

ORDINANCE NO. 1652

AN ORDINANCE OF THE CITY OF COCOA BEACH, FLORIDA, AMENDING THE FUTURE LAND USE ELEMENT THE CITY'S COMPREHENSIVE PLAN, SPECIFICALLY AMENDING POLICY II.2.1 RELATING TO ALLOWABLE BUILDING HEIGHTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Cocoa Beach, has adopted a Comprehensive Plan in accordance with the State of Florida Community Planning Act; and,

WHEREAS, the City of Cocoa Beach desires to amend and update the Future Land Use Element of its Comprehensive Plan pursuant to Chapter 163, Florida Statutes; and,

WHEREAS, the Local Planning Agency and the City Commission have held public hearings concerning all amendments to be considered and the adoption of amendments to the Future Land Use Element as required by Chapter 163, Florida Statutes; and,

WHEREAS, the City received and considered the written objections, recommendations, and comments from the State Land Planning Agency, other State agencies and all interested persons; and,

WHEREAS, the City finds that said Comprehensive Plan amendments have been processed in accordance with the applicable State Statutes, thus allowing the City to amend the Future Land Use Element.

NOW, THEREFORE, BE IT ORDAINED BY the City Commission of the City of Cocoa Beach, Florida:

SECTION 1: The Future Land Use Element of the City of Cocoa Beach's Comprehensive Plan is hereby amended as shown in Exhibit A, which is attached hereto and incorporated herein by reference. The deletion of Policy II.2.1(c) set forth in Exhibit A does not and is not intended to effectuate the repeal or rescission of the granted height variances previously memorialized therein, but rather is intended to give effect to the repeal of the requirement to memorialize height variances in the Comprehensive Plan, effectuated by the adoption of Ordinance No. 1634.

SECTION 2: Severability – If any section, subsection, sentence, clause, phrase of this ordinance, including Exhibit A, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 3: Effective Date – In accordance with Section 163.3184(3)(c)(4), Florida Statutes, the comprehensive plan amendment set forth herein shall not become effective until 31 days after the state land planning agency notifies the City that the plan amendment package is complete. If timely challenged, the comprehensive plan amendment set forth in this Ordinance shall not become effective until the state land planning agency or the

Administration Commission enters a final order determining the adopted comprehensive plan amendment to be in compliance with controlling state law.

Upon Motion by Commissioner _____, and Seconded by Commissioner _____, this Ordinance was duly adopted at a Regular Meeting of the City Commission of the City of Cocoa Beach, Florida, held on the ____ day of _____, 2021.

Ayes: _____
Nays: _____
Absent or Abstaining: _____

Ben Malik, Mayor-Commissioner

ATTEST:

Loredana Kalaghchy, CMC
City Clerk

First Reading: _____
Date Posted: _____
Date Published: _____

Exhibit A

CITY OF COCOA BEACH 2025 COMPREHENSIVE PLAN

GOAL II **Preserve the character of the established low-density residential neighborhoods within the City of Cocoa Beach.**

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Objective II.2 ***Maintain the current family-oriented nature of the community and its associated public amenities.***

Policy II.2.1 To protect existing residential areas from encroachment by land uses which are incompatible due to building height, the City shall regulate maximum allowable building height and allow exemptions for existing buildings. The following criteria shall be incorporated into the Land Development Code.

(a) The maximum allowable building height for all new construction is limited to 45 feet above crown of the abutting road, unless exempted as set forth below:

1. No owners of structures destroyed or substantially damaged by explosion, fire, flood, wind, erosion, or other disaster shall be denied the right either to rebuild or to raze and rebuild to the same height in the same location.
2. Where required to meet federal, state, or local law to provide a wash through or similar grade level passage for storm surges, existing buildings lost to a casualty event may be rebuilt to the existing height as previously provided plus up to the height of the wash through, if necessary to maintain the same density with the same habitable area or gross square footage.
3. Where a parcel or a portion thereof has been assigned a FEMA Base Flood Elevation, or another minimum elevation for construction of habitable space has been applied to a parcel pursuant to federal, state, or local law, the 45 foot building height limit shall be measured from the height of the Base Flood Elevation or other minimum elevation, rather than the crown of abutting road.
4. On all parcels, up to 10 feet of unoccupied building elements and attachments on the top of buildings shall not count toward the 45 foot building height limit.
5. Residential and non-residential structures may be razed and rebuilt to their existing height as previously provided to the same extent as if they were lost to a casualty event.

6. The City Commission may grant a variance to individual parcels to allow new structures at a height greater than 45 feet, but in no event greater than 70 feet (measured in accordance with Policy II.2.1(a)(7)), when: upon petition and proof that the variance will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this section would result in unnecessary hardship. To grant such a variance, the City Commission must make findings of fact that the petitioner has met the legal standards for variance as set forth in the City of Cocoa Beach Code of Ordinances, and the variance must be approved by a concurring vote of four (4) members of the City Commission after due notice and public hearing. A request for variance will be considered after a written petition is submitted to the City Commission indicating the grounds on which the variance is sought. After the petitioner has submitted a sufficient petition, the request must be scheduled for public hearing before the City Commission as expeditiously as possible, and not earlier than thirty (30) days from the day of submission of a sufficient petition. Notice and hearing requirements for such variance shall be in accordance with the provisions for variance set forth in the City of Cocoa Beach Code of Ordinances.
7. The 70 feet referenced in Policy II.2.1(a)(6) shall be measured from the crown of the abutting road and measured to the top of the highest building element or attachment, except as set forth in this paragraph and as adjusted by administrative waiver. Where a parcel or a portion thereof has been assigned a FEMA Base Flood Elevation, or another minimum elevation for construction of habitable space has been applied to a parcel pursuant to federal, state, or local law, the 70 feet referenced in Policy II.2.1(a)(6) shall be measured from the height of the Base Flood Elevation or other minimum elevation, rather than the crown of abutting road. The 70 feet limitation imposed by Policy II.2.1(a)(6) shall not apply to wireless communication towers or lightning rods.
 - (b) Residential areas shall be buffered by tiered heights from higher structures. Intervening rights of way or canals cannot be considered buffers.
 - (c) ~~Special consideration for building heights are granted for the location(s) identified below:~~
 1. ~~Cocoa Beach Junior/Senior High School, Performing Arts Facility located at 1500 Minutemen Causeway, on property having the legal description:~~

~~BEGINNING at the NE corner of Section 16, Township 25 South, Range 37 East and run South 1980 feet; thence West 1980 feet; thence North 1980 feet; thence East 1980 feet to the POINT OF BEGINNING, Brevard County, Florida. Containing 90 acres, more or less. Parcel ID: 25-37-16-00-00001.0-0000.00; and, based on plans, specifications, and location as identified in City application number 06-2000327-02, with a height not to exceed seventy (70) feet.~~

- ~~2. Sixth Floor Unit 16 foot x 16 foot sun room addition, Inn at Cocoa Beach located at 4300 Ocean Beach Boulevard, on property having the legal description:~~

~~Lots 8-14, Block 5, COCOA OCEAN BEACH SUBDIVISION, according to the plat thereof as recorded in Plat Book 10, Page 16; and together with the South one-half of the alley formerly existing which extended from Ocean Beach Boulevard on the West to the 40-foot promenade on the East, between Lots 7 and 8, Block 5, COCOA OCEAN BEACH SUBDIVISION, which alley has been closed to public use; Public Records of Brevard County, Florida.~~

~~Containing 1.22 acres, Parcel ID: 24-37-35-C1-00005.0-0008.00 and, based on plans, specifications, and location as identified in City variance application number 12-2000920-01, and building permit application 12-0503, with height not to exceed 59.00 feet.~~

- ~~3. Stair and Training Tower for the new City of Cocoa Beach Fire Station No. 51 construction, located at 50 South Orlando Avenue, on property having the legal description:~~

~~Lots 1-17, inclusive, and Lots 22-27, inclusive, together with that portion of the 15 foot wide vacated (O.R. Book 833, Page 137) alley lying North of said Lot 13, all in Block 33, COCOA BEACH Subdivision, according to the plat thereof as recorded in Plat Book 3, Page 54; Public Records of Brevard County, Florida. Containing 2.77 acres, Parcel ID's: 25-37-15-DD-00033.0-0001.00, 25-37-15-DD-00033.0-0006.00, 25-37-15-DD-00033.0-0008.00, and 25-37-15-DD-00033.0-0022.00; and, based on plans, specifications, and location as identified in City variance application number 13-2000506-01 and site development plan application 13-1000506-01, with a height not to exceed 60.0 feet.~~

- ~~4. Building height allowing a building/structure height of no greater than sixty (60) feet for the Ocean Dunes Condominium at 33, 35, 37, 39, and 41 North Atlantic Avenue and Tax ID: 2517526, to be summary platted to one~~

parcel, on property having the legal description:

~~LOTS 3 THROUGH 7, INCLUSIVE, OF BLOCK A, COCOA BEACH SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 3, PAGE 54, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.~~

~~Together with the lands lying East of the East line of said Block A, South of the North line of said Lot 3 extended easterly, West of the Erosion Control Line, as established by resolution recorded in Official Records Book 4242, Page 492, and shown on the survey recorded in Survey Book 8, Pages 38-56 and North of the South line of said Lot 7 extended easterly, being more particularly described as follows:~~

~~PARCEL 1 (PARCEL ID: 25-37-11-DD-0000A.0-0004.01)~~

~~Begin at the Northwest corner of said Lot 3; thence N89°26'01"E, along the North line of said Lot 3, a distance of 334.35 feet, to said Erosion Control Line; thence the following 3 courses along said Erosion Control line: (1) S01°32'11"W, a distance of 45.92 feet; (2) S00°37'25"W, a distance of 195.69 feet; (3) S01°34'33"W, a distance of 8.36 feet, to the South line of said Lot 7; thence S89°26'01"W, along said South line, a distance of 336.48 feet, to the Southwest corner of said Lot 7; thence N01°18'34"E, along the West line of said Block A, a distance of 15 feet to a point on the said West line of Block A; Thence N89°26'01"E, a distance of 110.00 feet; Thence N01°18'34"E, a distance of 220.02 feet, Thence S89°26'01"W, a distance of 110.00 feet to a point on the West line of Block A; Thence N01°18'34"E, a distance of 15.00 feet to the POINT OF BEGINNING; Containing 1.36 acres, more or less.~~

~~PARCEL 2 (PARCEL ID: 25-37-11-DD-0000A.0-0003.01)~~

~~Commence from the Northwest corner of Lot 3, Block A, Township 25, Range 37, Section 11, Brevard County, Florida as recorded in in Plat Book 3, Page 54; Thence S01°18'34"W, a distance of 15.00 feet along the West line of Lot 3 to the POINT OF BEGINNING; Thence N89°26'01"E, a distance of 110.00 feet; Thence S01°18'34"W, a distance of 220.02 feet; Thence S89°26'01"W, a distance of 110.00 feet to a point on the West line of Lot 7, Block A; Thence N01°18'34"E, 220.02 feet along the West line of said Block A to the POINT OF BEGINNING, Containing 0.55 acres, more or less.~~