

ORDINANCE NO. 2009-05

AN ORDINANCE OF THE TOWN OF GRANT-VALKARIA, BREVARD COUNTY, FLORIDA ESTABLISHING AND DECLARING A MORATORIUM ON THE ISSUANCE OF CERTIFICATE OF OCCUPANCIES AND BUSINESS LICENSE CERTIFICATE FOR CERTAIN BUSINESSES DEFINED AS ADULT ENTERTAINMENT AND ELECTRONIC GAME ARCADES IN THE AREA DEFINED AS THE CORPORATE LIMITS OF THE TOWN OF GRANT-VALKARIA; SETTING FORTH THE PURPOSE OF THE TEMPORARY MORATORIUM; SETTING FORTH THE EXTENT OF THE TEMPORARY MORATORIUM; ESTABLISHING THE DURATION OF THE TEMPORARY MORATORIUM; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Grant-Valkaria was incorporated on July 25, 2006; and

WHEREAS, the Town is in the process of establishing land use categories, zoning categories and adopting a comprehensive plan for the Town pursuant to the Town Charter; and

WHEREAS, the Town has not established the proper zoning categories for businesses known as Adult Entertainment or Electronic game arcades; and

WHEREAS, there is ample evidence to show that the issuance of certificates of occupancy and business tax certificates (formerly known as occupational license) for Adult Entertainment and Electronic game arcade establishments in the Town will or may be inconsistent with the character and nature of the Town and will result in the location of such businesses in areas that will be inconsistent with the Town's future comprehensive plan and zoning ordinances and may result in the proliferation of non-conforming uses in the Town ; and

WHEREAS, the issuance of certificates of occupancy and business tax certificates for Adult Entertainment and Electronic game arcades before the establishment of a Town comprehensive plan and zoning code will be contrary to the Town's stated goals, purposes and rural character as provided for in Section 9 of House Bill 1297 which states;

"Section 9. Land Use, Zoning and Development

(1) Rural Character of the Town. This section secures the foundation on which this town was formed and maintains the existing rural character of the town. "Rural" includes several key elements that constitute the makeup of the town. These elements include:

(a) Low development intensity and an abundance of agricultural lands.

(b) Inherent "green canopy" and natural preserve that currently covers the majority of the town.

(c) Inherent natural resources including aquifers, watersheds, wetlands, and the waterways of the Indian River Lagoon.

(d) Predominant and viable wildlife areas and protected species habitat.

(e) Small, family-owned and family-operated businesses.

(f) Commercial development as deemed appropriate to the character and emerging needs of the town.

(2) Land Use, Zoning, and Development Requirements. In order to preserve and promote the existing rural elements listed in subsection (1), this section outlines land use, zoning, and development requirements and the requirements for approval of development intensity increases for any parcel within the boundaries of the town. The provisions of this section shall make it incumbent upon all future development to protect the rural elements of the town and:

(a) Continue the use of private wells as sources of potable water and the use of private septic recycling.

(b) Promote and preserve public lands and parks for community enjoyment.

(c) Protect and promote the wildlife and the wildlife habitat that coexist within the town.

(d) Preserve the natural view and existing scenic highway designation of U.S. Highway 1 through careful management of development along and within these natural assets.

By proactively managing future growth as a rural community and limiting impacts through thoughtful community-based planned development, the naturally existing rural character of the town will be sustained. To this end, the land development regulations and ordinances of the town shall uphold and enforce the goals and overall spirit of this section. All zoning in effect at the time of incorporation shall remain unchanged after incorporation (i.e. "grandfathered in"). All present county zoning classifications and land use designation terminology shall continue in effect until the town is established and the town's long-range comprehensive plan and future land use map are completed and adopted. A new long-range comprehensive plan and future land use map shall be completed and adopted within 1 year after incorporation.

(3) Proposed Change; Prior Notice; Vote Required. Prior to voting on a proposed increase in development intensity, including, but not limited to, density levels, building heights, and traffic impacts, the town council shall notify all property owners inside the town whose property is within 1,500 feet of the proposed change. Notification shall occur no fewer than 30 days prior to consideration by the town council. An affirmative vote of six or more members of the town council shall be required to enact any such proposed change.";
and

WHEREAS, continued approval of such businesses will adversely affect the rural character of the Town including the reduction in agricultural lands, natural preserves, inherent green canopies, wetlands, wildlife, small – family owned and operated business, and natural and scenic views in the Town; and

WHEREAS, by Town Charter a long-term comprehensive plan, land use map and zoning categories must be adopted by the Town ~~within one year after incorporation~~; and

WHEREAS, the Town Council for the Town of Grant-Valkaria finds that based on the foregoing reasons for the moratorium, this ordinance will promote the public health, welfare, safety, aesthetic, and economic order of the Town of Grant-Valkaria.

NOW, THEREFORE, BE IT ordained by the Town Council of the Town of Grant-Valkaria, Brevard County Florida:

Section 1: Finding and Purpose

The terms Adult Entertainment and Electronic game arcades as defined by the code of ordinances of Brevard County have the same meaning for the purposes of this ordinance. Any findings of fact contained in the Brevard County Code of Ordinances relating to Adult Entertainment and Electronic Game Arcades are incorporated herein.

The recitals set forth above are hereby deemed findings of the Town Council of the Town of Grant-Valkaria relative to the need to establish the Town's own zoning ordinance, land use categories, comprehensive plan and future land use map.

The council of Grant-Valkaria hereby declares that allowing further consideration or approval of certificates of occupancy and business tax certificates for Adult Entertainment or Electronic game arcade establishments within the corporate limits of the Town is not in the best interest of the public health, safety, and welfare of its citizens until the Town establishes its own zoning code, land use categories, comprehensive plan and future land use map.

Section 2. Temporary Moratorium Imposed

In recognition of the expression of the reasoning and intent of the Town Council as set forth herein, no further certificate of occupancies or business tax certificates for such businesses on properties in the Town shall be issued within the corporate limits of the Town.

This moratorium on the issuance of certificates of occupancies or business tax certificates for such businesses on properties in the Town shall remain in effect until such time as the time that the Town adopts a zoning code, land use plan comprehensive plan and future land use map. The moratorium imposed herein shall be for the period commencing November 18, 2009 through May 18, 2010. The Council reserves the right to extend the declared moratorium for additional periods if such extension is supported by substantial competent evidence.

Section 3. Exemptions

This moratorium shall not affect any existing Adult Entertainment or Electronic game arcade certificates of occupancy or business tax certificate pending or issued prior to November 18, 2009.

Section 4. Conflicting Provisions

In the case of direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state, or county law, rule, code regulations, the more restrictive shall apply.

Section 5. Severability

If any subsection, clause, phrase, word or provision of this ordinance is, for any reason, held invalid or unconstitutional by any court of competence jurisdiction, such invalid unconstitutional portion shall be deemed a separate, distinct, and independent provision, in such holding shall not effect the validity of the remaining portions of this ordinance, providing the remaining portions effectuate the purpose and intent of this ordinance.

Section 6. Effective Date

This ordinance shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Grant-Valkaria, Brevard County, Florida, this 18th day of November, 2009.

TOWN OF GRANT-VALKARIA

(signature on file)

Del Yonts, Mayor.

ATTEST:

(signature on file)

TOWN CLERK

1ST READING: October 14, 2009
2ND READING: November 18, 2009