
Planning Division Staff Report – Protected Species (Chapter 23, Article II – Burrowing Owl and Gopher Tortoise Protection) – Ordinance 61-26

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Recommendation: Approval

Request: Amends Chapter 23, Protected Species, Article II, Burrowing Owl and Gopher Tortoise Protection, Section 23-12 (Development Standards) and Section 23-15 (Penalties), to replace the requirement for a physical affidavit with an electronic acknowledgement of the same information regarding the presence of burrowing owls, gopher tortoises, or burrows, and to update the penalty provisions. This is a companion ordinance to Ordinance 60-26, which amends the Comprehensive Plan to effect the same change from affidavit to acknowledgement.

Positive aspects of the amendment	• Simplifies the permitting process by eliminating the requirement for a physical (paper) affidavit and allowing electronic acknowledgement of the same required information. • Improves operational efficiencies for both applicants and City staff by enabling electronic submission and review consistent with modern permitting practices. • Reduces costs and delays associated with preparing, notarizing, scanning, and filing physical affidavits while retaining the substantive disclosure obligation. • Does not alter or eliminate the requirement for a visual survey of the property for burrowing owl and gopher tortoise burrows, nor the obligation to contact the Florida Fish and Wildlife Conservation Commission (Commission) when burrows are present. • Updates penalty provisions to a fine not to exceed \$3,000 (removing the prior \$500 fine and imprisonment option), providing a clearer, more contemporary enforcement tool.
Negative aspects of the amendment	• None identified. The visual survey requirement, environmental survey requirements for certain application types, City database review, and the obligation to indicate whether a take permit is being sought from the Commission all remain in place. The change is purely procedural (form of the required disclosure) and does not weaken substantive protections for protected species.
Mitigating factors	• Existing provisions continue to require a visual survey prior to submission of development applications, environmental surveys for PDP, PUD, or site plan applications, and review against the City database for burrowing owls and gopher tortoises. • Applicants must still acknowledge the presence of protected species or burrows and indicate whether a take permit is being sought from the Commission. • Penalty and restoration provisions remain available to address violations, with the fine amount updated to reflect a stronger deterrent.

BACKGROUND

Chapter 23, Article II of the City of Cape Coral Code of Ordinances regulates the protection of burrowing owls and gopher tortoises. Section 23-12 establishes development standards that require applicants to conduct a visual survey for burrows, to submit environmental survey information for certain application types, and—when the City database or required surveys indicate the presence of burrowing owls, gopher tortoises, or burrows—to submit documentation identifying that presence and indicating whether a take permit is being sought from the Florida Fish and Wildlife Conservation Commission (the Commission). Section 23-15 establishes penalties for violations of the article.

Under the current code, the required documentation is an affidavit. The physical-affidavit requirement has been identified as an unnecessary procedural burden in the modern permitting environment. The same substantive information can be provided through an electronic acknowledgement, which is consistent with the City’s broader effort to streamline permitting processes. The visual survey obligation and all other substantive protection standards remain unchanged.

The proposed amendment therefore replaces the word “affidavit” with “acknowledgement” in Section 23-12(b), thereby allowing electronic acknowledgement of the required information. Concurrently, Section 23-15 is amended to increase the maximum fine from \$500 to \$3,000 and to remove the option of imprisonment, modernizing the penalty structure while retaining restoration and injunction remedies.

This ordinance is a companion to Ordinance 60-26, which amends the Comprehensive Plan to replace the affidavit reference with acknowledgement language, ensuring consistency between the Comprehensive Plan and the implementing Code provisions.

PURPOSE OF THE AMENDMENT

The purpose of this amendment is to simplify the permitting process and improve administrative efficiencies by replacing the physical-affidavit requirement with an electronic acknowledgement of the same information regarding the presence of burrowing owls, gopher tortoises, or burrows and whether a take permit is being sought from the Commission. Because the substantive disclosure obligation remains identical, the change is purely procedural and aligns the Code with contemporary electronic permitting practices. Removal of the physical-affidavit requirement will reduce applicant costs and processing steps while preserving all protections for protected species. The penalty update provides a clearer, more contemporary enforcement mechanism.

ANALYSIS OF PROPOSED CHANGES

The proposed Code amendment provides several benefits that are summarized below.

- Streamlines permitting. Replacement of the physical affidavit with an electronic acknowledgement removes an extraneous paper-based step from the permit process while retaining the identical disclosure content.
- Reduces applicant cost and delay. Applicants will no longer be required to prepare, notarize, and submit a physical affidavit solely to satisfy Section 23-12(b); the same information may be acknowledged electronically.
- Improves staff efficiency. City staff will be able to receive and review the required acknowledgement through electronic permitting systems, consistent with the City’s broader streamlining initiatives.
- Preserves substantive protections. All existing requirements for visual surveys, environmental surveys (where applicable), City database review, and indication of whether a take permit is being sought remain fully in place. The amendment does not alter or weaken any standard that protects burrowing owls or gopher tortoises.
- Companion consistency. The amendment implements the parallel Comprehensive Plan change advanced in Ordinance 60-26, ensuring the Plan and the Code use consistent terminology (acknowledgement rather than affidavit).
- Updated penalties. Increasing the maximum fine to \$3,000 and removing the imprisonment option modernizes the enforcement framework while retaining restoration and injunction remedies.

COMPREHENSIVE PLAN ANALYSIS

The amendment is consistent with the goals and policies of the Comprehensive Plan that emphasize efficient administration of land development regulations and protection of natural resources, including protected species, while supporting orderly private development. It is the implementing companion to Ordinance 60-26, which amends the Comprehensive Plan to replace the affidavit reference with acknowledgement language.

Conservation and Coastal Management Element

The Comprehensive Plan’s conservation policies call for protection of burrowing owls and gopher tortoises through survey, disclosure, and coordination with the Commission.

Staff analysis: The proposed amendment does not alter any substantive survey, disclosure, or coordination requirement. It merely changes the form of the required disclosure from a physical affidavit

to an electronic acknowledgement of the same information. The amendment therefore continues to support protection of protected species while improving administrative efficiency.

The amendment is also consistent with the broader Comprehensive Plan objective of providing clear, efficient, and predictable regulations that facilitate appropriate private investment while safeguarding natural resources and the public interest.

RATIONALE FOR CODE TEXT AMENDMENTS

This Code amendment is advanced as part of the City's series of land-development and related code updates intended to streamline the permitting process. The change clarifies that the required disclosure may be made by electronic acknowledgement rather than a physical affidavit, corrects an outdated procedural requirement, and aligns the Code with the companion Comprehensive Plan amendment (Ordinance 60-26).

1. The amendment clarifies the intent of the Code.

Staff analysis. The intent of Section 23-12 is to ensure that applicants identify the presence of burrowing owls, gopher tortoises, or burrows and indicate whether a take permit is being sought from the Commission, so that the City and the Commission can apply appropriate management guidelines. Prescribing a physical affidavit as the exclusive form of that disclosure is not necessary to achieve that intent. Replacing "affidavit" with "acknowledgement" clarifies that the same information may be provided electronically while the substantive obligation remains unchanged.

2. The amendment corrects an outdated procedural requirement in the Code.

Staff analysis. Inclusion of a mandatory physical-affidavit requirement created an administrative redundancy and process burden in an environment in which electronic permitting is standard. Because the developer remains responsible for conducting the visual survey and disclosing the presence of protected species or burrows, and because the acknowledgement carries the same informational content, the separate physical-affidavit mandate is unnecessary.

MANNER OF INITIATION

This amendment is a City-initiated request advanced by the Development Services Department to improve permitting efficiency and eliminate a redundant paper-based procedural requirement for disclosure of protected-species information, consistent with the companion Comprehensive Plan amendment in Ordinance 60-26.

REVIEW CRITERIA FOR PROPOSED CODE TEXT AMENDMENTS

The following criteria, adapted from the City's standard review framework for text amendments, are evaluated below.

1. Whether the proposed text amendment is consistent with the goals, policies, and future land use designations of the City Comprehensive Plan.

Staff analysis. The amendment is consistent with Comprehensive Plan policies that call for efficient regulations and for protection of burrowing owls and gopher tortoises. It implements the parallel Comprehensive Plan change advanced in Ordinance 60-26.

2. The amendment results in compatible land uses within a zoning designation.

Staff analysis. The amendment does not add, remove, or reclassify any land use. It solely changes the form of a required disclosure applicable to development applications that already implicate protected-species standards. Compatibility of uses is unaffected.

3. The amendment protects the health, safety, and welfare of the community.

Staff analysis. Health, safety, and welfare—including protection of burrowing owls and gopher tortoises—remain protected by the retained substantive standards of Section 23-12, including the visual survey

requirement, environmental survey requirements for certain application types, City database review, and the obligation to acknowledge presence of protected species or burrows and to indicate whether a take permit is being sought. Penalty, restoration, and injunction remedies remain available under Section 23-15. Replacement of the physical affidavit with an electronic acknowledgement does not diminish these protections.

4. Other factors deemed appropriate by the Planning and Zoning Commission and City Council.

Staff analysis. The amendment advances the City's interest in efficient customer service and responsible use of staff resources. It reduces unnecessary process steps and costs for applicants while preserving the City's substantive protections for burrowing owls and gopher tortoises. It is part of a coordinated series of streamlining amendments and is the Code companion to Ordinance 60-26.

RECOMMENDATION

The proposed amendment replaces the physical-affidavit requirement in Section 23-12(b) with an electronic acknowledgement of the same information regarding the presence of burrowing owls, gopher tortoises, or burrows and whether a take permit is being sought from the Commission. It also updates the penalty provision in Section 23-15 to a fine not to exceed \$3,000 and removes the imprisonment option. The visual survey and all other substantive protection standards remain fully in force. The change is procedural only and is the companion to the Comprehensive Plan amendment in Ordinance 60-26. Retention of a physical-affidavit mandate adds administrative burden and cost without commensurate public benefit. The proposed amendment is consistent with the Comprehensive Plan and with the City's streamlining objectives. Staff recommends approval of the amendment to Sections 23-12 and 23-15.

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