



Agenda MEMORANDUM

Office of the City Attorney

To: City Council
From: Nancy Stuparich, City Attorney
Date: June 9, 2021
Regular Meeting Date: June 16, 2021

Legislative Quasi-Judicial

SUBJECT:

An ordinance relating to building heights; providing for legislative intent; amending Section 44-8, "Definitions", of Chapter 44, "General Provisions", and Section 46-37, "Variances to Zoning Requirements", of Article II, "Administrative Procedures", of Chapter 46, "Administration, Procedures and Enforcement"; and Section 56-39, "Height Requirement Exceptions Thereto", of Article II, "Standards Applicable to All Districts", of Chapter 56, "Supplemental Standards"; of the code of ordinances, City of Naples, pursuant to text amendment 20-T1 to clarify height limits for commercial districts to include buildings in Planned Developments used exclusively for residential purposes; providing a severability clause; providing a repealer provision; and providing an effective date.

SUMMARY:

City Council is asked to consider an Ordinance amending the Code of Ordinances to provide clear limitations on building height in commercial districts with such commercial districts including all the zoning categories listed in the Building Height Charter Amendment (that includes Planned Developments used exclusively for residential) and eliminating the ability to obtain a variance to building height in commercial districts. The ordinance provides for the application of equitable estoppel, as to heights already specifically approved as to specific buildings prior to the effective date of this code provision. No specific buildings are listed in the ordinance. The height of hospitals and public service buildings had been discussed, but if deemed appropriate by the city council that subject will be dealt with in the future through different ordinances.

BACKGROUND:

The proposed Ordinance will amend the Code to provide clear limits for building height in commercial zoning districts including all the zoning categories listed in the Building Height Charter Amendment provision (that includes Planned Developments used exclusively for residential) and eliminating the ability to obtain a variance to building height in commercial districts. On June 17, 2020, City Council declared a zoning in progress to prohibit applications for variance to the maximum allowable height in commercial districts for six months in order to allow for the City to consider a text amendment to permanently remove the ability to request a variance to the allowable building height in commercial districts of three stories and 42 feet; the zoning in progress was extended for 180 days on December 16, 2020 via Resolution 2020-14577. City Council had previously discussed solutions to the height limit issue on May 14,

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2020, May 18, 2020, and March 3, 2021. This item was continued from the October 7, 2020 City Council meeting, and again from the April 21, 2021 City Council meeting, and yet again from the May 5, 2021 City Council meeting.

The proposed Ordinance will:

- Amend Chapter 44 to add a definition for “commercial zoning districts and/or commercial zoning district with a clarification that exclusively residential buildings in planned developments are subject to the Building Height Charter Amendment;
- Amend Chapter 46 to establish that variances are not permitted for uses or building height in commercial zoning districts, just as they are prohibited for density;
- Amend Chapter 56 to limit building height in commercial zoning districts (including buildings in Planned Developments that are exclusively residential) to three (3) floors and 42 feet to the peak of the roof, measured from the Base Flood Elevation plus one (1) foot as required by the Florida Building Code with no exceptions.
- Use the more technically correct phrase “Base Flood Elevation plus one (1) foot as required by the Florida Building Code” as the base from which the height of 42 feet is measured in place of the less technically correct phrase “1st floor FEMA elevation.”
- Recognize that some buildings have previously been approved by the city with heights in excess of three (3) floors and 42 feet, and that those specific buildings, due to the operation of equitable estoppel, can be built to a height only as high as the height specifically previously approved for such building.

RETURN ON VISION (ROV):

Amending the Code to clarify height restrictions in commercial districts, including all districts subject to the Building Height Charter Amendment, and to prohibit variances to these limits is in keeping with the Vision goal to preserve the small town character and culture by ensuring a scale of development that is consistent with the residential community and expectations that growth in the community is limited.

RECOMMENDED ACTION:

City Council adopt the Ordinance relating to building heights; amending Chapter 44, General Provisions; Section 44-8, Definitions; Chapter 46, Administrative Procedures and Enforcement, Article II, Administrative Procedures, Section 46-37, Variances to zoning requirements; and Chapter 56, Supplemental Standards, Article II, Standards applicable to all districts, Section 56-39, Height requirements, exceptions thereto, of the Code of Ordinances, City of Naples, pursuant to Text Amendment 20-T1 to clarify height limits for commercial districts; providing a severability clause; providing a repealer provision; and providing an effective date; at Second Reading.