



# Town Council Agenda Report

**SUBJECT:** Ordinance

**CONTACT PERSON/NUMBER:** Monroe D. Kiar, Town Attorney (954) 584-9770

**TITLE OF AGENDA ITEM:** AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE BY ADDING ARTICLE I, ENTITLED "CLEARING OF POTENTIAL WILDLIFE HABITAT", AND SECTION 26-1, ENTITLED "REQUIREMENTS FOR WILDLIFE PROTECTION PRIOR TO LAND CLEARING", CONCERNING ENDANGERED SPECIES, RARE SPECIES, SPECIES OF SPECIAL CONCERN, AND THREATENED SPECIES, AND REQUIRING COMPLIANCE BEFORE PERMIT BEING ISSUED BY THE BUILDING DEPARTMENT; AND PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** Councilmember Judy Paul at the November 15, 2000 Town Council meeting requested the Town Attorney to prepare an ordinance concerning the protection of endangered species, species of special concerns and threatened species of wildlife.

**PREVIOUS ACTIONS:** none

**CONCURRENCES:** The subject ordinance shall be presented to the Planning and Zoning Board at its December 13, 2000 meeting for its review.

**FISCAL IMPACT:** no

**RECOMMENDATION(S):** This matter has been prepared pursuant to the request of Councilmember Judy Paul for presentation at the Town Council for its review and approval.

**Attachment(s):** Ordinance

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF DAVIE, CHAPTER 26, BY ADDING ARTICLE I, ENTITLED "CLEARING OF POTENTIAL WILDLIFE HABITAT", AND SECTION 26-1, ENTITLED "REQUIREMENTS FOR WILDLIFE PROTECTION PRIOR TO LAND CLEARING", CONCERNING ENDANGERED SPECIES, RARE SPECIES, SPECIES OF SPECIAL CONCERN, AND THREATENED SPECIES, AND REQUIRING COMPLIANCE BEFORE PERMIT BEING ISSUED BY THE BUILDING DEPARTMENT; AND PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Davie, Florida, finds and determines it is in the best interests of the Town of Davie that there be a wildlife ordinance because of the concern for the protection of endangered species, rare species, species of special concern and threatened species of wildlife;

WHEREAS, an Ordinance is necessary to accomplish the proper purpose of protecting said wildlife;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, AS FOLLOWS:

SECTION 1. The Code of Ordinances of the Town of Davie is hereby amended to add a wildlife ordinance as set forth in Exhibit "A" attached hereto and made a part hereof.

SECTION 2. If any word, phrase, clause, sentence, or section of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.

SECTION 3. That this ordinance shall be in full force and effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2000

PASSED ON SECOND READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2000

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2000.

**Exhibit "A"**

**ARTICLE I. ~~IN GENERAL~~ CLEARING OF POTENTIAL WILDLIFE HABITAT"**

**Sec. 26-1 Requirements for Wildlife Protection Prior to Land Clearing**

(a) Definitions. For the purposes of this section, the following words shall have the meanings herein described:

Endangered species: Any species of fish or wildlife naturally occurring in Florida, whose prospects of survival are in jeopardy due to modification or loss of habitat or over-utilization for commercial, sporting, scientific or education purposes. Said species shall be those set forth in section 39-27 of the Florida administrative code, as same may be amended form time to time.

Qualified field biologist or ecologist: A firm or individual currently certified to be professionally competent or capable to perform habitat assessments in South Florida by a nationally recognized organization or otherwise acceptable to the Florida Freshwater Fish and Game Commission, Non-Game Wildlife Division. The Development Services Director shall determine the adequacy of the professional qualifications of such persons based upon the foregoing criteria.

Rare species: Those species of fish or wildlife that are so designated by ordinance by the Town Council of the Town from time to time.

Species of special concern: Any species of fish or wildlife that are not currently threatened or endangered but are the subject of special concern because of potential habitat loss or over-utilization for commercial, sporting, scientific or educational purposes and have been designated as such by the Florida Freshwater Fish and Game Commission as set forth in section 39-27.005 of the Florida administrative code, as same may be amended from time to time.

Threatened species: Any species of fish or wildlife naturally occurring in Florida that may not be in immediate danger of extinction, but exists in such small populations as to become endangered if it is subjected to increased stress as a result of further modification or loss of habitat or over-utilization for commercial, sporting, scientific or educational purposes. Said species shall be those set forth in Section 39-27.004 of the Florida administrative code, as same may be amended from time to time.

(b) Applicability. No permit shall be issued by the building department authorizing any land clearing or development of any land within the Town; unless and until the developer has demonstrated by complying with the requirements of this Code that the parcel proposed for land clearing or development does not serve as a habitat for a rare, threatened or endangered species or a species of special concern.

(c) Submittals: A developer may demonstrate that a parcel proposed for land clearing or development does not serve as habitat for rare, threatened or endangered species or a species of special concern by submitting each of the following three items to the Town:

- a. Affidavit by the current chief officer or head of the developer entity that he/she has:
  - i. made diligent search and inquiry of the personnel of the developer entity and of the field biologist and/or ecologist;
  - ii. that the Affiant has been advised or made aware of the following facts and opinions, both favorable and unfavorable, which concern endangered species and/or rare species and/or species of special concern and/or threatened species within the boundaries of the property to be developed and contiguous to the boundaries of the property to be developed, which facts and opinions include, but are not limited to: land cover or other conditions likely to serve or potentially likely to serve as habitat for any rare, threatened or endangered species or species of concern, the adverse or potentially adverse impact or harm or potential harm to any individual rare, threatened or endangered species or species of special concern:

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\_\_\_\_\_;

iii. that this Affidavit contains all facts and opinions that Affiant has been made aware of after diligent search and inquiry, and that all such facts and opinions are contained in the Affidavit, both favorable and unfavorable;

iv. Affiant's job title for the developer entity is: \_\_\_\_\_;

v. that the Affidavit is being given as part of the development process, and is material, and is given under penalty of perjury.

b. Affidavit by the field biologist or ecologist selected by the developer that he/she has:

i. made diligent search and inquiry of the personnel of the developer entity;

ii. that he/she has performed a study which is considered to be a sufficient study within the standards of the profession of the Affiant, which profession is \_\_\_\_\_, in order to come to the opinions given to the Town of Davie concerning the property to be developed and (if applicable) the contiguous property to the property to be developed;

iii. that the Affiant has been advised or made aware of the following facts and opinions, both favorable and unfavorable, which concern endangered species and/or rare species and/or species of special concern and/or threatened species within the boundaries of the property to be developed and contiguous to the boundaries of the property to be developed, which facts and opinions include, but are not limited to: land cover or other conditions likely to serve or potentially likely to serve as habitat for any rare, threatened or endangered species or species of concern, the adverse or potentially adverse impact or harm or potential harm to any individual rare, threatened or endangered species or species of special concern:

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\_\_\_\_\_  
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\_\_\_\_\_;

iv. that this Affidavit contains all facts and opinions that Affiant has been made aware of after diligent search and inquiry, and that all such facts and opinions are contained in the Affidavit, both favorable and unfavorable;

v. that the Affidavit is being given as part of the development process, and is material, and is given under penalty of perjury.

c. through approval of any one (1) of the following submittals:

i. Site visit. If the parcel proposed for land clearing or development is less than one (1) acre in size and is surrounded on at least fifty (50) percent of its boundaries by developed land, is not contiguous to any property which exhibits or contains land cover or other conditions likely to serve as habitat for any rare, threatened or endangered species or species of special concern, which when added to the parcel equals one (1) acre or more, an affidavit that a qualified field biologist or ecologist has visited the site and is of the opinion that the parcel does not serve as habitat for any rare, threatened or endangered species or a species of special concern;

ii. Field assessment. A preliminary field assessment of the parcel proposed for land clearing or development together with an affidavit, prepared and sworn to by a

qualified field biologist or ecologist, stating that a field inspection of the parcel proposed for land clearing or development indicates that there is no reasonable likelihood that the parcel serves as habitat for any rare, threatened or endangered species or species of special concern. For the purpose of this preliminary field assessment the presence of land cover likely to serve as habitat for any such species shall be deemed to be evidence that the parcel proposed for land clearing or development is likely to serve as habitat for such species;

- iii. Site survey. A detailed site survey of the parcel proposed for land clearing or development, prepared and sworn to by a qualified field biologist or ecologist, that demonstrates that the proposed character, location and magnitude of the proposed land clearing or development is such that it will not have an adverse impact or result in any harm to any individual rare, threatened or endangered species or a species of special concern;
- iv. Mitigation plan. A mitigation plan, prepared and sworn to by a qualified field biologist or ecologist, demonstrating that the proposed land clearing or development will not result in the taking of any threatened or endangered species and that the survival of each and every population of any rare, threatened or endangered species or a species of special concern, individuals of which are found on the parcel proposed for land clearing or development, is assured notwithstanding the proposed land clearing or development.

(d) Current information. Affidavits, site surveys, or field assessments must be current to within thirty (30) days of the date of application for permit. Should a permit expire, or should a period of seventy-five (75) days elapse between the date of issuance of the initial permit and any subsequent permit, the developer shall be required to have the affidavit, site survey, or field assessment updated or a new affidavit, site survey or field assessment performed prior to the renewal of the permit, commencement of work or issuance of a new permit.

Secs. ~~26-1~~ 26-2 --26-15 Reserved.