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**ORDINANCE NO. 19-19**

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**AN ORDINANCE AMENDING THE LAND DEVELOPMENT REGULATIONS; AMENDING ARTICLE II, DEFINITIONS, SECTION 201.00, GENERAL DEFINITIONS, TO DELETE THE NET LAND DEFINITION AND TO ADD NEW DEFINITIONS FOR GROSS DENSITY AND NET DENSITY, AND SECTION 206.00, WETLAND PROTECTION REGULATIONS DEFINITIONS, TO REVISE THE WETLAND DEFINITION; AMENDING ARTICLE V, ZONING DISTRICTS, SECTION 504.00, DISTRICT REGULATIONS AND REQUIREMENTS, SUBSECTION 504.01, GENERAL REGULATIONS, TO REVISE THE DENSITY CALCULATION METHODOLOGY; AMENDING ARTICLE VII, STANDARDS FOR SITES WITH SPECIAL CHARACTERISTICS, SECTION 701.00, SITES CONTAINING WETLANDS, SUBSECTION 701.04, APPLICATION SUBMITTAL, TO ADD A PROVISION REGARDING WETLAND BOUNDARIES; PROVIDING FOR CODIFICATION; PROVIDING FOR PUBLIC HEARING; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.**

*WHEREAS*, the City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, has completed a Density Calculations Study and requests administrative text amendments; and

*WHEREAS*, the City of New Smyrna Beach, is committed to preserving wetlands, as evidenced by adopted policies the Future Land Use and Conservation Elements of the Comprehensive Plan; and

*WHEREAS*, the City of New Smyrna Beach desires to adopt provisions addressing wetland density allowance provisions similar to Volusia County's; and

*WHEREAS*, the Planning and Zoning Board, at its regular meeting held on April 1, 2019, by a vote of 4-0, recommended that the City Commission approve the text amendments with conditions; and

*WHEREAS*, the City Commission deems it is in the best interests of the citizens of the City of New Smyrna Beach to amend the Land Development Regulations as more particularly set forth hereinafter.

45 **NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY**  
46 **OF NEW SMYRNA BEACH, FLORIDA:**

47  
48 **SECTION 1: Amending Land Development Regulations.** That New Smyrna  
49 Beach Land Development Regulations are hereby amended as follows:  
50 **(Note: Omissions from text are indicated by . . ., deletions from**  
51 **text are indicated by ~~strikeout~~, and additions to text are**  
52 **indicated by underline.)**

53  
54 **201.00. - General definitions.**

55 . . .

56 Gross Acreage. The total acreage of a site which is above the mean high water or mean  
57 high tide line of any natural water body.

58 . . .

59 ~~Land, net.~~ Total high, dry land area that excludes existing water bodies or watercourses  
60 such as lakes, ponds, streams, canals, and tidal waters. Also referred to as "net land area"  
61 or "net acreage of land."

62 . . .

63 Net Acreage. Net acreage consists of the total acreage within a site, excluding the  
64 following:

- 65 a. Acreage below the mean high water or mean high tide line of any natural water body;  
66 b. Lands within the beach/dune system;  
67 c. Wetlands as they exist prior to development or mitigation;  
68 d. Land surface areas below the 100-year floodplain elevation as they exist prior to  
69 development;  
70 e. Public rights-of-way in existence prior to development;  
71 f. Acreage to be dedicated or reserved for public use, such as parks and public facilities  
72 (e.g., utility sites, schools), but not including public roads, stormwater ponds, and  
73 related public site infrastructure lands; and  
74 g. Acreage to be dedicated to other uses (commercial, office, industrial, institutional).

75 . . .

76 Residential Density, Gross. The total number of residential dwelling units divided by the  
77 gross residential acreage of the project (see Section 504.01, General Regulations, for  
78 density calculation methodology).

79 Residential Density, Net. The total number of residential dwelling units divided by the  
80 developable/net residential acreage of the project (see Section 504.01, General  
81 Regulations, for density calculation methodology).

82 . . .

83 **206.00. - Wetland protection regulations definitions.**

84 Wetlands. Per Section 373.019, F.S., as may be amended from time to time, wetlands are  
85 those lands which are identified by being inundated or saturated by surface water or  
86 groundwater at a frequency and duration sufficient to support, and that under normal  
87 circumstances do or would support, a prevalence of vegetation typically adapted for life in  
88 saturated soil conditions. The definition includes all natural contiguous and noncontiguous  
89 or isolated wetlands to waters, water bodies, and watercourses. Wetlands include, but are  
90 not limited to, swamp hammocks, hardwood hybrid hammocks, riverine cypress, cypress  
91 ponds, bayheads, bogs, wet prairies, freshwater marshes, tidal flats, salt marshes, mangrove  
92 swamps and marine meadows. Dominant wetland vegetation shall be determined as  
93 provided in F.A.C. 17 3.022 Section 62-340, F.A.C.

94 . . .

95 **504.00. - District regulations and requirements.**

96 **504.01. General regulations.**

- 97 A. No building, structure, or land, shall hereafter be used or occupied, and no building or  
98 structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or  
99 structurally altered except in conformity with all of the regulations herein specified for  
100 the district in which it is located.
- 101 B. Uses not designated as permitted by right or subject to additional conditions in a district  
102 shall be prohibited from that district. Special exceptions are permitted subject to  
103 additional regulations imposed. The special exceptions may be approved only by the  
104 city commission following proper application as described within this LDR. Additional  
105 uses may be added to this LDR by amendment.
- 106 C. In any business district, more than one structure housing a permitted principal use may  
107 be erected on a single commercial lot, provided that yard and other requirements of this  
108 LDR shall be met for each structure and the total lot.
- 109 D. ~~Density under this LDR shall be computed by multiplying the acreage by the number of~~  
110 ~~allowable units. The maximum density on a residential project shall be computed by~~  
111 ~~multiplying the Net Acreage of the site, as defined in Section 201.00, by the number of~~  
112 ~~allowable units per acre. In addition, on sites containing wetlands, the total number of~~  
113 ~~allowable residential units on a project may be increased by one dwelling unit per 10~~  
114 ~~acres of wetlands. The property owners shall be allowed to build one additional unit in~~  
115 ~~eases where utilizing the above formula (acreage times allowable units) produces a~~  
116 ~~fractional unit one half or greater. (For example: The property owner owns 1.05 acres.~~  
117 ~~The LDR allows 12 units per acre. Utilizing this formula, this would compute to 12.6~~

- 118 ~~allowable units on the site. The number of allowable units on this site would therefore~~  
119 ~~be 13. Second example: The property owner owns 1.04 acres. The LDR allows 12 units~~  
120 ~~per acre. Utilizing the formula, this would compute to 12.48 buildable units. The total~~  
121 ~~number of units allowable on this site would therefore be 12.~~
- 122 E. Where the density calculation results in a fraction that is 0.50 or greater, the number is  
123 rounded up (e.g. 12.6 = 13 units). Fractions lower than 0.50 are rounded down (e.g. 12.4  
124 = 12 units).
- 125 F. The density calculation described above provides the maximum number of dwelling  
126 units that may be built on a site. However, the development is not guaranteed to attain  
127 that maximum density. The application of other development standards may  
128 substantially decrease the lot yield for a specific site.
- 129 EG. No yard or lot existing at the time of passage of this LDR shall be reduced in dimension  
130 or area below the minimum requirements set forth herein. Yards or lots created after  
131 the effective date of this LDR shall meet at least the minimum requirements established  
132 by this LDR.
- 133 FH. No part of a yard, or other open space, or off-street parking or loading space required  
134 about or in conjunction with any building for the purpose of complying with this LDR  
135 shall be included as part of a yard, open space, or off street parking or loading space  
136 similarly required for any other building.
- 137 GI. All buildings shall be placed on lots or mobile homes on lots or spaces, in a manner  
138 that provides safe and convenient access for servicing, fire protection and required off-  
139 street parking.
- 140 HJ. The height limitations contained in the schedule of district regulations do not apply to  
141 spires, belfries, cupola, antennas, water tanks, ventilators, chimneys or other  
142 appurtenances usually required to be placed above the roof level and not intended for  
143 human occupancy.
- 144 IK. Lots platted or created prior to the effective date of this LDR having less width, depth  
145 and area than required in their zoning district but having no less than 90 percent of the  
146 width, depth and area shall be considered conforming with the requirements of this  
147 LDR.
- 148 JL. Any lot platted or created prior to the effective date of this LDR which meets two of  
149 the three size requirements of width, depth and area and which meet no less than 85  
150 percent of the third requirement shall be considered a nonconforming lot but shall be  
151 considered buildable.
- 152 KM. The number of residential and hotel/motel units and the percentage of building  
153 coverage and impervious lot coverage allowed on oceanfront property shall be  
154 calculated by using only the land zoned for residential or hotel/motel use. The applicant  
155 must demonstrate, by evidence of clear title, that the upland property is under its control  
156 and has not been dedicated or reserved for a public use including, but not limited to,  
157 recreational, right-of-way or park use; is not submerged by ocean, natural lake, natural  
158 pond or other natural waters, and is not subject to a deed restriction.

159 ~~L. Land that has been dedicated or reserved for any public use, including but not limited to,~~  
160 ~~recreational or park use; land that is within the beach/dune system; land that is underneath~~  
161 ~~a public right of way; land that is submerged by ocean, natural lake, natural pond or other~~  
162 ~~natural waters, or land that is under water from the mean high water line waterward, shall~~  
163 ~~not be used for calculation of density or lot area.~~

164 ~~M. Land that has been conveyed to or acquired by a governmental entity for right of way~~  
165 ~~purposes or other public purposes, may be used in calculation of allowable density for the~~  
166 ~~development of the remaining portion of the lot or parcel after the conveyance to the~~  
167 ~~governmental unit, provided that the portion conveyed does not exceed 20 percent of the~~  
168 ~~area of such lot or parcel prior to conveyance.~~

169

170 **701.04. Application submittal.** The city shall require an application for a wetland alteration  
171 permit and each application shall be reviewed by the EO or his/her duly authorized  
172 representative. A certificate of zoning is required in accordance with this LDR. Site plans and  
173 subdivisions that include wetland areas shall be reviewed by the planning and zoning  
174 department, the plan review committee, and approved by the planning department, plan review  
175 committee, or planning and zoning board. Each application shall include, but is not limited to,  
176 the following:

177 A. A wetland management plan which shall include the following:

178 (1) A detailed description of all water bodies, watercourses, and wetlands on-site and a  
179 general description of wetlands immediately adjacent to the site and associated  
180 hydrologic conditions;

181 (2) A general description of the upland habitats on-site;

182 (3) A site survey to scale no greater than one inch equals 50 feet which identifies the  
183 landward extent of the wetland boundaries, buffer zones, existing and proposed  
184 conservation areas and adjacent off-site conservation areas; Wetland boundaries shall  
185 be determined by the dominance of plant species, soils and other hydrologic evidence  
186 indicative of regular and periodic inundation or saturation in accordance with the  
187 unified statewide delineation method found in Chapter 62-340, Florida Administrative  
188 Code.

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. . .

190

191 **SECTION 2: Codification.** That following adoption of this ordinance,  
192 the City Clerk shall transmit a copy of this ordinance to Municipal  
193 Code Corporation of Tallahassee, Florida, to be codified into the  
194 City's Code of Ordinances. Municipal Code Corporation's usual and  
195 customary fee for said codification service is hereby approved.  
196 The provisions of this ordinance are intended to be incorporated  
197 into the Code of Ordinances of the City of New Smyrna Beach,  
198 Florida, and the sections of this ordinance may be renumbered,  
199 relettered, and the word "ordinance" may be changed to "section,"

200 "article," or such other word or phrase in order to accomplish  
201 such intention.

202

203 **SECTION 3: Public Hearing.** That a public hearing considering the  
204 adoption of this ordinance was held May 14, 2019 in the City  
205 Commission Chambers at City Hall, 210 Sams Avenue (south entrance  
206 on Julia Street), New Smyrna Beach, Florida, after notice published  
207 is found to comply with §166.041(3) (a), F.S.

208

209 **SECTION 4: Applicability.** That this ordinance shall not be  
210 applicable to any development application received for a final  
211 site plan, preliminary or final subdivision plat, or any approved  
212 PUD with a Master Development Agreement, prior to the effective  
213 date of this ordinance.

214

215 **SECTION 5: Conflicting Ordinances.** That all ordinances or parts  
216 thereof that are in conflict with this ordinance shall be and the  
217 same are hereby rescinded and repealed.

218

219 **SECTION 6: Severability.** That if any section, sentence, clause or  
220 phrase of this ordinance is held invalid or unconstitutional by  
221 any court of competent jurisdiction, then said holding shall in no  
222 way affect the validity of the remaining portions of this  
223 ordinance.

224

225 **SECTION 7: Effective Date.** That this ordinance shall take effect  
226 immediately upon its final adoption.

227

228 **APPROVED AS TO FORM AND CORRECTNESS:**

229

230   
231 CARRIE AVALLONE  
232 City Attorney

233

234 **DATE:** 4/16/2019

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