

CITY OF MARCO ISLAND

ORDINANCE 05- 12

AN ORDINANCE TO AMEND CHAPTER 30, ARTICLE XVI (TEMPORARY USE PERMITS) OF THE CITY OF MARCO ISLAND CODE OF ORDINANCES BY AMENDING SECTION 30-794 (MODEL HOMES AND MODEL SALES CENTER PERMIT); AMENDING SECTION 30-795 (TEMPORARY SALES); AND AMENDING SECTION 30-796 (COMMUNITY AND SPECIAL EVENTS); PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Chapter 30, Article XVI, Section 30-794 of the Marco Island Code of Ordinances contains construction, off-site/on-site parking and office standards for the temporary use of model homes, and model home sales centers located in residential and PUD zoning districts; and

WHEREAS, Chapter 30, Article XVI, Section 30-795 of the Marco Island Code of Ordinances identifies the various types of temporary sales uses, contains parking requirements and standards for building/shopping centers used during temporary sales events; and

WHEREAS, Chapter 30, Article XVI, Section 30-796 of the Marco Island Code of Ordinances identifies the various types of community and special event uses, contains parking requirements and standards for building/shopping centers used during these types of events; and

WHEREAS, the Marco Island Planning Board, as the City of Marco Island Local Planning Agency, has conducted all required public hearings related to this Ordinance, and has forwarded this Ordinance to City Council with a recommendation of approval.

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

SECTION ONE:

That section 30-794 of the Code of Ordinances is hereby amended to read as follows, with underlining indicating new text additions and strikeouts indicating deletions:

Sec. 30-794. Model homes and model sales center permit.

Model homes and model sales centers shall be of a temporary nature and may be allowed in any residential zoning district or residential component of a PUD by the issuance of a temporary use permit. Model homes are intended to facilitate the sale of the model design, or of

products similar in design to the model. Model homes located within residential zoning districts, or within a residential component of a PUD shall be restricted to the promotion of a product or products permitted within the residential zoning district or PUD in which the model is located and further subject to the following:

- (1) Use of a model home shall require a temporary use permit. Model homes shall only be permitted for dwellings which have not been previously used as a residence.
- (2) A model home or model sales center is not intended to allow the full scope of real estate activities and shall be restricted primarily to the sale and marketing of the model, or products similar to the model.
- ~~(3) Model homes may be "wet" or "dry". Model homes permitted as "dry" models shall be limited to a conditional certificate of occupancy allowing the use of the structure as a model only provided all required infrastructure is in place to service the unit. Model homes permitted as "wet models" shall not be occupied until such time as all required infrastructure is available to service the unit and a permanent certificate of occupancy has been issued.~~
- (3) When a Model home is completed, a "Temporary Certificate of Occupancy" will be issued to the owner of the model home to remain open for a period of 24 months. Extensions beyond this 24-month Temporary Certificate of Occupancy may be granted for the structure in the event an extension is approved for the model's temporary use permit by the Marco Island Planning Board, pursuant to section (6).
- (4) A temporary use permit for a model home or model sales center shall be issued initially for a period of 24 months. Extensions beyond the initial two-year permit may be granted in accordance with this article.
- (5) All temporary use requests for model homes shall require the submission of a conceptual plan which demonstrates that provisions will be made to adequately address the following:
 - a. Off-Street Parking.
 1. Adjacent vacant single-family lot(s) maybe used for model home parking. The applicant or the applicant's designee must submit the following to the Community Development Director or his designee in order to receive approval for off-street parking:
 - i. Affidavit of authorization from property owner(s).
 - ii. Site Plan for the parking area.
 - iii. Plan on how the parking lot surface will be returned to its natural environment grade and ground cover.
 - iv. \$5,000 refundable performance bond in the event to insure that the adjacent lot, which contains the temporary parking surface facility, is not returned to its natural grade and ground cover environment.

- v. Canopy trees shall be provided every 30 feet around the perimeter of the site and A hedge row of at least 24 36 inches in height at the time of planting and attaining a minimum of three (3) feet in one year shall be planted and maintained around the vehicular parking area.
 - vi. The parking area shall be stabilized and a dustless surface utilized on top. Mulch or organic covers shall not be used as a dustless surface.
- b. Landscaping- On-Site Parking
- 1. Four (4) vehicular parking spaces shall be provided on the model site. A parking space may be provided in the garage. A handicap parking space is required and shall count as one of the four (4) required spaces. A hedge row of at least 24 36 inches in height at the time of planting and attaining a minimum of three (3) feet height in one year shall be planted and maintained around the on-site vehicular parking area.
- c. Handicapped access standards- (providing including but not limited to access per F.B.C. 11-4.3 and handrail, grab bar requirements per F.B.C. 11-4.26.)
- d. ~~FEMA standards (floodplain management ordinance).~~
- e. d. Signage standards.
- f. e. Garage-Office
- 1. For any garage being used as an office for a model home the applicant must submit the following:
 - i. Plan of garage-office facility, including false walls, temporary electrical and/or plumbing.
 - ii. Plan showing how garage will be returned to its original use.
 - iii. \$10,000 refundable performance bond in the event to ensure that the garage is not converted back to the FEMA standards requirements for normal single-family home usage.
- (6) Extension of a temporary use permit issued for a model home or for a model sales center.
- a. The extension of a temporary use permit for a model home or model sales center may be granted for a maximum of three years and shall require public notice and a hearing by the planning board. A request for an extension and scheduling on the planning board agenda shall be made within 30 days of prior to the expiration of the initial temporary use permit issued for a model home or model sales center. Only one such extension may be granted and any additional requests for an extension shall be granted only in accordance with this article. Notice of the public hearing shall be prominently posted on the property for which the extension is sought. Notice of the public hearing shall be advertised in a newspaper of general circulation at least once 15 days prior to the hearing. Notice of the time and place of the public hearing shall be sent at least 15 days in

advance of the hearing by mail to all owners of property within 300 feet of the subject property. The planning board's action shall be based upon consideration of the following factors:

1. The number of existing model homes or model sales centers within the immediate area of the extension request.
 2. The classification of the right-of-way(s) upon which the model home or model sales center fronts.
 3. The character or makeup of the area surrounding the model home or model sales center.
 4. The potential effect of the model home or model sales center on adjacent and surrounding properties.
 5. The existence of complaints relating to the use of the model home or model sales center which is the subject to the extension request.
 6. A demonstration of good cause from the applicant why the extension request is needed.
- b. When deemed necessary and based upon review of the above criteria, the planning board may impose such conditions upon the approval of the extension request it determines necessary to accomplish the purpose of this section and protect the safety and welfare of the public. Such conditions may include, but shall not be limited to, restrictions to the hour of operation, parking, signage, screening and buffering, and the length of the extension.
- c. Extensions of temporary use permits for model homes or model sales centers in excess of three years shall require submittal and approval of a conditional use permit in accordance with the land development code.

SECTION TWO:

That section 30-795 of the Code of Ordinances is hereby amended to read as follows, with underlining indicating new text additions and strikeouts indicating deletions:

Sec. 30-795. Temporary sales.

- (a) **Temporary sales.** The community development director, or his designee, may grant a temporary sales permit in the case of temporary sales, such as grand openings, going out of business sales, special promotional sales, or other similar sales ~~uses~~ (exclusive of garage sales, lawn sales and similar private home sales), subject to the following:
- (1) Non-renewable permits of up to two weeks' duration, such that during any calendar year the sum total of all permits for such event does not exceed 28 days. Temporary permits may be allowed for up to an additional four weeks when approved by the city council for good cause shown. Such special approval shall be subject to stipulations or additional constraints deemed necessary and appropriate to the request. Such stipulations or constraints deemed necessary by the city council shall be noted as conditions to the issuance of said permits, and the permittee shall be required to sign a notarized agreement to said stipulations or constraints.

- (2) Temporary sales permits may, in support of the use being permitted, include the placement of one sign, a maximum of 32 square feet, or two such signs for properties containing more than one street frontage, as well as merchandise, temporary structures and equipment. All temporary structures and equipment, merchandise, or placement and parking of vehicles in conjunction with the temporary sale shall conform to the minimum yard requirements of the district in which it is located. If the temporary ~~use~~ sales event is not discontinued upon expiration of the permit, it shall be deemed a violation of the land development code and shall be subject to the penalties therein.
- (3) Temporary sales permits may be issued to the owner(s) of a commercial establishment, or to the tenants(s) operating within a commercial establishment with the approval of the property owner or property manager, provided said tenants provides documentation of a current annual lease with the property owner. Uses permitted by an approved temporary sales permit shall be operated by the property owner or tenant(s), except as provided for in this article.
- (4) Temporary sales permits shall be restricted to those zoning districts in which the sale of the items would normally be permitted. Further, the sales activity permitted by the temporary use permit shall be related to the principal commercial activities in operation on the subject property except as provided for in this article. The issuance of a temporary use permit shall not be issued for undeveloped properties.
- (5) The community development director, or his designee, may issue temporary ~~sales use~~ permits for satellite locations subject to the applicable restrictions set forth in this article, provided the applicant currently operates a business from a permanent approved commercial location within the city. Additionally, the purpose of the temporary sale shall be the same as the principal purpose of the existing commercial business of the applicant.
- (6) The community development director may, in determining a specific benefit to the public, grant a temporary ~~use~~ sales event permit to facilitate the sale of an item or items not generally available within the community, subject to the applicable restrictions set forth in this section.
- (7) Prior to the issuance of a temporary sales permit, a complete application, along with a conceptual site plan, shall be submitted to the community development director, or his designee. The conceptual plan, when reviewed in conjunction with the application, shall be of the appropriate scale and detail to adequately describe and define:
 - a. Vehicular and pedestrian traffic safety measures.
 - b. Additional parking requirements. A maximum of ten percent of the parking required by article V may be occupied or otherwise rendered unusable by the placement of temporary structures, equipment, signs and merchandise. The minimum required number of handicap spaces pursuant to article V shall remain available for usage.
 - c. Limited activity hours.
 - d. Watchmen, fencing and lighting.

- e. Fire protection measures.
- f. Sanitary facilities.
- g. If required, a financial guarantee assuring compliance with the conditions of the permit.

(8) In making such approval, the community development director, or his designee, may stipulate requirements or restrictions as deemed appropriate.

(9) Each calendar event shall be subject to the applicable permit fee.

(b) **Garage sales.** Garage and yard sales are permitted in residential zoning districts as follows:

(1) A two-day permit may be issued for a garage sale, lawn sale, or similar private home sales every 12 months.

a. The permitted garage/yard sale shall be valid for no more than two days.

b. The permit shall authorize the use of a temporary sign not to exceed 1.5 square feet located on the permitted property. ~~No signage shall be placed off-site or upon the public right-of-way.~~ One additional off-site directional sign is allowed during a garage sale. Said off-site directional sign shall not exceed 1.5 square feet, and shall be placed at the intersection of the arterial or collector street providing access to the street on which the garage sale is being conducted.

c. Items offered for sale shall be generally recognized as household goods and wares. Pre-packaged, bulk items, vehicles, construction materials (i.e., doors, windows, fixtures) shall not be displayed or offered for sale.

(c) **Estate and demolition sales.** Estate and demolition sales are permitted in residential zoning districts as follows:

(1) A special event permit application must be submitted at least seven days in advance of the estate/demolition sale.

(2) The applicant is responsible for notifying the city police department of the sale.

(3) The permit shall be valid for no more than two days per 12 month period.

(4) The permit shall authorize the use of a temporary sign located on the permitted property. No signage shall be placed off-site or upon the public right-of-way.

(5) The applicant must utilize the services of an off duty law enforcement officer or dedicated attendant for crowd, traffic, and parking control.

(6) Failure to secure a demolition permit prior to a demolition sale will result in an immediate after-the-fact permit fee of \$1000.

(d) **Temporary seasonal sales.** A non-renewable five-week permit may be issued for seasonal and holiday related temporary sales subject to the following restrictions:

- (1) Temporary use permits for seasonal sales may be issued for the following season/holiday related items:
 - a. Christmas trees.
 - b. Pumpkins.

- (2) Temporary use permits for seasonal sales may be issued on improved or unimproved properties provided the applicant submits a conceptual site plan which demonstrates that provisions will be made to adequately address the following:
 - a. Vehicular and pedestrian traffic safety measures.
 - b. Adequate on-site, or additional off-site parking areas for unimproved properties. A maximum of ten percent of the parking required by article V may be occupied or otherwise rendered unusable by the placement of temporary structures, equipment, signs and merchandise. The minimum required number of handicapped parking spaces pursuant to article V shall remain available for usage.
 - c. Limited activity hours.
 - d. Watchmen, fencing, lighting.
 - e. Fire protection measures.
 - f. Sanitary facilities.

- (3) The applicant shall provide a notarized letter from the property owner or the property manager granting permission to utilize the subject property for the temporary seasonal sale.

- (4) Temporary use permits for seasonal/holiday sales may, in support of the use being permitted, include the placement of one sign, a maximum of 32 square feet, or two such signs for properties containing more than one street frontage, as well as merchandise, temporary structures and equipment. If the temporary use is not discontinued upon expiration of the permit, it shall be deemed a violation of the land development code and shall be subject to the penalties therein.

SECTION THREE:

That section 30-796 of the Code of Ordinances is hereby amended to read as follows, with underlining indicating new text additions and strikeouts indicating deletions:

Sec. 30-796. Community and special events.

- (a) In the case of sports events, religious events, community events, or other similar events sponsored by nonprofit, charitable, civic, or membership organizations within the city, the community development director may grant non-renewable event permits of up to two weeks' duration, such that during any calendar year the sum total of all event permits for

~~such events~~ do not exceed 28 days. For purposes of this section, temporary sales promotions as described in Section 30-795 shall not qualify as a community or special event, and as such, event permits shall not be issued for temporary sales promotions described in Section 30-795. Temporary Event permits may be allowed for an additional period of up to four weeks when approved by the city council. Such ~~special~~ approval shall be subject to stipulations or additional constraints deemed necessary and appropriate to the request. Such stipulations or constraints deemed necessary by the city council shall be noted as conditions to the issuance of said permit(s); and the permittee shall be required to sign a notarized agreement to said stipulations or constraints.

- (1) ~~Temporary~~ Event permits may, in support of the use being permitted, include the placement of signs, merchandise, structures and equipment, and a mobile home as an temporary office, but not for residency. Event permits may be allowed within improved or unimproved properties. If the ~~temporary use event~~ is not discontinued upon expiration of the permit, it shall be deemed a violation of the land development code and shall be subject to the penalties therein.
- (2) ~~Temporary~~ Event permits ~~in this category~~ shall be restricted to those zoning districts in which the use would normally be permitted, unless otherwise approved by the city council via a public petition request.
- (3) The community development director shall accept without fee, ~~temporary use event~~ permit applications for sports events, religious events, community events, or other similar events, upon presentation of documentation that the sponsor of the event is a bona fide nonprofit organization and the event is intended to benefit the community at large, a specific group of individuals, or the nonprofit organization. Two such events per calendar year per organization are eligible for this exemption.

~~(b) In the case of special events sponsored by a shopping center with more than 50,000 square feet of floor area, the community development director may grant a non-renewable permit for all events planned for the calendar year such that the sum event days does not exceed 28 days. An additional 14 days of events may be approved by the planning board upon request by the applicant.~~

- ~~(1) Temporary permits may, in support of the use being permitted, include the placement of signs, merchandise, structures and equipment, and a mobile home (as an office but not for residency) upon the event site. If the temporary use is not discontinued upon expiration of the permit, it shall be deemed a violation of the land development code and shall be subject to the penalties therein.~~
- ~~(2) Temporary permits in this category shall be restricted to those zoning districts in which the use would normally be permitted, unless otherwise approved by the city council via a public petition request.~~

~~(c) (4)~~ (4) In conjunction with an approved ~~temporary use event~~ permit, ~~for a community or special event~~, off-premise directional signs, not to exceed ~~25~~ 10 signs, may be placed within the right-of-way subject to the following criteria:

- ~~(4)~~ a. A map indicating the proposed off-site directional sign locations must be included with the ~~temporary use event~~ permit application.

- (2) b. Directional signs must be a minimum size of 18 inches × 24 inches and a maximum size of 24 inches × 32 inches.
- (3) c. It is recommended that the signs be blue with white lettering, however, directional signs may be any single color background with any single color copy.
- (4) d. The signs shall be professional in appearance and shall include the ~~special~~ event permit number, which ~~may~~ shall be placed on back of sign.
- (5) e. Signs may not be erected prior to five days before the scheduled event and must be removed within 24 hours of the completion of the event.
- (6) f. Signs ~~may~~ shall not be located within medians, attached to traffic control signs or other authorized highway signs. Signs shall be located a minimum distance of 30 feet from street intersection and a minimum distance of six feet from the edge of pavement or three feet from the back of a curb. The bottom of all signs shall be a minimum of 12 inches above existing ground and the top of the sign shall not exceed a distance of five feet above the existing ground.
- (5) Prior to the issuance of an event permit, a complete application, along with a site plan, shall be submitted to the community development director, or his designee. The site plan, when reviewed in conjunction with the application, shall be of the appropriate scale and detail to adequately address the following items:
- a. Vehicular and pedestrian traffic safety measures.
 - b. External roads.
 - c. Property boundaries.
 - d. Existing on-site parking.
 - e. Parking (improved and unimproved to be used during the event).
 - f. Buildings and structures.
 - g. Tents.
 - h. Food and beverage vendors.
 - i. Hours of operation.
 - j. Watchmen, fencing, and lighting.
 - k. Fire protection measures.
 - l. Sanitary facilities.
 - m. Dedicated attendant for crowd, traffic, and parking control.
- (6) In evaluating an event permit application, the community development director, or his designee, may stipulate requirements or restrictions as deemed appropriate.
- (7) Each ~~calendared~~ event shall be subject to the applicable permit fee.

SECTION FOUR: INCORPORATION, CONFLICT AND SEVERABILITY

(a) It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Marco Island, Florida, and that the word "ordinance" may be changed to "section," "articles," or other appropriate word.

(b) All sections or parts of section of the Code of Ordinances of the City of Marco Island, all City Ordinances or parts of Ordinances, and all City Resolutions or parts of Resolutions in conflict herein are hereby repealed to the extent of such conflict.

(c) In the event this Ordinance conflicts with any other Ordinance of the City of Marco Island or other applicable law, the more restrictive shall apply. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion.

SECTION FIVE: EFFECTIVE DATE

This Ordinance shall take effect immediately upon adoption by the Marco Island City Council.

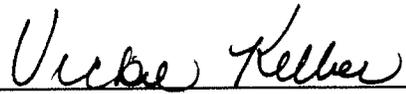
Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 17 day of October, 2005.

Attest:

CITY OF MARCO ISLAND, FLORIDA

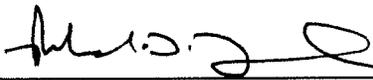


Laura Litzan, City Clerk

By: 

Vickie Kelber, Chairwoman

Approved as to form and
Legal sufficiency:



Richard D. Yovanovich
City Attorney