vegetation shall be removed by the root system with the
3 exception of invasive trees and palms defined in Section 72.06. or as authorized
4 by the Planning Director;

5 iv. The provisions of this Article shall not preclude the undertaking of approved
6 shoreline stabilization projects or the location and construction of approved
7 dune crossover structures and similar minor structures;

8 f. Any request to alter or remove any existing vegetative cover in Atlantic Coast
9 Upland Buffer Zone shall be accompanied with a dune revegetation plan approved
10 by the Planning Director.

11 **Sec. 72.45. – Indian River Lagoon natural buffer.**

12 The following upland buffer zone standards apply to properties adjacent the Indian River Lagoon
13 and connecting waterways:

14 (a) The required Upland Buffer Zone shall be planted or landscaped with trees, shrubs, ground
15 covers and other planted vegetation of only native Florida species according to the following
16 standards:

17 (1) The landscaped area shall be designed by a landscape professional or signed and sealed
18 by a landscape professional pursuant to Section 72.13(d).

19 (2) The landscaped areas shall be designed with an emphasis on aesthetic appeal, function,
20 safety, appropriateness to site conditions, and water conservation pursuant to the standards
21 in Section 72.16, Landscape specifications, except all landscape material shall be native
22 Florida species.

23 (3) The design of the landscaped areas should promote rain water capture, treatment, and
24 storage to promote recycling and reuse of water, including use of vegetated swales and
25 rain gardens.

26 (b) Lawns, golf course fairways, recreational fields, and other areas that may require the use of
27 fertilizers or pesticides shall not be located within the Upland Buffer Zone.

28 (c) Picnic structures, playground equipment, and other similar recreational structures shall not be
29 located within the Upland Buffer Zone.

30 (d) Sidewalks may be located within the Upland Buffer Zone with a maximum 10% impervious
31 coverage of the Upland Buffer Zone on the property. An additional 10% impervious coverage
32 may be allowed in the Upland Buffer Zone on the property for sidewalks and patios using
33 permeable paving techniques.

34 (e) Buildings or accessory structures, such as guest houses, pools, or sheds, shall not be located
35 within the Upland Buffer Zone.

36 (f) Off-street parking lot facilities shall not be located within the Upland Buffer Zone.

37 (g) Stormwater drainage facilities with a swale or berm to prevent direct discharge into the lagoon
38 may be located within the Upland Buffer Zone where there is a practical necessity, as
39 determined by the City Engineer.

1 **Sec. 72.46. – Indian River Lagoon bulkheads.**

2 The following bulkhead standards shall apply to the Upland Buffer Zone on properties adjacent
3 the Indian River Lagoon:

4 (a) Any construction of a new wall / bulkhead or reconstruction of an existing wall / bulkhead
5 shall require a permit from the City of Vero Beach and an applicable permit from FDEP. All
6 proposed construction shall be designed and constructed in accordance with a plan prepared
7 by a professional engineer registered in the State of Florida.

8 (b) Any construction of a new retaining wall or reconstruction of an existing retaining wall shall
9 require a permit from the City of Vero Beach, constructed in accordance with a plan prepared
10 by a professional engineer registered in the State of Florida.

11 **Sec. 72.47. – Modification of requirements.**

12 The Planning Director, in consultation with the City Engineer, may modify or vary the
13 requirements of this Article if in their professional opinion that all the following conditions exist:

14 (a) The physical characteristics of the site and surrounding properties make strict compliance
15 with the requirements of this article impractical and unreasonably burdensome to the
16 applicant;

17 (b) The modifications approved are consistent with the intent of this Article and are not in
18 conflict with the policies of the Comprehensive Plan; and

19 (c) The modifications approved will not adversely impact adjoining properties.

20 **Sec. 72.48. - Final inspection required.**

21 (a) Any construction undertaken pursuant to this Article shall be completed in accordance with
22 the approved plan and design.

23 (b) On projects requiring landscape plan approval pursuant to this Article, a final landscape
24 inspection and approval by the Planning Director or designee shall be required prior to the
25 issuance of a certificate of occupancy pursuant to the requirements in Section 72.18.

26 **Sec. 72.49. - Continuing maintenance required.**

27 Any person owning or occupying the site shall have the continuing duty and obligation to
28 maintain or cause the maintenance of all structures, landscape, and other improvements
29 constructed or required pursuant to this Article, so that it conforms to the approved site plan or
30 landscape plan.

31 **Section 6 – Deletion of Chapter 74, Bulkheads and Waterways.**

32 Chapter 74, Bulkheads and Waterways, is hereby deleted and reserved for future use

33 **CHAPTER 74. - BULKHEADS AND WATERWAYS-RESERVED**

34 **Sec. 74.01. – Waterfront construction permits.**

35 ~~Before any person shall dredge, fill, or excavate in any of the water areas within the corporate~~
36 ~~limits of Vero Beach, or before any person shall begin any construction, such as docks, piers,~~
37 ~~walls, bridges, groins, jetties, moles, bulkheads, breakwaters, seawalls, revetments, causeways,~~

1 artificial nourishment of beaches, or other disposition or removal of material in any of the water
2 areas within the corporate limits of Vero Beach, an application shall be made to the city for a
3 permit for such purpose and before such permit shall be granted there shall be presented and
4 filed a plan and design for any such work or construction, which plan and design shall be
5 prepared by a professional engineer registered as such in the State of Florida. No permit shall be
6 granted until the applicant has obtained permits from all government agencies having jurisdiction
7 over such activities.

8 **Sec. 74.02. Construction and maintenance.**

9 Any construction undertaken pursuant to this chapter shall be completed in accordance with
10 the approved plan and design. It shall be the obligation of the owner of the property to properly
11 maintain any structure, built pursuant to this chapter, so that it conforms to the approved plan
12 and design.

13 **Section 7 – Codification.**

14 The provisions of this Ordinance shall be codified in the Code of Ordinances of the City of Vero
15 Beach, Florida.

16 **Section 8 – Scrivener’s Error.**

17 The City Attorney may correct scrivener’s errors found in this Ordinance by filing a corrected
18 copy of this Ordinance with the City Clerk.

19 **Section 9 – Pending Site Plan Applications.**

20 Any site plan application deemed complete by the Planning Director received prior to the City
21 Council hearing date of this Ordinance will not be required to be review for compliance with this
22 Ordinance.

23 **Section 10 – Conflict and Severability.**

24 In the event any provision of this Ordinance conflicts with any other provision of the Code or any
25 other ordinance or resolution of the City of Vero Beach on the subject matter of this Ordinance,
26 the more strict provision shall apply and supersede. If any provision of this Ordinance is held to
27 be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdiction,
28 such invalidity shall not affect the validity of the remaining portions of this Ordinance, which shall
29 be deemed separate, distinct, and independent provisions enforceable to the fullest extent possible.

30 **Section 11 – Effective Date.**

31 This Ordinance shall become effective upon final adoption by the City Council.

This Ordinance was read by title for the first time on the 5th day of April 2023, and was advertised on the 7th day of April 2023, for a public hearing to be held on the 18th day of April 2023, at the conclusion of which hearing it was moved for adoption by Councilmember Moore, seconded by Councilmember Carroll, and adopted by the following vote of the City Council:

Mayor John E. Cotugno	<u>yes</u>
Vice Mayor Linda Moore	<u>yes</u>
Councilmember Tracey Zudans	<u>yes</u>
Councilmember John M. Carrol, Jr.	<u>yes</u>
Councilmember Rey Neville	<u>yes</u>

ATTEST:

CITY OF VERO BEACH, FLORIDA

Tammy K. Bursick
Tammy K. Bursick
City Clerk

John E. Cotugno
John E. Cotugno
Mayor

ADMINISTRATIVE REVIEW

(For Internal Use Only—Sec. 2-77 COVB Code)

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:

John S. Turner
John S. Turner
City Attorney

Monte K. Falls
Monte K. Falls, P.E.
City Manager

Approved as to technical requirements:

Approved as to technical requirements:

Jason H. Jeffries
Jason H. Jeffries, AICP
Planning and Development Director

Matthew T. Mitts
Matthew T. Mitts, P.E.
Public Works Director / City Engineer