

# ORDINANCE 2019-03

**AN ORDINANCE OF THE TOWN OF PONCE INLET, FLORIDA, AMENDING ARTICLE 4 OF THE LAND USE AND DEVELOPMENT CODE BY CREATING SECTION 4.14. ENTITLED “PROTECTION OF THE THREATENED AND ENDANGERED WILDLIFE SPECIES” AND CREATING SUBSECTION 4.14.1. - GOPHER TORTOISE PROTECTION; ESTABLISHING RULES TO PROTECT THE THREATENED GOPHER TORTOISE (*GOPHERUS POLYPHEMUS*) AND ITS HABITAT WITHIN THE TOWN OF PONCE INLET WHILE RECOGNIZING THE RIGHTS OF PROPERTY OWNERS TO USE THEIR LAND IN A REASONABLE AND RESPONSIBLE MANNER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, *Objective 1.1* of the Coastal Management Element of the Comprehensive Plan requires the Town to ensure the long-term protection, restoration and enhancement of the natural upland and wetland habitats of the coastal area, particularly areas identified as critical habitat for threatened and endangered species and species of special concern, through cooperation and coordination with federal, state and regional agencies, as well as Volusia County and adjoining coastal municipalities; and

**WHEREAS**, *Policy 1.2.1* of the Coastal Management Element states that developments in habitat areas listed by the Florida Fish and Wildlife Conservation Commission and the U.S. Fish and Wildlife Service as Endangered, Threatened, or Species of Special Concern shall not adversely impact the listed species; and

**WHEREAS**, the gopher tortoise (*Gopherus Polyphemus*) is listed as “threatened” and therefore is protected under *Chapter 68A-27* of the Florida Administrative Code (F.A.C.); and

**WHEREAS**, *Chapter 68A-27* provides the framework for developing management strategies and interventions to prevent species from being threatened to such an extent that they become regulated and managed under the Federal Endangered Species Act of 1973, as amended, 16 U.S.C. §1531 et seq.; and

**WHEREAS**, the Town desires to adopt the following regulations in furtherance of the objectives and policies of the Town's Comprehensive Plan, the provisions of rules 68A-27.003, 68A-27.004, and 68A-27.005 of the F.A.C., and to satisfy any obligations that it may have under these provisions to prevent harm to gopher tortoises; and

**WHEREAS**, the Planning Board, in its capacity as the Local Planning Agency, has determined that this Ordinance is consistent with the Comprehensive Plan and has recommended approval of this Ordinance to the Town Council; and

47       **WHEREAS**, the Town Council hereby affirms that this Ordinance is consistent with the  
48 Comprehensive Plan and is in the best interest of the public and the health, safety, and welfare of  
49 the Town’s residents; and  
50

51       **WHEREAS**, the Town of Ponce Inlet has complied with all requirements and procedures  
52 established by Town and Florida law in processing, noticing, and advertising this Ordinance; and  
53

54       **WHEREAS**, this Ordinance is enacted under the general home rule, police powers, and  
55 land regulatory powers of the Town of Ponce Inlet.  
56

57       **NOTE:** Underlined words constitute additions to the Town of Ponce Inlet Land Use and  
58 Development Code, ~~striketrough~~ constitutes deletions from the current Land Use and Develop-  
59 ment Code, and asterisks (\*\*\*) indicate an omission from the existing text which is intended  
60 to remain unchanged.  
61

62       **NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE**  
63 **TOWN OF PONCE INLET, AS FOLLOWS:**  
64

65       **SECTION 1.** Legislative Findings and Intent. The findings set forth in the recitals above  
66 are hereby adopted as legislative findings pertaining to this Ordinance.  
67

68       **SECTION 2.** Section 4.14. of the Land Use and Development Code entitled  
69 “*PROTECTION OF THE THREATENED AND ENDANGERED WILDLIFE SPECIES*” is hereby  
70 created and shall read as follows:  
71

## 72 **Article 4 - DEVELOPMENT STANDARDS**

### 73 **SECTION 4.1. - PURPOSE AND APPLICABILITY**

#### 74 **4.1.1 - Generally.**

75 This article establishes standards for the development and improvement of property. This includes  
76 standards for infrastructure and improvements, site design and layout, protecting a development  
77 and its surrounding neighborhood from negative environmental–damage impacts, including  
78 impacts on the listed protected and endangered wildlife species, and other related issues.  
79

80 \*\*\*  
81

### 82 **SECTION 4.14. – PROTECTION OF THE THREATENED AND ENDANGERED** 83 **WILDLIFE SPECIES**

#### 84 **4.14.1. PROTECTION OF GOPHER TORTOISE**

##### 85 **4.14.1.2. Purpose and jurisdiction**

86 In 2007, the Florida Fish and Wildlife Conservation Commission (FWC) listed the gopher tortoise  
87 as a threatened species and created a plan to manage and protect these reptiles. The plan includes  
88

91 guidelines for landowners whose property contains gopher tortoises to ensure they are protected,  
92 and their habitat needs are maintained.

93 The purpose of this subsection is to enhance the protection mechanism of the threatened gopher  
94 tortoises and their habitat at the local level.

95 **4.14.1.3. Penalty.**

96 Violations of this article are punishable as provided in *Chapter 162 of Florida Statutes*, Article V  
97 (Code Enforcement) of the Town's Code of Ordinances, and Article 8 (Enforcement) of the Land  
98 Use and Development Code. The FWC rules, policies, guidelines and other state laws including  
99 F.S. Ch. 379<sup>1</sup> also apply.

100 **4.14.1.4. General prohibitions.**

101 Unless otherwise authorized by a permit, the FWC rules, policies or guidelines, or applicable state  
102 laws, no person shall be allowed to:

- 103 (1) take, attempt to take, pursue, hunt, molest, capture or intentionally kill gopher tortoises or  
104 destroy their eggs;
- 105 (2) transport or move a gopher tortoise;
- 106 (3) clear land, operate heavy equipment, or pursue construction activity within 25 feet from the  
107 opening of any gopher tortoise burrow without first obtaining a valid permit from the FWC  
108 or an affirmation that no such permit is necessary.

109 **4.14.1.5. General exemptions.**

110  
111 The following activities are exempt from permitting requirements:

- 112
- 113 (1) Linear utility and right-of-way vegetation maintenance such as mowing grass and trimming  
114 trees that are in accordance with the current FWC guidelines.
- 115
- 116 (2) Site preparation activities such as hand trimming of vegetation to determine the suitability of  
117 a property for development or to conduct required surveys, if they do not harm the existing  
118 gopher tortoise burrows.
- 119
- 120 (3) Typical activities associated with residential lawn and landscape maintenance that do not  
121 require a Town permit, provided they do not harm gopher tortoises or cause the collapse of  
122 their burrows.
- 123
- 124 (4) Development activities which are permitted by the Town outside of a 25-foot radius buffer  
125 from the mouth of all burrows which meet the current FWC guidelines<sup>2</sup>.

---

<sup>1</sup>[http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0300-0399/0379/0379ContentsIndex.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0300-0399/0379/0379ContentsIndex.html)

<sup>2</sup> <https://myfwc.com/media/11854/gt-permitting-guidelines.pdf>

126 **4.14.1.6. Standards for review.**

- 127
- 128 (1) All applications for subdivision, development, or redevelopment except for single-family  
129 residential use are required to include a biological survey conducted by a qualified wildlife  
130 biologist documenting the types of habitat on the site and the presence of any protected or  
131 endangered species, including gopher tortoises. The survey must mark the exact location of  
132 their nests or burrows.
- 133
- 134 (2) For all new single-family residential development and redevelopment, a gopher tortoise survey  
135 must be completed in conjunction with the required tree survey by a licensed land surveyor.  
136 The survey must mark the location of any existing burrows.
- 137
- 138 (3) If based on the survey and examination by staff, gopher tortoises or their burrows are  
139 determined to be present on the site, the applicant must apply for a gopher tortoise permit from  
140 FWC. No site work including clearing, tree removal, or grading activity shall be allowed until  
141 it is authorized by FWC.
- 142
- 143

144 **4.14.1.7. Standards for gopher tortoise protection during development activities.**

145 The following are minimum standards necessary to protect gopher tortoise burrows from damage  
146 during any development activities:

- 147
- 148 (1) *Gopher tortoise protection zones.* A permit from the FWC may not be required if the proposed  
149 development activity is outside of a 25 foot protection zone from the mouth of all burrows. No  
150 construction activity or other disturbance is permitted within this protection zone.
- 151
- 152 (2) *Temporary barriers.* A temporary barrier shall be constructed around the 25-foot radius  
153 protection zone to prevent physical damage from equipment and other activities incidental to  
154 development. The barrier must meet the FWC standards and shall be subject to inspection by  
155 the Town prior to any clearing. The barriers must be completely removed from the site at the  
156 end of the construction, unless otherwise authorized.
- 157
- 158 (3) *Gopher tortoises and burrows damaged during construction.* If any gopher tortoise burrows  
159 are impacted or any gopher tortoise injury or mortality occurs during development, the  
160 applicant shall immediately notify the FWC and the Town's Planning and Development  
161 Department. A "Stop Work Order" shall be issued and posted on the site and shall remain in  
162 effect until the FWC law enforcement has completed its investigation and the matter is fully  
resolved; and

163 **4.14.1.8. Appeals.**

164 Any decision or determination made by the Planning and Development Department staff may be  
165 appealed in writing within thirty (30) days of said determination to the Planning Board (Board) in  
166 accordance with Article 6 of the Land Use and Development Code. The Board may uphold, modify  
167 or reverse the determination of the staff. Appeals of decisions of the Board shall be as provided in

Section 6.3.7 of the Land Use and Development Code.

**4.14.1.9. Relation to Florida Administrative Code.**

(1) It is the intent of the Town that this Section be consistent with, and in furtherance of the provisions of Rules 68A-27.003, 68A-27.004, and 68A-27.005, of the Florida Administrative Code (F.A.C.)<sup>3</sup>, and that it satisfies any obligation the Town may have under these provisions to prevent harm to gopher tortoises by its election to adopt this regulation.

(2) Nothing in this article shall be construed to authorize or license any act prohibited by the Florida Administrative Code or the Endangered Species Act.

**SECTION 3.** Severability. If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

**SECTION 4.** Conflicts. In any case where a provision of this Ordinance is found to conflict with a provision of any other ordinance of this Town, this ordinance shall prevail.

**SECTION 5.** Codification. It is the intent of the Town Council of the Town of Ponce Inlet that the provisions of this Ordinance shall be codified. The codifier is granted broad and liberal authority in codifying the provisions of this Ordinance.

**SECTION 6.** Effective Date. This Ordinance shall become effective immediately upon its passage and adoption.

It was moved by Councilmember Paritsky and seconded by Vice-Mayor Hoss that said Ordinance be passed on first reading. A roll call vote of the Town Council on said motion resulted as follows:

Mayor Smith, Seat #1	Yes
Councilmember Milano, Seat #2	Yes
Vice-Mayor Hoss, Seat #3	Yes
Councilmember Perrone, Seat #4	Yes
Councilmember Paritsky, Seat #5	Yes

Passed on first reading this 21<sup>st</sup> day of March, 2019.

It was moved by Councilmember Paritsky and seconded by Vice-Mayor Hoss that said Ordinance be passed on second reading. A roll call vote of the Town Council on said motion resulted as follows:

---

<sup>3</sup> <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=68A-27>

209	Mayor Smith, Seat #1	Yes
210	Councilmember Milano, Seat #2	Yes
211	Vice-Mayor Hoss, Seat #3	Yes
212	Councilmember Perrone, Seat #4	Excused Absent
213	Councilmember Paritsky, Seat #5	Yes
214		
215	Passed this 18 <sup>th</sup> day of April, 2019.	
216		Town of Ponce Inlet, Florida
217		
218		
219		
220		<hr/> Gary L. Smith, Mayor
221		
222	ATTEST:	
223		
224		
225		
226	<hr/> Jeaneen Witt, CMC	
227	Town Manager/Town Clerk	
228		