

ORDINANCE 16-04

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, RELATING TO RESIDENTIAL TOURIST (RT) ZONING DISTRICT CONDITIONAL USES; MAKING FINDINGS; REVISING SECTIONS 30-161 AND 30-164, CITY CODE, ADDING AN ADDITIONAL CONDITIONAL USE; REVISING PURPOSE AND INTENT OF THE RT ZONING DISTRICT; PROVIDING CONDITIONAL USE STANDARDS; PROVIDING FOR SEVERABILITY/INTERPRETATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the intent and purpose of the Residential Tourist (RT) zoning district as provided in Section 30-161, Code of Ordinances of the City of Marco Island, is as follows:

The purpose and intent of the RT zoning district is to provide lands for tourist accommodations and support facilities, and multiple-family uses. The RT zoning district corresponds with and implements the residential tourist designated area on the future land use map of the city comprehensive plan;

WHEREAS, the RT zoning district generally envisions commercial uses that are "support facilities" for other permitted and conditional uses, and if any commercial uses are permitted or allowed as conditional uses, they should be limited so as not to disrupt the character of the RT zoning district;

WHEREAS, this Ordinance is a pilot program to ascertain the acceptability of certain uses in the RT zoning district that are compatible with the character of the RT zoning district and surrounding areas;

WHEREAS, the manner in which these uses may be permitted in the RT zoning district is through the conditional use proceed in Section 30-64, Code of Ordinances of the City of Marco Island, and through individualized analysis and requirements for the various limited commercial uses;

WHEREAS, a conditional use is defined by Section 30-10, Code of Ordinances of the City of Marco Island, as "a use that would not be appropriate generally or without restriction throughout a zoning district, but which if controlled as to number, area, location, or relation to the neighborhood would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or the general welfare. Such uses may be permissible in a zoning classification or a district as a conditional use if specific provision for such a conditional use is made in this land development code"; and

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WHEREAS, consistent with the concept of allowing limited uses through the conditional use process, this Ordinance provides for the permitting as a conditional uses;

WHEREAS, certain limited commercials as defined by the North American Industry Classification System (NAICS) (1997 ed.) are envisioned to be permitted as conditional uses pursuant to this process, including: Beauty Salons (NAICS Group 812112); Offices of Chiropractors (NAICS Group 621310); Nail Salons (NAICS Group 812113); Offices of Real Estate Agents and Brokers (NAICS Group 531210); Offices of Dentists (NAICS Group 621210); and Offices of Physical, Occupational and Speech Therapists, and Audiologists (NAICS Group 621340);

WHEREAS, while other limited commercial uses could be allowed as conditional uses, the purpose of this pilot program Ordinance is to test the acceptability of conditional use review in the RT zoning district;

WHEREAS, NAICS defines a beauty salon (NAICS Group 812112) as follows:

The U.S. industry comprises establishments (except those known as barber shops or men's hair stylist shops) primarily engaged in one or more of the following: (1) cutting, trimming, shampooing, coloring, waving, or styling hair; (2) providing facials; and (3) applying makeup (except permanent makeup).

WHEREAS, NAICS defines an Office of Chiropractors (NAICS Group 621310) as follows:

This industry comprises establishments of health practitioners having the degree of D.C. (Doctor of Chiropractic) primarily engaged in the independent practice of chiropractic. These practitioners provide diagnostic and therapeutic treatment of neuromusculoskeletal and related disorders through the manipulation and adjustment of the spinal column and extremities, and operate private or group practices in their own offices (*e.g.*, centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.

WHEREAS, NAICS defines a nail salon (NAICS Group 812113) as follows:

This U.S. industry comprises establishments primarily engaged in providing nail care services, such as manicures, pedicures, and nail extensions.

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WHEREAS, NAICS defines Offices of Real Estate Agents and Brokers (NAICS Group 531210) as follows:

This industry comprises establishments primarily engaged in acting as agents and/or brokers in one or more of the following: (1) selling real estate for others; (2) buying real estate for others; and (3) renting real estate for others.

WHEREAS, NAICS defines Offices of Dentists (NAICS Group 621210) as follows:

This industry comprises establishments of health practitioners having the degree of D.M.D. (Doctor of Dental Medicine), D.D.S. (Doctor of Dental Surgery), or D.D.Sc. (Doctor of Dental Science) primarily engaged in the independent practice of general or specialized dentistry or dental surgery. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. They can provide either comprehensive preventive, cosmetic, or emergency care, or specialize in a single field of dentistry.

WHEREAS, NAICS defines Offices of Physical, Occupational and Speech Therapists, and Audiologists (NAICS Group 621340) as follows:

This industry comprises establishments of independent health practitioners primarily engaged in one of the following: (1) providing physical therapy services to patients who have impairments, functional limitations, disabilities, or changes in physical functions and health status resulting from injury, disease or other causes, or who require prevention, wellness or fitness services; (2) planning and administering educational, recreational, and social activities designed to help patients or individuals with disabilities, regain physical or mental functioning or to adapt to their disabilities; and (3) diagnosing and treating speech, language, or hearing problems. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.

WHEREAS, Objective 1.1 of the Future Land Use ("FLU") Element of the Comprehensive Plan states:

Objective 1.1: New, revised, or redeveloped uses of land shall be consistent with the designations shown on the Future Land Use

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Map (FLUM) presented in Exhibit 2.1. The Future Land Use Map and companion Future Land Use designations are hereby adopted as amended (2008) and shall be binding on all development orders approved by the City of Marco Island. The Future Land Use Map is a visual representation of land use designations that are planned to reasonably occur within the prescribed short and long range planning periods, between 2008 and 2013, and between 2013 and 2018, respectively;

WHEREAS, Section 30-161, Code of Ordinances of the City of Marco Island, provides the purpose and intent of the Residential Tourist (RT) zoning district;

WHEREAS, Section 30-161 states that “[T]he RT district corresponds with and implements the residential tourist designated area on the future land use map of the city comprehensive plan”;

WHEREAS, the code should state that the RT district implements the “resort residential” area designated on the future land use map series, because there is no “residential tourist designated area” on the Comprehensive Plan Future Land Use Map series;

WHEREAS, the area on the Future Land Use Map series adopted in Objective 1.1 of the Future Land Use Element depicts areas designated “Resort Residential”, and the Data & Analysis, which is not a part of the Comprehensive Plan but which was adopted simultaneously with the Comprehensive Plan, is a document which assists in interpreting the Comprehensive Plan;

WHEREAS, Section I.F.2. of the Data & Analysis, which discusses future land use categories, states:

Resort Residential: Residential dwellings shall be limited to multifamily structures. Hotels and motels, timeshare facilities, and family care facilities are permitted. *Non-residential uses permitted within this district are limited to those uses that are compatible and/or support the residential resort character of the area.* The non-residential uses contemplated include: parks, open space, recreational uses, *and other related essential services as defined in the LDC.* A density of less than or equal to sixteen (16) dwelling units per gross acre are permitted, and a density less than or equal to twenty-six (26) hotel/motel or timeshare units per gross acre is permitted.

(emphasis supplied);

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WHEREAS, the Planning Board and the City Council find that limited commercial uses that are compatible with the residential resort character of the area and that are essential services as provided in the Land Development Code (“LDC”) are consistent with the future land use map series;

WHEREAS, Beauty Salons (NAICS Group 812112); Offices of Chiropractors (NAICS Group 621310); Nail Salons (NAICS Group 812113); Offices of Real Estate Agents and Brokers (NAICS Group 531210); Offices of Dentists (NAICS Group 621210); and Offices of Physical, Occupational and Speech Therapists, and Audiologists (NAICS Group 621340), could all be compatible with the residential resort character of the area, if defined in the LDC as an essential service and if each limited commercial use is found to be compatible with the residential resort character of the area and with adjacent uses;

WHEREAS, careful analysis of compatibility is the centerpiece of the conditional use permitting process as explicated in Section 30-64(3)d., Code of Ordinances of the City of Marco Island;

WHEREAS, this Ordinance is consistent with Objective 1.1 of the FLU Element, because this Ordinance requires the each new individualized limited conditional use to be approved only if consistent with the Comprehensive Plan and if compatible with the surrounding area and the Resort Residential character of the area;

WHEREAS, Policy 1.1.3 of the Future Land Use (“FLU”) Element of the Comprehensive Plan states:

Policy 1.11.1: The City will resist the rezoning of non-commercially zoned land that would extend commercial zoning outside areas delineated for commercial land uses per the Future Land Use Map. No request shall be approved if inconsistent with the Future Land Use Map.

Measurement: Requests for rezoning from non-commercial to commercial review annually.

WHEREAS, this Ordinance is consistent with Policy 1.11.1 of the FLU Element, because this Ordinance requires the continued use of lands in a manner consistent with the Comprehensive Plan and requires an individualized, case-by-case “compatibility” determination with regard to the use permitted by the conditional use review process provided for by this Ordinance in the RT zoning district;

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WHEREAS, Objective 1.7 of the Future Land Use ("FLU") Element of the Comprehensive Plan states:

Objective 1.7: The City will enforce existing and future Land Development regulations to eliminate and/or reduce uses of land inconsistent with the Future Land Use Map and the community's character.

WHEREAS, this Ordinance is consistent with Objective 1.7 of the FLU Element, because this Ordinance requires the continued use of lands in a manner consistent with the Comprehensive Plan;

WHEREAS, as required by Section 30-62(8)b., Code of Ordinances of the City of Marco Island, Florida, the Planning Board, also sitting as the City's Local Planning Agency, has also found that this Ordinance is consistent with the City of Marco Island Comprehensive Plan and, in particular, Future Land Use Element Objectives 1.1 and 1.7 and Policy 1.11.1;

WHEREAS, the Planning Board has found that this Ordinance will promote the public health, safety, and welfare by implementing a limited program of potential commercial uses protecting the character of the RT zoning district;

WHEREAS, it is the intent of the Planning Board and the City Council to further study the concept of allowing certain uses as conditional uses in the RT zoning district during the pending revision of the Land Development Code; and

WHEREAS, the City Council adopts the findings of the Planning Board, also sitting as the City's Local Planning Agency.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA¹ :

SECTION 1. Recitals. Each and all of the foregoing recitals be and the same are hereby incorporated in this Ordinance as if specifically set forth herein.

SECTION 2. Amendment and Adoption. That Section 30-161 of the Code of Ordinance, Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-161. - Intent and purpose.

The purpose and intent of the residential tourist district (RT) is to provide lands for tourist accommodations and support facilities, ~~and multiple-family uses, and limited commercial uses~~

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when restricted as to size and intensity of use and when compatible and supportive of the resort residential character of the area. The RT district corresponds with and implements the resort residential tourist designated area on the future land use map series of the city comprehensive plan.

SECTION 3. Amendment and Adoption. That Section 30-164 of the Code of Ordinance, Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-164. - Conditional uses.

The following uses are permitted as conditional uses in the residential tourist district (RT), subject to the standards and procedures established in Section 30-64 of the land development code, other applicable land development code provisions, and the North American Industry Classification System (NAICS) (1997 ed.):

- (1) Churches and other places of worship.
- (2) Marinas, subject to the land development code.
- (3) Noncommercial boat launching facilities, subject to the applicable review criteria set forth in the land development code.
- (4) Group care facilities (category I and II); care units; nursing homes; assisted living facilities, and continuing care retirement communities pursuant to the land development code.
- (5) Private clubs.
- (6) Yacht clubs.
- (7) Permitted uses not to exceed 125 feet in height.
- (8) Hotel use for the redevelopment of properties located along the west side of Collier Boulevard between the northern property boundary of the Sand Castle II Condominium and the southern boundary of the Marriott PUD which have an existing principal use of hotel as of the date of this article. In addition to the criteria for review of conditional use petitions set forth in subsection 30-64 (3) of this section, the following supplemental review criteria shall be considered for such use and each petition shall be subject to the following standards:
 - a. The maximum building height for principal structures shall be measured from the base flood elevation to the mid-point of the roof and shall not exceed 150 feet.
 - b. Minimum yard requirements:

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1. Front yard: One-half the building height as measured from each exterior wall with a minimum of 50 feet.
 2. Side yard: Fifty feet.
 3. Rear yard: One-half the building height as measured from each exterior wall with a minimum of 30 feet.
- c. Distance between structures: Between any two principal buildings on the same parcel of land, there shall be provided a distance equal to at least 30 feet. For accessory structure separations, see section 30-1001.
 - d. The floor area requirements shall not exceed 1,300 square feet except that 20 percent of the units may be utilized for suites greater than 1,300 square feet.
 - e. Architectural renderings and a site development plan shall be provided revealing the location and size of all buildings, units, recreational facilities, restaurants, meeting rooms, lobby, hotel guest accommodations, and open space.
 - f. Maximum lot coverage may exceed 76 percent provided redevelopment is consistent with policy 1.1.2.5 of the comprehensive plan.
 - g. Valet and tandem parking may be considered onsite, provided a parking analysis and traffic circulation plan is reviewed by staff.
 - h. For purposes of this conditional use timeshare estate facilities which allow for transient occupancy consistent with the following criteria shall be deemed a hotel and may be constructed at a density of 26 units per acre consistent with the Marco Island Comprehensive Plan:
 1. Daily occupancy;
 2. Units are available for rent by the general public if not used by owners or members of an internal exchange organization;
 3. Units include complete living, sleeping, cooking, and sanitation facilities; and
 4. At least seven percent of room nights in the facility will be available for rental to the general public over the course of a year.
 - i. Upon providing public beach access in a manner consistent with the conditions described herein, an applicant may be granted an increase from the 26-unit per acre maximum density of up to three units per acre pursuant to policy 1.1.2.3 of the comprehensive plan provided the following requirements are met: a minimum 20-foot wide access way is provided by easement or dedication to the city adjacent to the northern or southern property line for beach access; said access easement or dedication provides access for the general public; all cost associated with improving the beach access shall be the responsibility of the developer; improvement plans shall be reviewed by the city as a site development plan; the public beach access is provided from Collier Boulevard right-of-way to the beach; and the public beach access is completed prior to issuance of a certificate of occupancy permit.
 - j. The redevelopment project shall include at least 80 percent of the number of hotel units provided onsite prior to the redevelopment project.

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- (9) Any other use to be consistent with the City's Comprehensive Plan and is approved pursuant to the conditional use process set forth in Section 30-64 of this Code.

SECTION 4. Severability/Interpretation.

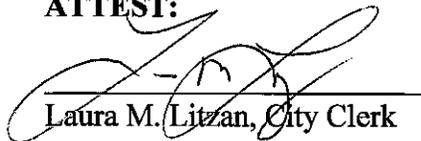
(a) If any term, section, clause, sentence or phrase of this Ordinance is for any reason held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the other or remaining terms, sections, clauses, sentences, or phrases portions of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

(b) In interpreting this Ordinance, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text. Asterisks (* * * *) indicate a deletion from the Ordinance of text, which continues to exist in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

SECTION 5. Effective Date. This Ordinance shall be effective immediately upon adoption by the City Council on second reading.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 1st day of August 2016.

ATTEST:



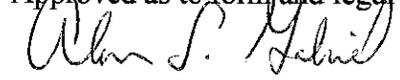
Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

Robert C. Brown, Chairman

Approved as to form and legal sufficiency:



Alan L. Gabriel, City Attorney

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