

**Agenda Item
Meeting of 9/7/2023
First Reading**

ORDINANCE 2023-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA, AMENDING CHAPTER 16 "CONSTRUCTION, REHABILITATION AND PROPERTY MAINTENANCE REGULATIONS" TO CREATE A NEW ARTICLE X "MANDATORY INSPECTION OF AGING CONDOMINIUM AND COOPERATIVE BUILDINGS ORDINANCE" CONTAINING NEW SECTIONS 16-340 TO 16-343, INSPECTION, REPORTING, REPAIRS, ENFORCEMENT AND PENALTIES; PROVIDING FOR CONFLICT, SEVERABILITY, AND CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City is authorized and has the power to inspect all buildings, structures, and facilities within its jurisdiction to protect the public's health, safety, and welfare through enforcement of the Florida Building Code; and

WHEREAS, construction work that requires a building permit generally includes electrical, plumbing, mechanical, and gas inspections, which is subject to inspection by the Building Official prior to the closeout of a building permit; and

WHEREAS, during the 2023 Legislative Session, the Florida Legislature amended existing law to further provide for mandatory inspection for maintenance of previously permitted existing buildings to avoid catastrophic building collapses, such as the collapse of the building in the Town of Surfside in 2021 killing 98 people; and

WHEREAS, an advertisement of the public hearing for adoption of the proposed ordinance was published in the Naples Daily News on the _____ day of _____, 2023, as required by Section 166.041, Florida Statutes and City of Naples Code of Ordinances; and

WHEREAS, adoption of the regulations contained in this Ordinance is in compliance with the recent 2023 changes to Florida law and is in the best interest of the City of Naples to promote the health, safety and welfare of the City's residents; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to omitted original text, and strikethrough shall constitute deletions to the original text;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA:

SECTION 1. The above "Whereas" clauses are ratified, confirmed, and incorporated by reference as if set forth herein as the City Council's legislative findings.

SECTION 2. That Article X of Chapter 16 containing Sections 16-340 through 16-344 in the Code of the City of Naples, is hereby created to read as follows:

ARTICLE X. MANDATORY INSPECTION OF AGING CONDOMINIUM AND COOPERATIVE BUILDINGS ORDINANCE

Sec. 16-340. - Title. This Ordinance shall be known and may be cited as the "City of Naples Mandatory Inspection of Aging Condominium and Cooperative Buildings Ordinance."

Sec 16-341. – Definitions. When used in this Code, the following terms shall have the following meanings:

a. "Association" means a residential condominium association under chapter 718, Florida Statutes or a residential cooperative association under chapter 718 or 719, Florida Statutes including any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership.

b. "Building Official" means the individual charged with the responsibility to administer, supervise, direct, enforce, or perform the permitting and inspection of construction, alteration, repair, remodeling, or demolition of structures and the installation of building systems to ensure compliance with the Florida Building Code. This term is synonymous with "building official" as used in the Florida Building Code.

c. "Milestone Inspection" means a structural inspection of a building, including an inspection of load-bearing elements and the primary structural members and primary structural systems as those terms are defined in Section 627.706, Florida Statutes, as that Section may be amended, by an architect licensed under chapter 481, Florida Statutes or engineer licensed under chapter 471, Florida Statutes authorized to practice in Florida for the purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of the building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building. The purpose of the inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code or the fire safety code.

d. "Substantial Structural Deterioration" means substantial structural distress or substantial structural weakness that negatively affects a building's general structural condition and integrity. The term does not include surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes unless the licensed engineer or architect performing the phase one or phase two

inspection determines that such surface imperfections are a sign of substantial structural deterioration.

Sec. 16-342. – Inspection, Reporting and Repairs.

A. Milestone Inspection Required. An Association must have a Milestone Inspection performed for each building that is three stories or more in height by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. If a building reached 30 years of age before July 1, 2022, the building's initial Milestone Inspection must be performed before December 31, 2024. If a building reaches 30 years of age on or after July 1, 2022 and before December 31, 2024, then the building's Milestone Inspection must be performed before December 31, 2025. An Association must arrange for the Milestone Inspection to be performed and is responsible for ensuring compliance with the requirements of this Ordinance. The Association is responsible for all costs associated with the inspection. This subsection does not apply to a single-family, two-family, or three-family dwelling with three or fewer habitable stories above ground.

1. However if the building is subject to environmental conditions such as proximity to salt water as defined in Section 379.101, Florida Statutes, The Building Official may determine that the Association must have a Milestone Inspection performed by December 31 of the year in which the building reaches 25 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter.

2. If the date of issuance for the certificate of occupancy is not available, the date of issuance of the building's certificate of occupancy shall be the date of occupancy evidenced in any record of the Building Official.

B. Notice from Building Official. The Building Official shall provide the Association written notice of the requirement for a Milestone Inspection by certified mail, return-receipt requested once the Building Official has determined that a Milestone Inspection is required.

C. Milestone Inspection. A Milestone Inspection consists of two phases:

1. Phase One. For phase one of the Milestone Inspection, a licensed architect or engineer authorized to practice in this state shall perform a visual examination of habitable and non-habitable areas of a building, including the major structural components of a building, and provide a qualitative assessment of the structural conditions of the building. If the architect or engineer finds no signs of Substantial Structural Deterioration to any building components under visual examination, phase two of the inspection, as provided in paragraph C.2, is not required. An architect or engineer who completes a phase one Milestone Inspection shall prepare and submit an inspection report pursuant to paragraph D.

2. Phase Two. A phase two of the Milestone Inspection must be performed if any Substantial Structural Deterioration is identified during phase one. A phase two inspection may involve destructive or nondestructive testing at the inspector's direction. The inspection may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building. When determining testing locations, the inspector must give preference to locations that are the least disruptive and most easily repairable while still being representative of the structure. An inspector who completes a phase two Milestone Inspection shall prepare and submit an inspection report pursuant to paragraph d.

D. Owner's Report. Upon completion of a phase one or phase two Milestone Inspection, the architect or engineer who performed the inspection must submit a sealed copy of the inspection report with a separate summary of, at minimum, the material findings and recommendations in the inspection report to the condominium association or cooperative association, and to the Building Official of the local government which has jurisdiction, subject to the following requirements.

1. Such report must meet the following criteria:

(a) Bear the seal and signature, or the electronic signature, of the licensed engineer or architect who performed the inspection.

(b) Indicate the manner and type of inspection forming the basis for the inspection report.

(c) Identify any Substantial Structural Deterioration, within a reasonable professional probability based on the scope of the inspection, describe the extent of such deterioration, and identify any recommended repairs for such deterioration.

(d) State whether unsafe or dangerous conditions, as those terms are defined in the Florida Building Code, were observed.

(e) Recommend any remedial or preventive repair for any items that are damaged but are not substantial structural deterioration.

(f) Identify and describe any items requiring further inspection.

2. The phase one report must be submitted to the Building Official within 180 days of receipt of the notice by the owners from the condominium or cooperative association in paragraph B. The phase two report, if required, within 180 days after submitting a phase one inspection report, the architect or engineer performing the phase two inspection, must submit a phase two progress report to the local enforcement agency with a timeline for completion of the phase two inspection. The phase two inspection report must be submitted to the Building Official by the date of the completion in the progress report. All reports must be submitted by the licensed engineer or architect who

performed the inspection by e-mail, United States Postal Service, or commercial delivery service.

3. The Building Official may extend the date by which a building's initial phase one milestone must be completed upon showing of good cause by the owner or owners of the building that the inspection cannot be timely completed if the owner or owners have entered into a contract with an architect or engineer to perform the milestone inspection and the inspection cannot reasonably be completed before the deadline or other circumstance to justify and extension.

4. The Building Official may issue an extension of not more than 60 days to submit the phase two Milestone Inspection report upon a written extension request from an engineer or architect. Such request must contain a signed and sealed statement from the engineer or architect that the building may continue to be occupied while undergoing inspection.

E. Repairs and Modifications.

1. In the event that repairs or modifications are necessary as specified in the phase two Milestone Inspection, the condominium or cooperative association shall have a total of 150 days from the date of submittal of the phase two inspection report to the Building Official to obtain the necessary permits and complete indicated repairs or modifications. All repairs or modifications requiring permits shall be performed in conformance with the Florida Building Code as adopted by City Ordinance and shall follow the timeline provided in the applicable active permit.

2. When any structural repairs or modifications are required, the responsible engineer or architect who has performed the Milestone Inspection shall provide the Building Official with a letter indicating whether the building or structure may continue to be safely occupied while the building or structure is undergoing repairs. The letter shall be valid for no more than 180 days, and a new letter shall be issued if repairs or modifications remain ongoing.

3. Once all applicable repairs are completed, the engineer(s) or architect(s) providing the Milestone Inspection report must provide an amended report indicating that the building or structure is safe for continued use under the present occupancy.

4. All repairs for Substantial Structural Deterioration must commence within 365 days of receipt by the Building Official of the phase two Milestone Inspection report.

5. The Building Official may issue an extension of not more than 60 days to obtain any necessary permits upon a written extension request from an engineer or architect. Such request must contain a signed and sealed statement from the engineer or architect that the building may continue to be occupied while undergoing recertification.

F. Failure to Perform Repairs and Modifications. If an Association fails to submit proof to the Building Official that repairs have been scheduled or have commenced

for Substantial Structural Deterioration identified in a phase two inspection report within the required timeframe in paragraph E, the Building Official must review and determine if the building is unsafe for human occupancy.

Sec 16-343. – Enforcement and Penalties.

If any person, firm or corporation, whether public or private, or other entity fails or refuses to obey or comply with or violates any of the provisions of this Ordinance, such person, firm, corporation or other entity, upon conviction of such offense, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00) or by imprisonment not to exceed Sixty (60) days in the County Jail, or both, in the discretion of the Court. Each violation or non-compliance shall be considered a separate and distinct offense.

Further, each day of continued violation or non-compliance shall be considered as a separate offense.

Nothing herein contained shall prevent or restrict the City from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. Further, nothing in this Section shall be construed to prohibit the City from prosecuting any violation of this Ordinance by means of a Code Enforcement Board or Special Magistrate established pursuant to the authority of Chapter 162, Florida Statutes.

All remedies and penalties provided for in this Section shall be cumulative and independently available to the City and the City shall be authorized to pursue any and all remedies set forth in this Section to the full extent allowed by law.

Section 3. That if any word, phrase, clause, subsection, or section of this Ordinance is for any reason held unconstitutional, invalid, or ineffective, the same shall not affect the validity of any remaining portions of this Ordinance. In such event, the pre-existing word, phrase, clause, subsection, or section, will be revived.

Section 4. That all sections or parts of sections of the Code of Ordinances, City of Naples, and all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict. This Ordinance shall be codified and made a part of the official Code of Ordinances of the City of Naples.

Section 5. That this Ordinance will take effect immediately upon adoption.

APPROVED AT FIRST READING THIS 7TH DAY OF SEPTEMBER 2023.

ADOPTED AT SECOND READING AND DURING A PUBLIC HEARING BY THE CITY COUNCIL ON THIS ____TH DAY OF _____ 2023.

Attest:

Patricia L. Rambosk, City Clerk

Teresa Lee Heitmann, Mayor

Date filed with City Clerk:_____

Approved as to form and sufficiency:

Vose Law Firm, City Attorney