

CITY OF MARCO ISLAND
ORDNINANCE 02- 12

AN ORDINANCE TO ESTABLISH NEW LOCATIONAL RESTRICTIONS FOR ESTABLISHMENTS INVOLVING ON-PREMISE CONSUMPTION OF INTOXICATING BEVERAGES TO SUPERSEDE, SUPPLEMENT AND/OR REPLACE SUCH RESTRICTIONS FOUND IN THE COLLIER COUNTY LAND DEVELOPMENT CODE (ORDINANCE 91-102, AS AMENDED), AND CURRENTLY APPLICABLE TO ESTABLISHMENTS ON MARCO ISLAND; ESTABLISHING PURPOSE AND INTENT; PROVIDING LOCATIONAL CRITERIA; PROVIDING FOR EXEMPTIONS; PROVIDING FOR REQUIRED INFORMATION; PROVIDING FOR WAIVER OF DISTANCE REQUIREMENTS; PROVIDING FOR EXPIRATION OF ZONING APPROVAL; PROVIDING FOR STATEMENT OF GROSS RECEIPTS; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; 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, Chapter 163, Florida Statutes, requires municipalities to adopt Land Development Regulations within one year of Comprehensive Plan approval; 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: PURPOSE AND INTENT

It is the purpose of this ordinance to establish reasonable standards to protect the community from potential adverse impacts related to establishments primarily engaged in the sale of alcoholic beverages for on-premise consumption. It is the intent of this ordinance to provide reasonable separation and/or distance requirements between such establishments, and

between such establishments and community facilities, to avoid potential conflicts or adverse impacts.

SECTION TWO: LOCATIONAL CRITERIA FOR ESTABLISHMENTS
 INVOLVING ON-PREMISE CONSUMPTION OF
 ALCOHOLIC BEVERAGES

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.

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 THREE: EXEMPTIONS

The following uses shall be exempted from the distance limitations of section two, but shall comply with all other requirements of this ordinance.

- a. Any restaurant deriving at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages.
- b. Any motel and/or hotel with 100 or more guestrooms.
- c. Any private club, golf club, country club, civic or fraternal club may serve alcoholic beverages for consumption on-premises when such service is incidental to the main use and for the exclusive use of the members, tenants and/or guests of the facility.

SECTION FOUR: REQUIRED INFORMATION

In addition to the application required by the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, the applicant shall submit a sit plan showing the following:

1. Dimensions of subject premises;
2. All vehicular points of ingress and egress;
3. Distance from any use identified in section two above; and
4. Compliance with all requirements of the Land Development Code including landscaping, off-street parking, buffer areas, and location and size of all signs.

SECTION FIVE: EXPIRATION OF ZONING APPROVAL

The community development director's approval for the sale of alcoholic beverages for consumption on-premises, granted pursuant to this ordinance, shall expire after the following periods of time and shall thereafter become null and void:

1. In the case of an existing structure, zoning approval shall expire six months from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. For purposes of this section, operation shall be defined as the sale of alcoholic beverages in the normal course of business.
2. In the case of a new structure, zoning approval shall expire one year from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. However, if substantial construction is completed, the development services director may grant an extension for up to six months.

SECTION SIX: WAIVER OF DISTRICT REQUIREMENTS

The board of zoning appeals may, by resolution, grant waiver of part or all of the minimum distance requirement set forth in section two 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 be based upon 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.

Prior to consideration of such waiver by the board of zoning appeals, the applicant shall provide to the development services director a written application for waiver of the distance limitation on an application form supplied by the development services 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 board of zoning appeals in its evaluation pursuant to the factors set forth above.

Upon receipt of the application and the applicable fee, established by City Council, a public hearing date shall be scheduled before the 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 or public playground, of

the application at least 15 days prior to the public hearing; and evidence of such notification shall be supplied to the community development director.

SECTION SEVEN: STATEMENT OF GROSS RECEIPTS

Any owner or operator of an establishment exempted under Section 3.a. shall upon written demand of the community development director, make or cause to be made under oath a statement itemizing what percentage of his gross receipts are from the sale of alcoholic beverages.

SECTION EIGHT: 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 part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this Ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article" or other appropriate word.

[B] All sections or parts of sections of the Code of Laws and Ordinances of Collier County, Florida, all Collier County ordinances or parts of ordinances, and all Collier County resolutions or parts of resolutions made applicable by the City Charter in conflict herewith are hereby repealed to the extent of such conflict.

[C] If any word, phrase, clause, subsection or section of this Ordinance is for any reason held unconstitutional or invalid by any court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

SECTION NINE: 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 4th day of March, 2002.

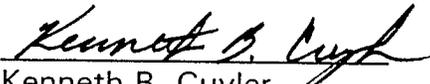
Attest:


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