

ORDINANCE NO. 2024-03

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DADE CITY, FLORIDA, CREATING ARTICLE III OF CHAPTER 70 IN THE CODE OF ORDINANCES RELATING TO EMINENT DOMAIN OR ACQUISITION WAIVERS, EXCEPTIONS AND VARIANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Dade City, Florida (the “City Commission”) desires to clarify and establish guidelines, procedures and criteria to grant waivers, exceptions and variances from certain city land development codes or regulations arising from eminent domain or public acquisition; and

WHEREAS, the City of Dade City (the “City”) and other governmental or public agency entities have the authority to acquire property through the procedures and guidelines established in Chapters 73 and 74 of the Florida Statutes; and

WHEREAS, it is necessary from time to time to acquire properties in whole, or in part, by negotiations or eminent domain proceedings in order to provide the public improvements necessary to adequately serve the general public and residents of the City; and

WHEREAS, in certain cases, hardships are imposed upon property owners when public projects require the acquisition of private property which causes the remainder parcels to become nonconforming under the City’s land development regulations and codes; and

WHEREAS, the City Commission finds that this Ordinance serves to further enhance the protection of the public health, safety and welfare and serves a valid public purpose.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DADE CITY, FLORIDA:

SECTION 1. Legislative Findings and Intent. The findings set forth in the recitals above are hereby adopted as legislative findings pertaining to this Ordinance.

SECTION 2. There is hereby created Article III “EMINENT DOMAIN OR PUBLIC ACQUISITION WAIVERS, EXCEPTIONS AND VARIANCES” within Chapter 70 of the City of Dade City Code of Ordinances, which is attached hereto as **Exhibit 1**.

SECTION 3. Codification. It is the intent of the City Commissioners of the City of Dade City, Florida, and it is hereby ordained the provisions of this Ordinance become and be made part of the City of Dade City Code of Ordinances; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word “Ordinance” may be changed to “Section” or other appropriate wording.

SECTION 4. Conflict. All ordinances or resolutions, or parts thereof, in conflict herewith, are repealed to the extent of such conflict.

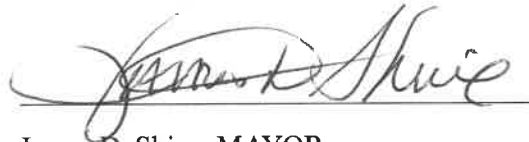
SECTION 5. Severability. If any provision of this Ordinance, or the application thereof, is determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, such provision shall be deemed severable and the remaining provisions shall continue to remain in full force and effect provided that the invalid, illegal or unenforceable provision is not material to the logical and intended interpretation of this Ordinance.

SECTION 6. Effective Date. This Ordinance shall be effective upon final approval by the City Commission.

PASSED AND ADOPTED this 27th day of February 2024.

First Reading: 2/13/2024

Second Reading: 2/27/2024



James D. Shive, MAYOR

ATTEST:



Angelia Guy, CITY CLERK
Ma-Anna Harris, Deputy City Clerk

Approved as to form:



Patrick Brackins, CITY ATTORNEY

Exhibit 1¹

ARTICLE III. EMINENT DOMAIN OR PUBLIC ACQUISITION WAIVERS, EXCEPTIONS AND VARIANCES

Sec. 70-33. Findings of fact.

The board of city commissioners hereby finds that the acquiring of private property by various governmental or public agency entities, so authorized, by law through the eminent domain process, through trial, or negotiations prior thereto, is an extremely costly and burdensome process. Allowing the City Manager, pursuant to established guidelines, procedures and criteria, to grant waivers and exceptions from certain city land development codes or regulations, or to apply for variances on behalf of affected property owners serves a valid public purpose and promotes the general safety and welfare of the citizens and landowners of the city.

Sec. 70-34. Intent.

It is the intent of this article to establish a fair procedure by which the City Manager can grant waivers and exceptions to city land development, sign and engineering codes and regulations, or to seek such waivers or variances before the appropriate boards, in order that property owners who have been subjected to the condemnation process have a viable and fair alternative in preventing any adverse impact upon their property as a result of the condemnation process and allow the continued use of their property in a manner similar to its pre-condemnation condition. Further, it is the intent of this article to establish procedures which will reduce the cost of acquisitions of real property needed for public improvements.

Sec. 70-35. Authority of City Manager.

The City Manager or his or her designee, having jurisdiction over land development, signs, and engineering codes, ordinances, regulations, or resolutions, shall have the authority to grant waivers or exceptions, or to seek variances on behalf of owners of property from applicable codes, ordinances, regulations, or resolutions. The City Manager or his or her designee shall provide a copy of the determination letter to the city attorney's office if the property is in a condemnation lawsuit, or to the community development department in pre-suit negotiations, that the waiver or exception does not adversely affect the public health, safety or welfare.

Sec. 70-36. Application for waivers, exceptions and variances.

- (a) The condemning authority, or the landowner, may apply in writing to the City Manager or his or her designee for a determination that the granting of the waiver or exception will not result in a condition which adversely affects the health, safety or welfare of the general public.
- (b) The City Manager or his or her designee shall, within thirty (30) days of receipt of the application, issue a signed letter to all parties granting or denying the waiver or exception.

¹ Additions to existing city code text are shown by underline.

- (c) If the waiver or exception is denied by the City Manager or his or her designee, the owner or condemning authority may apply for, at no cost to the owner, a variance before the appropriate board.

Sec. 70-37. Waivers, exceptions and variances.

If, as a result of a governmental taking, either by negotiation or condemnation, existing lots, parcels, structures, or uses of land become nonconforming with the provisions of the City Code, the following provisions shall apply:

- (1) Existing characteristics of use which become nonconforming or increase in nonconformity as a result of a taking, including, but not limited to, minimum lot size, setbacks, open space, off-street parking, landscape requirements, drainage and retention, shall be required to meet code requirements to the greatest extent possible, to the satisfaction of the appropriate division manager or his or her designee. Thereafter, the existing characteristics of use shall be deemed conforming. Any further expansion or enlargement thereof shall be in accordance with all applicable code requirements.
- (2) In granting any waiver or exception to code requirements, the City Manager or his or her designee shall:
 - a. Determine that the requested exception or waiver will not adversely affect visual, safety, aesthetic or environmental concerns of neighboring properties.
 - b. Verify the requested exception or waiver shall not adversely affect the safety of pedestrians (including accessibility requirements of the most recent editions of Florida Department of Transportation Americans with Disabilities Act Standards for Transportation Facilities and other applicable federal and state standards as adopted), bicyclists, transit users, or operators of motor vehicles.
 - c. Preserve code-required off-street parking requirements to the greatest extent practicable. The reconfiguration, reduction, or removal of landscape and/or open space requirements may be considered to preserve off-street parking.
- (3) If any legally existing structures (principal or accessory), or vehicular use area must be relocated as a direct result of the governmental taking, or as a result of safety concerns, if allowed to remain after the taking, then the City Manager or his or her designee, and the building official may allow the relocation of the structure on the remaining property, so as to comply with all applicable regulations to the greatest extent practicable, as determined by the City Manager or his or her designee. If the relocation results in substandard characteristics of use, it shall be deemed thereafter to be conforming. Any future expansion or enlargement thereof shall be in accordance with all applicable code requirements.

- (4) Legally existing structures (principal or accessory) or vehicular use areas which become nonconforming or increase in nonconformity according to subsection (1), which are thereafter damaged or destroyed, other than by voluntary demolition, to an extent of more than seventy-five (75) percent of assessed value at the time of destruction can be restored but only to pre-destruction condition. Any expansion or enlargement that does not increase the nonconformity of a characteristic of use shall be permitted in accordance with all applicable code requirements. Where expansion or enlargement increases the nonconformity of a characteristic of use, relief from appropriate city board(s) is necessary.
- (5) If the structure to be relocated harbors a nonconforming use, the zoning manager and building official may permit the relocation pursuant to this section, if the City Manager or his or her designee determines that public harm will not result.
- (6) Where part of a principal structure is taken, the reconstruction of the taken structure (same size and use) may be permitted. The reconstruction must meet code to the greatest extent possible, to the satisfaction of the appropriate department manager or designee and building official. The reconstructed structure shall thereafter be deemed conforming.
- (7) Any alterations, repairs or rehabilitation work necessitated by a governmental or public agency acquisition or condemnation of real property may be made to any existing structure, building, electrical, gas, mechanical or plumbing system without requiring the building, structure, plumbing, electrical, mechanical or gas system to comply with all the requirements of the technical codes provided that the alteration, repair or rehabilitation work conforms to the requirements of the technical codes for new construction. The building official shall determine the extent to which the existing system shall be made to conform to the requirements of the technical codes for new construction.

Sec. 70-38. Signs.

A sign which is located on a parcel that is subject to condemnation action by a governmental or public agency may be allowed to be relocated on the remaining portion of the parcel in accordance with the following:

- (1) The sign is to be relocated on the remaining parcel in such a manner as to meet the setback and distance separation requirements. If due to the size and/or configuration of the remaining parcel setback and distance separation requirements cannot be met, then, subject to the zoning manager's discretion, the sign may be relocated so as to comply with such regulations to the greatest extent practicable as determined by the zoning manager
- (2) Any existing nonconformity of a sign, other than setback or distance separation, shall not be increased upon relocation.

- (3) If the sign to be relocated is a nonconforming sign, upon proof submitted by the applicant and subject to the determination by the zoning manager that public harm would not occur, then such sign may be relocated pursuant to this subsection notwithstanding any other provisions of the code.

Sec. 70-39. Authority for staff to testify at judicial proceedings on the likelihood of variances.

- (a) The City Manager, or his or her designee, is hereby authorized to testify in judicial proceedings as to the likelihood of whether a variance from city codes or regulations would be granted or the reasons the City Manager has granted the waiver or exception.
- (b) In testifying, the City Manager or his or her designee is specifically authorized to employ the following criteria:
 - (1) History of similar variances, waivers or exceptions being granted by the appropriate boards in and for Dade City, Florida.
 - (2) Analysis of why the variance, waiver or exception would not adversely affect surrounding property owners.
 - (3) Analysis of the hardship imposed by the condemnation action initiated by the governmental or public agency.
 - (4) Analysis of any and all other criteria normally considered by the appropriate boards or departments in granting similar variances, waivers or exceptions and how those criteria relate to the subject and neighboring properties.
 - (5) That the granting of a variance, waiver or exception would not adversely affect the public health, safety or welfare.

Sec. 70-40. Code violations threatening public health, safety and welfare.

- (a) The provisions of this article shall not be interpreted to allow for the continued existence of building or other safety code violations that are determined to be an immediate threat to the public health, safety or welfare.
- (b) The appropriate building officials and inspectors are hereby authorized to take any and all necessary steps to enforce all applicable building and safety codes even though the subject property is part of a condemnation action.

Secs. 70-41 – 70.99. Reserved.