



**AGENDA
REQUEST
FORM
CITY OF
CAPE
CORAL**

Item Number:	B.(1)
Meeting Date:	4/17/2024
Item Type:	Public Hearings - Legislative Hearings (Note: Input received as follows: 1. City Staff presentations are limited to five (5) minutes; 2. Applicant(s) presentations are limited to five (5) minutes; and 3. Resident input is limited to three (3) minutes per individual with a maximum of sixty (60) minutes total. All three are subject to the following statement: Unless otherwise extended by City Council.)

TITLE:

Ordinance 15-24 Second and Final Public Hearing

ORDINANCES AND RESOLUTIONS:

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance of the City of Cape Coral, Florida, relating to a moratorium on the acceptance of applications for and the issuance of permits for development of self-storage facilities within all zoning districts in the City of Cape Coral; providing for exemptions; providing for the duration of the moratorium and method of processing applications and permits during, after, or prior to the effective date of the moratorium; providing a procedure to determine vested rights, appeals, and modification to vested development; providing for exhaustion of administrative remedies. (Brought forward by City Management)

REQUESTED ACTION:

Approve or Deny

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance of the City of Cape Coral, Florida, relating to a moratorium on the acceptance of applications for and the issuance of permits for development of self-storage facilities within all zoning districts in the City of Cape Coral; providing for exemptions; providing for the duration of the moratorium and method of processing applications and permits during, after, or prior to the effective date of the moratorium; providing a procedure to determine vested rights, appeals, and modification to vested development; providing for exhaustion of administrative remedies.

Specific to business impact estimates, this ordinance is exempt pursuant to Section 166.041(4)(a)4.(c)7(a), Florida Statutes.

STRATEGIC PLAN ALIGNMENT:

1. Is this a Strategic Decision?

No

If Yes, Priority Goals Supported are listed below.

If No, will it harm the intent or success of the Strategic Plan?

No

RECOMMENDATIONS:

SOURCE OF ADDITIONAL INFORMATION:

Matt Grambow, Interim Development Services Director
(239) 574-0446

FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

1. Will this action result in a Budget Amendment? No

PREPARED BY:

Division- Planning
Division

Department- Development Services
Department

ATTACHMENTS:

Description	Type
▣ 1. Ordinance 15-24	Ordinance

ORDINANCE 15 - 24

AN ORDINANCE OF THE CITY OF CAPE CORAL, FLORIDA, RELATING TO A MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR AND THE ISSUANCE OF PERMITS FOR DEVELOPMENT OF SELF-STORAGE FACILITIES WITHIN ALL ZONING DISTRICTS IN THE CITY OF CAPE CORAL; PROVIDING FOR EXEMPTIONS; PROVIDING FOR THE DURATION OF THE MORATORIUM AND METHOD OF PROCESSING APPLICATIONS AND PERMITS DURING, AFTER, OR PRIOR TO THE EFFECTIVE DATE OF THE MORATORIUM; PROVIDING A PROCEDURE TO DETERMINE VESTED RIGHTS, APPEALS, AND MODIFICATION TO VESTED DEVELOPMENT; PROVIDING FOR EXHAUSTION OF ADMINISTRATIVE REMEDIES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, presently, and in the preceding years, the self-storage industry has proven to be a sector that is proliferating at an unprecedented rate of growth throughout the Florida commercial real estate industry, and within the commercial corridors of the City of Cape Coral, Florida; and

WHEREAS, in order to prevent the proliferation of self-storage facilities consuming essential commercial property, too fast, in close proximity to one another, it is necessary to study the issue to determine the number(s) and location(s) that are appropriate for the City; and,

WHEREAS, Florida Statutes require the City to adopt new land development regulations, or amend its current regulations as necessary to ensure that such regulations are compatible with and further the goals of the City's Comprehensive Plan, and to utilize accepted planning practices and analyses that include, but are not limited to, the direction of growth and development into those locations that have proper access to the existing and planned transportation system ("access management"), minimal environmental constraints, and compatibility of land uses both within the particular area and in relation to surrounding land uses; and,

WHEREAS, it has been estimated that there exists one million five hundred thousand (1,500,000) square feet of existing self-storage space in the City, and an additional one million six hundred thousand (1,600,000) in the permitting process or under construction, for a total of three million one hundred thousand (3,100,000) square feet of self-storage facilities existing or forthcoming in the City; and

WHEREAS, the applicable industry standard for the supply of self-storage facilities has been identified to be five to ten (5-10) feet per capita, resulting in an approximate supply of self-storage facilities to be between one million forty thousand (1,040,000) up to two million eighty thousand (2,080,000) square feet based on the current estimated population of the City; and

WHEREAS, the City has documented that there exists a deficiency of vacant, non-residentially zoned land that is needed to meet the commercial/industrial demands of current and future residents; and

WHEREAS, the City's Land Development Code is hereby determined to require additional study by City staff, and potential revision, in order to ensure that they provide a sufficient safeguard regarding the proliferation of these self-storage facilities for the future protection and promotion of the public health, safety welfare, aesthetics, and economic order of the City; and

WHEREAS, the Mayor and City Council hereby determine that changes to the City's Land Development Code that may be proposed pursuant to a study by City staff regarding self-storage facilities, is of such gravity and importance that issuing any Development Permits, and other documents as stated below, except in accordance with this Ordinance, would in all probability undermine the study and, thereafter, the purpose of the Land Development Code revisions; and

WHEREAS, the City needs time to develop and implement revisions to its Land Development Code, and to devise a better plan for future development of self-storage facilities throughout the City; and

WHEREAS, to protect, preserve and effectuate the public safety, welfare, aesthetics, and economic order of the City, the Mayor and City Council find that a moratorium on the receipt of applications for and the issuance of certain requests for Development Permits, Building Permits, Site Plan

Approvals, and any other official action by the City, for the development of self-storage facilities that may be affected by the study is required for a limited duration and until revisions to the City's Land Development Code can be developed to implement the Local Government Comprehensive Planning and Land Development Regulation Act, and in particular Sections 163.3177(6)(a), and 163.3202, Florida Statutes; and

WHEREAS, the Florida Legislature enacted Senate Bill 250 (2023), codified as chapter 2023-304, Laws of Florida, that prohibits local governments from proposing or adopting a moratorium on construction, reconstruction, or redevelopment of any property damaged by Hurricane Ian or Nicole before October 1, 2024, and applies it retroactively to September 28, 2022; and

WHEREAS, the Mayor and City Council find that the Florida Legislature expressly drafted chapter 2023-304, Laws of Florida, to apply to property damaged by Hurricane Ian or Nicole, and that this moratorium applies to unimproved land that by its vacant nature did not suffer property damage from Hurricane Ian or Nicole; and

WHEREAS, the Mayor and City Council find that state legislative bill analyses related to Senate Bill 250 (2023) provide analysis related to prior versions of the bill, which did not contain language prohibiting moratoria, and that the Florida Senate House Message Summary, provided after the moratorium language was added, expressly includes that property damage by Hurricane Ian or Nicole is a requirement for the moratoria prohibition to apply; and

WHEREAS, the Mayor and City Council find that, based on the foregoing reasons for the moratorium, this Ordinance will promote the public health, welfare, safety, aesthetics, and economic order of the community, the region, and the City; and

WHEREAS, the Mayor and City Council have determined that a moratorium of twelve (12) months in duration is the minimum reasonable period of time needed for staff to conduct the study, and determine what remedial legislation and new or amended Land Development Codes are essential, and to prepare and adopt said remedial legislation to address this matter; and

WHEREAS, as provided in section 2(b), Article VIII of the Constitution of the State of Florida, and section 166.021(1), Florida Statutes, the City of Cape Coral, Florida, a municipal corporation, enjoys all governmental, corporate, and home rule proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, as provided in section 166.021(3), Florida Statutes, the governing body of each municipality in the state has the power to enact legislation concerning any subject matter upon which the state legislature may act, except when expressly prohibited by law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA. AS FOLLOWS:

SECTION 1: The above recitals are true and correct and by this reference are hereby incorporated herein and made an integral part hereof as though fully set forth herein.

SECTION 2: Area Subject to Moratorium. The moratorium imposed by this Ordinance will be effective upon all property located within the City of Cape Coral, Florida.

SECTION 3: Moratorium Imposed.

- (a) Moratorium in effect. No applications for the issuance of Development Permits, Building Permits, Site Plan Approvals, and any other official action by the City, for the development of a self-storage facility within the City of Cape Coral, Florida, shall be accepted, processed, considered, or issued by the City during the time period that the moratorium is in effect.
- (b) Exemptions. The following shall be exempt from the provisions of this Ordinance.
 - (1) Any application for a Development Permit, Building Permit, Site Plan Approval, or other official action by the City, for the purpose of repair or rehabilitation of an existing self-storage facility; or

- (2) Construction, repair, or rebuilding of self-storage facilities in existence prior to April 17, 2024, for which approved Development Permits, Building Permits, Site Plan Approvals, and any other official action by the City, have been obtained.
- (c) Duration of moratorium.
- (1) The moratorium imposed by this Ordinance shall expire on January 17, 2025, or upon adoption by the Mayor and City Council of an ordinance(s) revising the Land Development Codes regarding the development of self-storage facilities within the City. No ordinance shall be construed to have the effect of terminating the moratorium effectuated by this Ordinance, unless said ordinance revising the Land Development Codes contain a statement that its adoption is intended to terminate the moratorium.
 - (2) The moratorium effectuated by this Ordinance shall become effective as provided in Section 5 hereof. This Ordinance shall be deemed to be pending on March 20, 2024, within the meaning of the term "pending ordinance" as that term is used in Smith v. City of Clearwater, 383 So.2d 681 (Fla.2d DCA), rev. dismissed, 403 So.2d 407 (Fla. 1980).
 - (3) The duration and term of the moratorium provided for by this Ordinance may be extended from time to time by adoption of an amendatory ordinance.
- (d) Permit issuance. With regard to applications for issuance of any Development Permit, Building Permit, Site Plan Approval, and any other official action by the City, for the development of self-storage facilities on any parcel of land within the City subject to the moratorium provided for by this Ordinance, the application shall be considered pursuant to the following requirements:
- (1) To protect the due process and other constitutional rights of applicants and the general public, applications for a Development Permit, Building Permit, Site Plan Approval, and any other official action by the City, submitted prior to March 20, 2024, shall be processed in good faith and Site Plans, Development Permits or Building Permits therefor may be issued. This provision shall not in and of itself be construed to mandate approval of any Land Development Regulation, Site Plan, or Development Permit, including, but not limited to, Building Permit.
 - (2) To protect the due process and other constitutional rights of applicants and the general public, applications for a Development Permit, Building Permit, Site Plan Approval, and any other official action by the City, received on or after March 20, 2024 (the date that this Ordinance became a pending ordinance), but prior to the date this moratorium ordinance became effective shall be processed in routine fashion without slowing or accelerating review. However, upon adoption of the moratorium, if no final Development Permit, Building Permit, Site Plan Approval, and any other official action by the City, has been issued, said application shall be subject to the moratorium. If revisions to the Land Development Code of the City with regard to self-storage facilities are adopted by the City Council on or before the expiration of the moratorium that revise the substantive or procedural legal requirements regarding a Development Permit, Building Permit, Site Plan Approval, and any other official action by the City, any application submitted on or after the date March 20, 2024, but before the expiration of the moratorium shall be required to comply with the new substantive or procedural legal requirements.
 - (3) Any application for a Development Permit, Building Permit, Site Plan Approval, and any other official action by the City, received on or after the date that the moratorium adopted by this Ordinance becomes effective shall not be reviewed or considered by the City until the moratorium provided for hereby shall terminate, except in conformity with the provisions of this Ordinance. During the term of the moratorium, no Site Plan, Development Permit or Building Permit shall be issued, or Land Development Regulation adopted, in violation of the moratorium effectuated by this Ordinance.

- (e) Vested rights. Nothing in this ordinance shall be construed or applied to abrogate the vested rights of a property owner to begin or complete development where the property owner can demonstrate each of the following:
 - (1) An application(s) for administrative review for a Development Permit, Building Permit, Site Plan Approval, and any other official action by the City, for a self-storage facility was received on or after March 20, 2024 (the date this ordinance became a pending ordinance) and prior to April 17, 2024 (the effective date of this ordinance);
 - (2) Upon which the property owner has detrimentally relied, in good faith, by making substantial expenditures; and
 - (3) That would be highly inequitable to deny the property owner the right to complete the development of the new self-storage facility.

Any property owner claiming to have vested rights under this Section must file an application with the Director of the Developmental Services Department, or the Director's designee, for a vested rights determination within ninety (90) days of the effective date of this ordinance. The application shall be accompanied by a fee of \$500.00 and contain a sworn statement as to the basis upon which the vested rights are asserted, together with documentation required by the City and other documentary evidence supporting the claim. The Mayor and City Council shall hold a public hearing on the application and, based upon the evidence submitted, make a determination as to whether the property owner has established vested rights.

- (f) Appeals. Appeals from final decisions by the Mayor and City Council under this ordinance shall be by the filing of a notice of appeal in the Circuit Court of the 20th Judicial Circuit, in and for Lee County, in accordance with the Florida Rules of Appellate Procedure for the review of the rulings of commissions or boards.
- (g) Modification to Vested Development. Within one hundred (120) days of a final determination of vested rights under Section (e) above, a property owner shall have the right to file an application requesting a modification to the vested development, notwithstanding the moratorium imposed by this ordinance. In considering the applications, the City Council shall apply all established criteria and land development regulations then in effect. This right to apply for modification does not in any manner vest any rights, and such application shall be considered a new application subject to de novo proceedings.
- (h) Exhaustion of Administrative Remedies. No property owner claiming that this section as applied constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court unless he or she first exhausted the administrative remedies provided in this section.

SECTION 4. Severability. In the event that any term, provision, clause, sentence or section of this Ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable, unconstitutional, or illegal for any reason whatsoever, any such illegality, unconstitutionality or unenforceability shall not affect the other term, provisions, clauses, sentences or sections of this ordinance, and this Ordinance shall be read and/or applied as if the illegal, unconstitutional or unenforceable term, provision, clause, sentence or section did not exist.

SECTION 5. Effective Date. This Ordinance shall take effect immediately upon its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2024.

JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

GUNTER _____
STEINKE _____
SHEPPARD _____
HAYDEN _____

CARR _____
WELSH _____
LONG _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____,
2024.

KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:



ALEKSANDR BOKSNER
CITY ATTORNEY
ord/Moratorium-Self Storage


