

CITY OF MARCO ISLAND
ORDINANCE 02- 21

AN ORDINANCE TO AMEND ORDINANCE 02-12 BY AMENDING SECTION TWO TO INCLUDE A 500 FOOT SEPARATION BETWEEN ESTABLISHMENTS WHOSE PRIMARY FUNCTION IS THE SALE OF ALCOHOLIC BEVERAGES FOR ON-SITE CONSUMPTION; BY AMENDING SECTION SIX TO INCORPORATE PUBLIC HEARINGS AND REVIEW FACTORS FOR ESTABLISHMENTS REQUESTING A WAIVER FROM THE 500 FOOT SEPARATION REQUIREMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes provides 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 prohibited by law; and

WHEREAS, Ordinance 02-12 contains locational restrictions for establishments whose primary function is the sale of alcoholic beverages for consumption on-premises; and

WHEREAS, the Marco Island Planning Board, as the 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 Two of Ordinance 02-12, entitled "Locational Criteria for Establishments involving on-premise consumption of alcoholic beverages" be amended to read as follows:

The community development director, or his designee, may authorize the sale of alcoholic beverages for consumption on-premises subject to compliance with all zoning restrictions and the following locational criteria:

1. No such use shall be located within 500 feet of any established elementary, middle or high school, child-care center, public library, church, public park, or public playground, unless a waiver of said

distance requirement is granted pursuant to Section Six by the board of zoning appeals. This does not include beach access points.

2. The distance of 500 feet shall be measured as the shortest distance between the lot on which the school, child care center, public library, church, public park or public playground is located and the lot on which the alcoholic beverages are to be sold, except that establishments located in shopping centers shall be measured to the outer wall of the establishment.
3. No such use shall be located within 500 feet of any existing establishment whose primary function is the sale of alcoholic beverages for consumption on-premises.
4. The distance of 500 feet shall be measured as the shortest distance between the lot on which the existing establishment is located and the lot on which the alcoholic beverages are to be sold, except that establishments located in shopping centers shall be measured to the outer wall of the establishment.

The erection of any school, child care center, public library, church, public park or public playground within 500 feet of an establishment which offers the sale of alcoholic beverages for consumption on-premises shall not cause such establishment to become nonconforming.

SECTION TWO:

That Section Six of Ordinance 02-12, entitled "Waiver of Distance Requirements" be amended to read as follows:

After a public hearing and recommendation by the planning board, the board of zoning appeals may, by resolution, grant waiver of part or all of the minimum distance requirement set forth in Section Two, items 1 and 2, if it is demonstrated by the applicant and determined by the board of zoning appeals that the site proposed for the sale and consumption of alcoholic beverages is separated from an established school, child care center, public library, church, public park or public playground by natural or manmade boundaries, structures or other features which offset or limit the necessity for such minimum distance requirement. The board of zoning appeals decision to waive part or all of the distance requirement shall consider the following factors:

- a. The nature and type of natural or manmade boundary, structure or other feature lying between the proposed establishment and

an existing school, child care center, public library, church, public park or public playground which is determined by the board of zoning appeals to lessen the need for the total 500-foot distance requirement. Such boundary, structure or other feature may include, but not be limited to, lakes, marshes, non developable wetlands, designated preserve areas, canals, and major rights-of-way.

- b. The paths of vehicular and pedestrian traffic, which could be taken between the establishment and the school, child, care center, public library, church, public park or public playground.
- c. The hours of operation and the noise and light which could potentially be generated from the premises selling alcoholic beverages.
- d. Whether alcoholic beverages will be sold in conjunction with food or whether the establishment is primarily engaged in the sale of alcoholic beverages as a primary use.

Further, after a public hearing and recommendation by the planning board, the board of zoning appeals may, by resolution, grant waiver of part or all of the minimum distance requirement set forth in Section Two, items 3 and 4, if it is demonstrated by the applicant and determined by the board of zoning appeals that the site proposed for the sale and consumption of alcoholic beverages is separated from another such establishment by features or circumstances which offset or limit the necessity for such minimum distance requirement. The board of zoning appeals decision to waive part or all of the distance requirement shall consider the following factors:

- e. The establishment is located within a shopping center containing a gross leasable floor area of at least 25,000 square feet.
- f. The establishment fronts upon an arterial, collector or local collector street as shown on the "Existing 2000 Island Road Network", contained in the Comprehensive Plan.
- g. The establishment can accommodate all required parking on-site.
- h. The establishment is located in a commercial zoning district abutting the Residential Tourist (RT) zoning district, if applicable.

Prior to consideration of such waiver by the planning board and the board of zoning appeals, the applicant shall provide to the community development director a written application for waiver of the distance limitation on an application form supplied by the community development director, including a legal description of all applicable structures with a survey or boundary sketch to scale, and such other information which the applicant can supply which would assist the planning board and the board of zoning appeals in their evaluation pursuant to the factors set forth above.

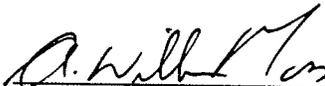
Upon receipt of the application and the applicable fee, established by City Council, public hearing dates shall be scheduled before the planning board and board of zoning appeals for a determination on the proposed waiver. The applicant shall notify, by certified mail, the owners, or representatives of the subject school, childcare center, public library, church, public park, public playground, or other establishment(s) of the application at least 15 days prior to the public hearings; and evidence of such notification shall be supplied to the community development director.

SECTION THREE: EFFECTIVE DATE

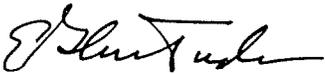
This Ordinance shall take effect immediately upon adoption by the Marco Island City Council.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 15th day of July, 2002.

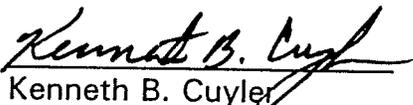
Attest:


A. William Moss
City Manager/City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 
E. Glenn Tucker, Chairman

Approved as to form and
Legal sufficiency:


Kenneth B. Cuyler
City Attorney