

CITY OF MARCO ISLAND

ORDINANCE 02- 08

AN ORDINANCE TO ESTABLISH NEW ZONING ADMINISTRATIVE AND PROCEDURAL REGULATIONS TO SUPERSEDE, REPLACE AND/OR SUPPLEMENT ZONING ADMINISTRATIVE AND PROCEDURAL REGULATIONS FOUND IN THE COLLIER COUNTY LAND DEVELOPMENT CODE (ORDINANCE 91-102, AS AMENDED), AND CURRENTLY APPLICABLE TO ZONING ADMINISTRATION ON MARCO ISLAND; ESTABLISHING INTENT AND PURPOSE; PROVIDING FOR AMENDMENT PROCEDURES; PROVIDING FOR PLANNED UNIT DEVELOPMENT (PUD) PROCEDURES; PROVIDING FOR CONDITIONAL USE PROCEDURES; PROVIDING FOR VARIANCE PROCEDURES; PROVIDING FOR BUILDING PERMIT AND CERTIFICATE OF OCCUPANCY PROCESS; PROVIDING FOR AFFORDABLE HOUSING DENSITY BONUS PROGRAM; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; PROVIDING FOR PENALTIES FOR VIOLATION; 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, state law requires municipalities to adopt Land Development Regulations within one year of Comprehensive Plan adoption; 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: INTENT AND PURPOSE.

It is the purpose of the City Council to establish standards, regulations and procedures for the review and approval of zoning amendments, conditional use variance and PUD rezoning requests and applications, building permits and certificates of occupancy, and for an affordable housing bonus program

within the City of Marco Island, and to provide processes that will be comprehensive, informative, consistent, and efficient.

In order to foster and preserve the public health, safety, and welfare, and to aid in the harmonious, orderly, and progressive development of the City, it is the intent of this ordinance that the amendment process in Marco Island be efficient, effective, and equitable, in terms of consistency with established regulations and procedures, respect for the rights of property owners, and consideration of the interests of the citizens of Marco Island.

SECTION TWO: AMENDMENT PROCEDURES.

This zoning code and the official zoning atlas may, from time to time, be amended, supplemented, changed or repealed in accordance with the procedures contained herein:

1. *Initiation of proposals for amendment.* A zoning amendment may be proposed by:
 - A. City Council, Planning Board, Board of Zoning Appeals or any other department or agency of the City.
 - B. Any person other than those identified above; provided, however, that no person shall propose an amendment for the re-zoning of property (except as agent or attorney for an owner) that he does not own. The name of the owner shall appear in each application.
2. *Consideration by the Planning Board.* All proposals for zoning amendments shall be considered first by the Planning Board. All proposals for zoning amendments shall be submitted in writing to the office of the Community Development Director accompanied by all pertinent information required by this zoning code and which may be required by the Planning Board for proper consideration, along with payment of applicable fees and charges. No application for zoning amendment shall be heard by the Planning Board until such fees and charges have been paid.
3. *Notice and Public Hearing Requirements.*
 - A. *Notice and public hearing where proposed amendment would not change zoning classification of land.* Ordinances or resolutions initiated by City Council or its designee which do not actually change the official zoning atlas (the zoning designation applicable to a piece of property) but do affect the use of land, including, but not limited to, land development regulations as defined in Florida Statutes regardless of the percentage of the total land area of the City actually affected, shall be enacted or amended pursuant to the following public notice and hearing requirements by the Planning Board and the City Council:

- i. The Planning Board shall hold one advertised public hearing on the proposed ordinance or resolution. No request for establishment or amendment of a regulation that affects the use of land may be considered by the Planning Board until such time as notice of a public hearing on the proposed amendment has been given to the citizens of Marco Island by publication of a notice of the hearing in a newspaper of general circulation in the city, at least 15 days in advance of the public hearing.
- ii. City Council shall hold at least one advertised public hearing on the proposed ordinance or resolution. City Council at any regular or special meeting may enact or amend the ordinance or resolution if notice of intent is given at least 10 days prior to said meeting by publication in a newspaper of general circulation in the City. A copy of such notice shall be kept available for public inspection during regular business hours of the office of clerk to City Council. The notice of proposed enactment shall state the date, time and place of the meeting, the title of the proposed ordinance or resolution, and the location within the City where the proposed ordinance or resolution may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance or resolution.

B. *Notice and public hearing where proposed amendment would change zoning classification of land.* In the case of an application for the rezoning of land, to include rezonings initiated by other than City Council or amendments to planned unit developments such provisions shall be enacted or amended pursuant to the following public notice and hearing requirements by the Planning Board and City Council. The applicant shall bear all costs associated with the notice provisions contained herein.

- i. A sign shall be posted at least 15 days prior to the date of the public hearing by the Planning Board. The sign to be posted shall measure at least 11/2 square feet in area and shall contain substantially the following language:

PUBLIC HEARING TO REZONE THIS PROPERTY:
 FROM _____ TO
 TO PERMIT:
 DATE:
 BE HELD AT _____, MARCO ISLAND, FLORIDA.

The sign shall be erected by the Community Development Director/City Planner in full view of the public on each street side of the said land to be rezoned. Where the

property for which rezoning is sought is landlocked or for some other reason the signs cannot be posted directly on the land to be rezoned, then the sign or signs shall be erected along the nearest street right-of-way, with an attached notation indicating generally the distance and direction to the property for which rezoning is sought. Where large parcels of property are involved with street frontages extending over considerable distance, the Community Development Director shall erect as many signs on a street frontage as may be deemed adequate to inform the public. The posting of signs as provided in this subsection shall only be required where the zoning amendment proposal is specifically directed to changing the zoning classification of a particular parcel of land.

- ii. The Planning Board shall hold one advertised public hearing. Notice of the time and place of the public hearing by the Planning Board shall be advertised in a newspaper of general circulation in the City at least 15 days in advance of the hearing, and by mail to the owner of the subject property or his designated agent or attorney, if any, again 15 days in advance of the hearing.
- iii. Notice of the time and place of the public hearing by the Planning Board shall be sent at least 15 days in advance of the hearing by mail to all owners of property within 300 feet of the property lines of the land for which rezoning or a planned unit development (PUD) amendment is sought; provided, however, that where the land for which the rezoning or PUD amendment is sought is part of, or adjacent to, land owned by the same person, the 300-foot distance shall be measured from the boundaries of the entire ownership or PUD, except that notice need not be mailed to any property owner located more than one-half mile (2,640 feet) from the land or PUD for which rezoning or PUD amendment is sought. For the purposes of this requirement, the names and addresses of property owners shall be deemed those appearing on the latest tax rolls of Collier County.
- iv. Notice of the time and place of the public hearing by City Council shall be advertised in a newspaper of general circulation in the city at least one time at least 15 days prior to the public hearing. The clerk to the City Council shall notify by mail each real property owner whose land is subject to rezoning or PUD amendment and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance or resolution. Such notice shall be given at least 15 days prior to the date set for the public hearing, and a copy of such notices shall be kept available for public inspection during the regular business hours of the clerk to the City Council.

The City Council shall hold one advertised public hearing on the proposed ordinance or resolution and may, upon the conclusion of the hearing, immediately adopt the ordinance or resolution.

- C. *Notice and public hearing where proposed amendment initiated by the City Council would change the zoning map designation of a parcel or parcels of land involving less than ten contiguous acres of land.* In cases in which the proposed comprehensive rezoning action initiated by the City Council or its designee involves less than ten contiguous acres of land, such provisions shall be enacted or amended pursuant to the following public notice and hearing requirements by the Planning Board and the City Council.
- i. The Planning Board shall hold one advertised public hearing. Notice of the time and place of the public hearing by the Planning Board shall be advertised in a newspaper of general circulation in the city at least one time at least 15 days prior to the date of the public hearing. Notice of the time and place of the public hearing by the Planning Board shall be sent at least 15 days in advance of the hearing, by mail, to the owner of the properties whose land will be rezoned by enactment of the ordinance or resolution, whose address is known by reference to the latest ad valorem tax records.
 - ii. A notice advising of the hearing by the City Council to consider rezoning properties shall be sent by mail [to] each real property owner whose land will be redesignated by enactment of the ordinance or resolution and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance or resolution as it affects the property owner and shall set a time and place for the public hearing on such ordinance or resolution. Such notice shall be given at least 30 days prior to the date set for the public hearing.
 - iii. Notice of the time and place of the public hearing by City Council shall be advertised in a newspaper of general circulation in the city at least ten days prior to the public hearing. A copy of such notice shall be kept available for public inspection during regular business hours of the office of the clerk of the City Council. The notice of the proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the city where the proposed ordinance(s) may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

City Council shall hold one advertised public hearing on the proposed ordinance or resolution and may, upon the conclusion of the hearing, immediately adopt the ordinance or resolution.

D. *Notice and public hearing where proposed amendment would change the zoning map designation of a parcel or parcels of land involving ten contiguous acres or more of land in the City or would change the actual list of permitted, conditional, or prohibited uses of land within a zoning category.* In cases in which the proposed change to the zoning map designation of a parcel or parcels of land involves ten contiguous acres or more of land or changes the actual list of permitted, conditional or prohibited uses of land within a zoning category, such provisions shall be enacted or amended pursuant to the public notice and hearing requirements by the Planning Board and the City Council.

- i. The Planning Board shall hold two advertised public hearings on the proposed ordinance or resolution. Both hearings shall be held on a weekday, and the first shall be held approximately seven days after the day that the first advertisement is published. The second hearing shall be held approximately two weeks after the first hearing and shall be advertised approximately five days prior to the public hearing. The day, time, and place at which second public hearing will be held shall be announced at the first public hearing.
- ii. The required advertisements for the Planning Board public hearings shall be no less than one-quarter page in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the city. The advertisement shall be in the following form:

NOTICE OF ZONING CHANGE

The City of Marco Island proposes to rezone the land within the area shown in the map in this advertisement. A public hearing on the rezoning will be held on (date and time) at (meeting place).

- iii. The advertisement shall also contain a geographic location map which clearly indicates the area covered by the proposed ordinance or resolution. The map shall include major street names as a means of identification of the area.
- iv. City Council shall hold two advertised public hearings on the proposed ordinance or resolution. At least one hearing

shall be held after 5:00 p.m. on a weekday, unless City Council, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least seven days after the day that the first advertisement is published. The second hearing shall be held at least ten days after the first hearing and shall be advertised at least five days prior to the public hearing.

- v. The required advertisements shall be no less than two columns wide by ten inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper of general paid circulation in the city. Whenever possible, the advertisement shall appear in a newspaper that is published at least five days a week unless the only newspaper in the community is published less than five days a week. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The City of Marco Island proposes to adopt the following by ordinance or resolution.

A public hearing on the ordinance or resolution will be held on (date and time) at (meeting place).

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area within the local government covered by the proposed ordinance or resolution. The map shall include major street names as a means of identification of the general area.

- vi. In lieu of publishing the advertisement set out in this paragraph, City Council may mail a notice to each person owning real property within the area covered by the ordinance or resolution. Such notice shall clearly explain the proposed ordinance or resolution and shall notify the person of the time, place, and location of both public hearings on the proposed ordinance or resolution.

4. *Planning Board hearing and report to City Council.*

Time limits. Hearings by the Planning Board on applications for rezoning of land may be held at any regularly scheduled meeting. For applications not involving the rezoning of land, but

which involve amendments to these zoning regulations, the Planning Board shall hold its public hearings four times (quarterly) per calendar year. In the case of an emergency, amendments to these zoning regulations may be made more often than four times during the calendar year if the additional amendment receives the approval of a majority vote of City Council. The Planning Board shall file its recommendations for either type of amendment with City Council within 45 days after the public hearing before the Planning Board has been closed.

5. *Presentation of evidence.* The staff report on the application for rezoning shall be presented prior to the close of the public hearing on the application. The applicant shall be afforded the opportunity, prior to the close of the public hearing, to respond to any contentions presented by any testimony or other evidence presented during the public hearing, and to respond to the staff report, after receipt of which the hearing shall be concluded, unless the hearing is continued and the matter referred back to staff for further consideration of such matters as the Planning Board may direct.
6. *Nature of requirements of Planning Board report.* When pertaining to the rezoning of land, the report and recommendations of the Planning Board to City Council required below shall show that the Planning Board has studied and considered the proposed change in relation to the following, when applicable:
 - A. Whether the proposed change will be consistent with the goals, objectives, and policies and future land use map and the elements of the comprehensive plan.
 - B. The existing land use pattern.
 - C. The possible creation of an isolated district unrelated to adjacent and nearby districts.
 - D. Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.
 - E. Whether changed or changing conditions make the passage of the proposed amendment necessary.
 - F. Whether the proposed change will adversely influence living conditions in the neighborhood.
 - G. Whether the proposed change will create or excessively increase traffic congestion or create types of traffic deemed incompatible with surrounding land uses, because of peak volumes or projected types of vehicular traffic, including activity during construction phases of the development, or otherwise affect public safety.
 - H. Whether the proposed change will create a drainage problem.
 - I. Whether the proposed change will seriously reduce light and air to adjacent areas.
 - J. Whether the proposed change will adversely affect property values in the adjacent area.
 - K. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance

- L. with existing regulations.
 - L. Whether the proposed change will constitute a grant of special privilege to an individual owner as contrasted with the public welfare.
 - M. Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.
 - N. Whether the change suggested is out of scale with the needs of the neighborhood or the city.
 - O. Whether it is impossible to find other adequate sites in the city for the proposed use in districts already permitting such use.
 - P. The physical characteristics of the property and the degree of site alteration which would be required to make the property usable for any of the range of potential uses under the proposed zoning classification.
 - Q. The impact of development on the availability of adequate public facilities and services consistent with the levels of service adopted in the Marco Island comprehensive plan and as defined and implemented through the City's Adequate Public Facilities Ordinance, as amended.
 - R. Such other factors, standards, or criteria that the City Council shall deem important in the protection of the public health, safety, and welfare.
7. *Provision of adequate public facilities.* The petitioner may provide all required community and public facilities and services in support of the requested rezone in any one of the following manners:
- A. Petition for a rezone at such time as all required adequate existing community and public facilities and services have been provided at public expense according to the capital improvement program; or
 - B. Petition for a rezone at such time as all required existing community and public facilities and services have been provided at the private expense of the petitioner; or
 - C. Post a surety in lieu of completed improvements to guarantee that all of the required community and public facilities and services will be provided; or
 - D. Facilities for parks and schools through land dedication or fee in lieu of such dedication; or
 - E. Other method acceptable to City Council.
8. *Other proposed amendments.* When pertaining to other proposed amendments of these zoning regulations, the Planning Board shall consider and study:
- A. The need and justification for the change;
 - B. The relationship of the proposed amendment to the purposes and objectives of the City's comprehensive, with appropriate consideration as to whether the proposed change will further the purposes of these zoning regulations and other City codes, regulations, and actions designed to implement the growth management plan.

9. *Restrictions, stipulations and safeguards.* The Planning Board may recommend that a petition to amend, supplement or establish a zoning district be approved subject to stipulations, including, but not limited to limiting the use of the property to certain uses provided for in the requested zoning district. City Council, after receiving the recommendation from the Planning Board on a request to amend, supplement or establish a zoning district, may grant or deny such amendment or supplement and may make the granting conditional upon such restrictions, stipulations and safeguards as it may deem necessary to ensure compliance with the intent and purposes of the comprehensive plan.

Restrictions, stipulations and safeguards attached to an amendment, supplement, or establishment of a zoning district may include, but are not limited to those necessary to protect adjacent or nearby landowners from any deleterious effects from the full impact of any permitted uses, limitations more restrictive than those generally applying to the district regarding density, height, connection to central water and sewer systems and stipulations requiring that development take place in accordance with a specific site plan. The maximum density permissible or permitted in a zoning district within the urban designated area shall not exceed the density permissible under the density rating system. City Council shall be required to condition and limit the density of a zoning district to a density not to exceed the maximum density permissible under the density rating system. City Council may also stipulate that the development take place within a given period of time after which time public hearings will be initiated and the district returned to the original designation or such other district as determined appropriate by the governing body in accordance with the comprehensive plan and this ordinance. Any restrictions, stipulations and safeguards attached to an amendment or rezoning including those identified in this section may be indicated on the official zoning atlas in a manner deemed by the City to be appropriate and informative to the public. In cases where stipulations, restrictions or safeguards are attached, all representations of the owner or his agents at public hearings shall be deemed contractual and may be enforced by suit for injunction or other appropriate relief. All conditions, restrictions, stipulations and safeguards which are a condition to the granting of the change in zoning district shall be deemed contractual and may be enforced by suit for injunction or other appropriate relief. All costs, including reasonable attorney's fees shall be awarded to the governmental unit if it prevails in such suit.

10. *Status of Planning Board report and recommendations.* The report and recommendations of the Planning Board required by this ordinance shall be advisory only and not be binding upon City Council.

11. *City Council: action on Planning Board report.*

- A. Upon receipt of the Planning Board's report and recommendations, City Council shall hold a second public hearing with notice to be given pursuant to the provisions of general law. The reports and recommendations of the staff and

the Planning Board on the application shall be presented prior to the close of the public hearing on the application. The applicant shall have the right, prior to the close of the public hearing, to respond to any contentions presented by any testimony or other evidence presented during the public hearing.

- B. In the case of all proposed changes or amendments, such changes or amendments shall not be adopted except by the affirmative vote of four members of City Council.
- C. *Failure of City Council to act.* If a Planning Board recommendation is not legislatively decided within 90 days of the date of closing of the public hearing by the City Council, the application upon which the report and recommendation is based shall be deemed to have been denied, provided that City Council may refer the application to the Planning Board for further study.

13. *Limitations on the rezoning of property.*

- A. No change in the zoning classification of property shall be considered which involves less than 43,560 square feet of area and 200 feet of street frontage except: where the proposal for rezoning of property involves an extension of an existing or similar adjacent district boundary; within the broader land use classification of "C" districts, "RSF" districts, "RMF" districts, wherein such rezoning is compatible with, or provides appropriate transition from, adjacent districts of higher density or intensity; or a rezoning to Planned Unit Development (PUD). Minimum acreages for rezoning of property to PUD are found in the PUD section of the Land Development Code. However, the requirement of 200 feet of street frontage shall not apply to rezoning petitions that provide 80 percent or more affordable housing units.
- B. Whenever City Council has denied an application for the rezoning of property, the Planning Board shall not thereafter:
 - i. Consider any further application for the same rezoning of any part or all of the same property for a period of 12 months from the date of such action;
 - ii. Consider an application for any other kind of rezoning of any part or all of the same property for a period of six months from the date of such action.
- C. Except as otherwise provided within this section all zoning approvals for which a final development order has not been granted within the fifth year of the date of its approval shall be evaluated to determine if the zoning classification for the property should be changed to a lower, or more suitable classification. During the fifth year after the date of the zoning approval by City Council and during every fifth year thereafter, the Community Development Director shall prepare a report on

the status of the rezoned property. The purpose of the report will be to evaluate what procedural steps have been taken to develop the property under its current zoning classification.

- I. Should the Community Development Director determine that development has commenced, then the land shall retain its existing zoning classification and shall not be subject to additional review and classification change.
 - II. Should the Community Development Director determine that development has not commenced, and then upon review and consideration of the report and any supplemental information that may be provided, City Council shall elect one of the following:
 - a. To extend the current zoning classification on the property for a maximum period of five years; at the end of which time, the property shall again be evaluated under the procedures as defined herein.
 - b. Direct the appropriate City staff to begin rezoning procedures for said property. The existing zoning classification of the property shall remain in effect until subsequent action by the board on the property.
 - III. In the case of developments of regional impact, time limit restrictions shall be superseded by the phasing plan and/or time limits contained within the application for development approval and approved as part of a development order in conformance with F.S. § 380.06.
14. *Applications for rezones to a specific use.* The applicant for any rezoning application may, at his or her option, propose a specific use or ranges of uses permitted under the zoning classification for which application has been made. As a condition of approval of such proposal, the development of the property which was the subject of the rezoning application shall be restricted to the approved use or range of uses. Any proposed addition to the approved use or range of uses shall require resubmittal of a rezoning application for the subject property.
15. *Waiver of time limits.* The time limits of section 13 above may be waived by four affirmative votes of City Council when such action is deemed necessary to prevent injustice or to facilitate the proper development of Marco Island.
16. *Site development plan time limits.* Approved final site development plans shall remain in force for two years. If no development (actual construction) has commenced within two years, the site development plan shall expire. One one-year extension may be granted for good cause shown upon written application submitted to the Community Development Director prior to expiration of the preceding approval. When extending the final site development plan approval, the Community Development Director shall require the approval to be modified to bring the plan into compliance with any new provision of this code in effect at the time of the extension request.

SECTION THREE: PLANNED UNIT DEVELOPMENT (PUD) PROCEDURES.

1. *Application and PUD master plan submission requirements.* Applications for rezoning to PUD shall be in the form of a PUD master plan of development. The plan shall have been designed by an urban planner who possesses the education and experience to qualify for full membership in the American Institute of Certified Planners; and/or a landscape architect who possesses the education and experience to qualify for full membership in the American Society of Landscape Architects, together with either a practicing civil engineer licensed by the State of Florida, or a practicing architect licensed by the State of Florida, and shall be comprised, at a minimum, of the following elements:

A. *PUD master plan.* The PUD master plan shall include the following information unless determined to be unnecessary to graphically illustrate the development strategy:

- i. The title of the project and name of the developer;
- ii. Scale, date, north arrow;
- iii. Boundaries of the subject property, all existing streets and pedestrian systems within the site, watercourses, easements, land uses and zoning districts of abutting property including book and page numbers of platted parcels, section lines, and other important physical features within and adjoining the proposed development;
- iv. Identification of all proposed tracts or increments within the PUD such as, but not limited to: residential; commercial; industrial; institutional; conservation/preservation; lakes and/or other water management facilities; common open space; buffers; the location and function of all areas proposed for dedication or to be reserved for community and/or public use; and areas proposed for recreational uses including golf courses and related facilities, and provisions for ownership, operation, and maintenance;
- v. Identification of all proposed land uses within each tract or increment describing: acreage; proposed number of dwelling units; proposed density and percentage of the total development represented by each type of use; or in the case of commercial, industrial, institutional or office, the acreage and maximum gross leasable floor area within the individual tracts or increments;
- vi. The location and size (as appropriate) of all existing drainage, water, sewer, and other utility provisions;
- vii. The location of all proposed major internal thoroughfares and pedestrian accessways;
- viii. Typical cross sections of all major, collector, and local streets, public or private, within the proposed PUD;
- ix. The location of existing roads, rights-of-way, and

pedestrian systems within 200 feet of the proposed PUD;

- x. The overall acreage and proposed gross density for the PUD;
- xi. Other uses of land.

B. *Supporting data.* Data supporting and describing the application for rezoning to PUD in the form of a PUD document which shall consist of the following unless determined to be unnecessary to describe the development strategy:

- i. Title page to include name of project;
- ii. Index/table of contents;
- iii. List of exhibits;
- iv. Statement of compliance with all elements of the growth management plan;
- v. General location map showing relationship of the site to such external facilities as in shopping areas. cultural complexes as the like;
- vi. Property ownership and general description of site (including statement of unified ownership);
- vii. Description of project development;
- viii. Boundary survey and legal description;
- ix. Proposed land uses within each tract or increment;
- x. Dimensional standards for each type of land use proposed within the PUD. Dimensional standards shall be based upon an existing zoning district that most closely resembles the development strategy, particularly the type, density and intensity, of each proposed land use. All proposed variations or deviations from dimensional standards of the most similar zoning district shall be clearly identified;
- xi. The proposed timing for location of, and sequence of placing or incremental development within the PUD;
- xii. The proposed location of all other roads and pedestrian systems, with typical cross sections, which will be constructed to serve the PUD;
- xiii. Habitats and their boundaries identified on an aerial photograph of the site. Habitat identification will be consistent with the Florida Department of Transportation Florida Land Use Cover and Forms Classification System and shall be depicted on an aerial photograph having a scale of one inch equal to at least 200 feet when available from the City, otherwise, a scale of at least one inch equal to 400 feet is acceptable. Information obtained by ground-truthing surveys shall have precedence over information presented through photographic evidence. Habitat, plant and animal species protection plans as required by the Land Development Code shall apply;
- xiv. Environmental impact analysis pursuant to

- applicable provisions of the Land Development Code;
- xv. Information about existing vegetative cover and soil conditions in sufficient detail to indicate suitability for proposed structures and uses;
- xvi. The location and nature of all other existing public facilities, such as schools, parks, fire stations and like;
- xvii. A plan for the provision of all needed utilities to and within the PUD; including (as appropriate) water supply, sanitary sewer collection and treatment system, stormwater collection and management system, pursuant to related City regulations and ordinances;
- xviii. Traffic impact analysis;
- xix. Agreements, provisions, or covenants which govern the use, maintenance, and continued protection of the PUD and any of its common areas or facilities;
- xx. Development commitments for all infrastructure and related matters;
- xxi. When determined necessary to adequately assess the compatibility of proposed uses to existing or other proposed uses, their relationship to open space, recreation facilities, or traffic impacts, or to assess requests for reductions in dimensional standards, the Community Development Director may request schematic architectural drawings (floor plans, elevations, perspectives) for all proposed structures and improvements, as appropriate.

C. *Deviations from the required master plan element.* The Community Development Director may exempt a petition from certain required elements of the PUD master plan when the petition contains conditions that demonstrate that the element may be waived without a detrimental effect on the health, safety and welfare of the community. All exemptions shall be noted within the PUD) submittal and provided City Council.

2. *Procedures for planned unit development zoning.* Petitions for rezoning to PUD in accordance with this subsection shall be submitted and processed as for a rezoning amendment generally pursuant to this ordinance and in accordance with the following special procedures:

A. *Pre-application conference.* Prior to the submission of a formal application for rezoning to PUD, the applicant shall confer with the Community Development Director and other city staffing agencies, and officials involved in the review and processing of such applications and related materials. The applicant is further encouraged to submit a tentative land use sketch plan for review at the conference, and to obtain information on any projected

plans or programs relative to possible applicable federal or state requirements or other matters that may affect the proposed PUD. This pre-application conference should address, but not be limited to, such matters as:

- i. The suitability of the area for the type and pattern of development proposed in relation to physical characteristics of the land, surrounding areas, traffic and access, drainage, sewer, water, and other utilities.
- ii. Adequacy of evidence of unified control and suitability of any proposed agreements, contract, or other instruments, or for amendments in those proposed, particularly as they may relate to arrangements or provisions to be made for the continuing operation and maintenance of such areas and facilities that are not to be provided or maintained at public expense. Findings and recommendations of this type shall be made only after consultation with the City Attorney.
- iii. Conformity of the proposed PUD with the goals, objectives and policies of the growth management plan.
- iv. The internal and external compatibility of proposed uses, which conditions may include restrictions on location of improvements, restrictions on design, and buffeting and screening requirements.
- v. The adequacy of usable open space areas in existence and as proposed to serve the development.
- vi. The timing or sequence of development for the purpose of assuring the adequacy of available improvements and facilities, both public and private.
- vii. The ability of the subject property and of surrounding areas to accommodate expansion.
- viii. Conformity with PUD regulations, or as to desirable modifications of such regulations in the particular case, based on determination that such modifications are justified as meeting public purposes to a degree at least equivalent to literal application of such regulations.

B. *Pre-hearing conference.* Any application for rezoning to PUD, together with all materials prescribed herein, shall be submitted to the Community Development Director. Pre-hearing conferences may be held between the applicant and/or his representatives and officials or representatives of the City. The purpose of such pre-hearing conferences shall be to assist in bringing the application for rezoning to PUD as nearly as possible into conformity with the intent of these or other applicable regulations, and/or to define specifically any justifiable variations from the application of such regulations.

C. *Staff review and recommendation.* Based upon its evaluation of the factors set forth above, the appropriate City staff shall prepare a report containing their review findings, and a recommendation of approval or denial.

3. *Hearing before the Planning Board.* Public notice shall be given and a public hearing held before the Planning Board on the application for rezoning to PUD. Both the notice and the hearing shall identify the application, proposed PUD master plan of development, and required statements as they may have been amended as a result of the pre-hearing conference.
4. *Planning Board recommendation.* The Planning Board shall make written findings as required below and as otherwise required in this section and shall recommend to City Council either approval of the PUD rezoning as proposed; approval with conditions or modifications; or denial. In support of its recommendation, the Planning Board shall make findings as to the PUD master plan's compliance with the following criteria:
 - A. The suitability of the area for the type and pattern of development proposed in relation to physical characteristics of the land, surrounding areas, traffic and access, drainage, sewer, water, and other utilities.
 - B. Adequacy of evidence of unified control and suitability of any proposed agreements, contract, or other instruments, or for amendments in those proposed, particularly as they may relate to arrangements or provisions to be made for the continuing operation and maintenance of such areas and facilities that are not to be provided or maintained at public expense. Findings and recommendations of this type shall be made only after consultation with the City Attorney.
 - C. Conformity of the proposed PUD with the goals, objectives and policies of the growth management plan.
 - D. The internal and external compatibility of proposed uses, which conditions may include restrictions on location of improvements, restrictions on design, and buffering and screening requirements.
 - E. The adequacy of usable open space areas in existence and as proposed to serve the development.
 - F. The timing or sequence of development for the purpose of assuring the adequacy of available improvements and facilities, both public and private.
 - G. The ability of the subject property and of surrounding areas to accommodate expansion.
 - H. Conformity with PUD regulations, or as to desirable modifications of such regulations in the particular case, based on determination that such modifications are justified as meeting public purposes to a degree at least equivalent to literal application of such regulations.

5. *Action by City Council.* Unless the PUD application is withdrawn by the applicant, City Council shall, upon receipt of the Planning Board's recommendation, advertise and hold a public hearing on the application. The notice and hearing shall be on the application and PUD master plan of development as recommended by the Planning Board to City Council. City Council shall either grant the proposed rezoning to PUD; approve with conditions or modifications; or deny the application for PUD rezoning.
6. *Effect of planned unit development zoning.* If approved by City Council, the master plan for development and all other information and materials formally submitted with the petition shall be considered and adopted as an amendment to the zoning code and shall become the standards of development for the subject PUD. Thenceforth, development in the area delineated as the PUD district on the official zoning atlas shall proceed only in accordance with the adopted development regulations and PUD master plan for said PUD district.

Before development of any type may proceed, all agreements, conditions of approval, and contracts required, but not approved at the time of amending action, shall be approved by appropriate officers or agencies of the City. Issuance of a final development order within any tract or increment within the PUD shall first require compliance with all sections of the Marco Island City subdivision regulations and/or the site development plan regulations as appropriate.

7. *Time limits for approved PUD master plans.* In the event that a PUD master plan is given approval, and the landowner(s) shall:
 - A. Fail to obtain approval for improvement plans or a development order for all infrastructure improvements to include utilities, roads and similar improvements required by the approved PUD master plan or other development orders for at least 15 percent of the gross land area of the PUD site every five years of the date of approval by City Council; and
 - B. Fail to receive final local development orders for at least 15 percent of the total number of approved dwelling units in the PUD, or in the case of PUDs consisting of nonresidential uses, 30 percent of the total approved gross leasable floor area within the PUD every six years of the date of approval by City Council.

The project developer shall submit to the Community Development Director a status report on the progress of development annually commencing on the third anniversary date of the PUD approval by City Council. The singular purpose of the report will be to evaluate whether or not the project has commenced in earnest in accordance with the criteria set forth above. Should the Community Development Director determine that the development has commenced in earnest, then the land shall retain its existing PUD approval and shall not be subject to additional review and consideration of new development standards or use modification.

Should the Community Development Director determine that the

development has not commenced in earnest, then upon review and consideration of the report provided by the owner and any supplemental information that may be provided, City Council shall elect one of the following:

- i. To extend the current PUD approval for a maximum period of two years; at the end of which time, the owner will again submit to the procedure as defined herein.
- ii. Require the owner to submit an amended PUD in which the unimproved portions of the original PUD shall be consistent with the growth management plan. The existing PUD shall remain in effect until subsequent action by the board of the submitted amendment of the PUD.
- iii. If the owner fails to submit an amended PUD within six months of board action to require such an amended submittal, then the board may initiate proceedings to rezone the unimproved portions of the original PUD to an appropriate zoning classification consistent with the future land use element of the comprehensive plan.

In the case of developments of regional impact, time limit restrictions shall be superseded by the phasing plan and/or time limits contained within the application for development approval and approved as part of a development order in conformance with F.S. § 380.06.

8. *Changes and amendments.*

Substantial/insubstantial changes. Any substantial change(s) to an approved PUD master plan shall require the review and recommendation of the plan by City Council prior to implementation. Any insubstantial change(s) to an approved PUD master plan shall require approval by the Planning Board. For the purpose of this section, a substantial change shall be deemed to exist where:

- A. There is a proposed change in the boundary of the PUD; or
- B. There is a proposed increase in the total number of dwelling units or intensity of land use or height of buildings within the development; or
- C. There is a proposed decrease in preservation, conservation, recreation or open space areas within the development not to exceed five percent of the total acreage previously designated as such, or five acres in area; or
- D. There is a proposed increase in the size of areas used for nonresidential uses, to include institutional, commercial and industrial land uses (excluding preservation, conservation or open spaces), or a proposed relocation of nonresidential land uses; or
- E. There is a substantial increase in the impacts of the development which may include, but are not limited to, increases in traffic generation; changes in traffic circulation; or impacts on other public facilities; or
- F. The change will result in land use activities that generate a

- higher level of vehicular traffic based upon the Trip Generation Manual published by the Institute of Transportation Engineers; or
- G. The change will result in a requirement for increased stormwater retention, or will otherwise increase stormwater discharges; or
 - H. The change will bring about a relationship to an abutting land use that would be incompatible with an adjacent land use; or
 - I. Any modification to the PUD master plan or PUD document or amendment to a PUD ordinance which is inconsistent with the future land use element or other element of the comprehensive or which modification would increase the density or intensity of the permitted land uses; or
 - J. The proposed change is to a PUD district designated as a development of regional impact (DRI) and approved pursuant to F.S. § 380.06, where such change requires a determination and public hearing by Marco Island pursuant to F.S. § 380.06(19). Any change that meets the criterion of F.S. § 380.06(19)(e)2, and any changes to a DRI PUD master plan that clearly do not create a substantial deviation shall be reviewed and approved by the; or
 - K. Any modification to the PUD master plan or PUD document or amendment to a PUD ordinance which impact(s) any consideration deemed to be a substantial modification as described under this ordinance.

9. *Procedure for substantial/insubstantial change determination.*

The applicant shall provide the Community Development Director documentation which adequately describes the proposed changes along with the appropriate review fee prior to review by the Planning Board. The PUD master plan map shall show all data normally required for submittal of a PUD master plan unless it is otherwise determined not to be necessary, describing the proposed changes in: land use; densities; infrastructure; open space, preservation or conservation areas; area of building square footage proposed for nonresidential development; change in potential intensity of land use and related automobile trip movements, and relationships to abutting land uses. In addition, the applicant, for evaluation of PUD master plan revisions, shall provide a detailed written narrative describing all of the change(s) and the reasons for the request. Upon receipt of the amended PUD master plan, the Community Development Director shall review said plan against criteria established herein and may forward the plan to any other agency, division or authority deemed necessary for review and comment.

Upon completion of the review, the Community Development Director shall provide a written determination to the applicant, or his legal representative, confirming that the proposed change(s) do or do not constitute a substantial change to the approved PUD master plan based upon the evaluation of the criteria described herein. Any such determination made by the Community

Development Director may be appealed to City Council.

- A. *Substantial changes procedures.* Changes, as identified in section 3.8, shall be considered substantial changes to the approved PUD master plan, and the applicant shall be required to submit and process a new application complete with pertinent supporting data, as set forth in sections 3.1.A and 3.1.B.
- B. *Insubstantial changes procedures.* Any insubstantial change(s) to an approved PUD master plan based upon an evaluation of subsection 3.8 shall require the review and approval of the Planning Board based on the findings and criteria used for original applications as an action taken at a regularly scheduled meeting.
- C. *Language changes.* Language changes to a previously approved PUD document shall require the same procedure as for amending the official zoning atlas.
- D. *Minor changes not otherwise provided for.* It shall be understood that, while a PUD is required to describe and provide for infrastructure, intended land use types, approximate acreages of internal development tracts, and compatibility with adjacent land uses, minor changes may become necessary during the subdivision or site development plan review processes.

The Community Development Director shall also be authorized to allow minor changes to the PUD master plan during its subdivision improvements plan or site development plan process to accommodate topography, vegetation and other site conditions not identified or accounted for during its original submittal and review and when said changes have been determined to be compatible with adjacent land uses, have no impacts external to the site, existing or proposed, and is otherwise consistent with the provisions of this code and the growth management plan. Such changes shall include:

- A. Internal realignment of right-of-ways, other than a relocation of access points to the PUD itself, where no water management facility, conservation/preservation areas, or required easements are affected or otherwise provided for.
- B. Relocation of building envelopes when there is no encroachment upon required conservation or preservation areas.
- C. Relocation of swimming pools, clubhouses, or other recreation facilities when such relocation will not affect adjacent properties or land uses.
- D. Relocation or reconfiguration of lakes, ponds, or other water facilities subject to the submittal of revised water management plans, or approval of the environmental advisory board where applicable.

Minor changes of the type described above shall nevertheless be reviewed by appropriate staff to ensure that said changes are otherwise in compliance with all City ordinances and regulations prior to the Community Development Director's consideration for approval.

10. *Monitoring requirements.* In order to ensure and verify that approved project densities or intensities of land will not be exceeded and that development commitments will be fulfilled, annual monitoring reports shall be submitted by the developer/owner or authorized agent of a PUP to the Community Development Director. The monitoring report shall be submitted annually, on each anniversary of the date said PUD was approved by the board until the PUD is completely constructed and all commitments in the PUD document/master plan are met. The monitoring report shall provide the following information:
 - A. Name of project.
 - B. Name of owner, developer.
 - C. Number of units, by residential type; square footage and acreage of recreation facilities, commercial and other permitted uses; infrastructure and/or other uses which are complete of [or] for which a valid permit has been issued, but which have not been completed.
 - D. Up-to-date PUD master plan showing infrastructure, projects/developments, plats, parcels and other pertinent information.
 - E. Traffic counts for all access points to the major highway network.
 - F. Copies of all required monitoring reports completed in past year (i.e., traffic, wellfield, etc.).
 - G. Up-to-date PUD document which includes all approved amendments.
 - H. Status of commitments in PUD document.
 - I. Other information as may be required by the Community Development Director.

11. *Change of ownership.* A change in ownership shall not absolve the original owner of the requirement to file an annual monitoring report. Transferring responsibility for filing the annual monitoring report to an entity other than the original owner may be demonstrated in the form of an executed agreement between the original owner and the new entity which when filed with the site development review director shall automatically transfer responsibility for filing the annual monitoring report.

12. *Interpretations of PUD documents.* The Community Development Director shall be authorized to interpret the PUD document.

SECTION FOUR: CONDITIONAL USE PROCEDURES.

General. A conditional use is a use that would not be appropriate generally or without restriction throughout a particular zoning district

or classification, which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order of comfort, convenience, appearance, or the general welfare. Such uses may be permissible in zoning district as a conditional use if specific provision for such conditional use is made in this zoning code. All petitions for conditional uses shall be considered first by the Planning Board in the manner herein set out. Decisions regarding conditional uses shall be quasi-judicial in nature.

- A. *Written petition.* A written petition for conditional use shall be submitted to the Community Development Director indicating the basis in this zoning code under which the conditional use is sought and stating the grounds upon which it is requested, with particular reference to the types of findings which the board of zoning appeals must make under this section. The petition should include material necessary to demonstrate that the grant of conditional use will be in harmony with the general intent and purpose of this zoning code, will be consistent with the growth management plan, will not be injurious to the neighborhood or to adjoining properties, or otherwise detrimental to the public welfare. Such material shall include, but is not limited to, the following, where applicable:
- i. Conceptual site development plans at an appropriate scale showing the proposed placement of structures on the property, provisions for ingress and egress, off-street parking and off-street loading areas, refuse and service areas, and required yards and other open spaces. The conceptual site development plan shall not be in lieu of, nor eliminate the need for, a site development plan under the Land Development Code.
 - ii. Plans showing proposed locations for utilities. Plans providing for screening and buffering with reference as to type, dimensions, and character.
 - iii. Proposed landscaping and provisions for trees protected by City regulations.
 - iv. Proposed signs and lighting, including type, dimensions, and character.
 - v. Developments shall identify, protect, conserve, and appropriately use native vegetative communities and wildlife habitat. Habitats and their boundaries shall be identified on a current aerial photograph of the property

at a scale of at least one-inch equals 400 feet. Habitat identification shall be consistent with the Florida Department of Transportation Land Use Cover and Forms Classification System and shall be depicted on the aerial photograph. Information obtained by ground-truthing surveys shall take precedence over photographic evidence.

Where this zoning code places additional requirements on specific conditional uses, the petitioner shall demonstrate that such requirements are met.

Where the rezoning of land, as well as grant of conditional use, is requested simultaneously for the same parcel of land, both said petitions may be processed concurrently in accordance with the procedures set forth in this ordinance.

- B. *Notice and public hearing.* Notice and public hearing by the Planning Board and the Board of Zoning Appeals shall be as provided for under subsection 2.3.A. All testimony given shall be under oath and the action by City Council shall be quasi-judicial in nature.
- C. *Findings.* Before any conditional use shall be recommended for approval to the Board of Zoning Appeals, the Planning Board shall make a finding that the granting of the conditional use will not adversely affect the public interest and that the specific requirements governing the individual conditional use, if any, have been met by the petitioner and that, further, satisfactory provision and arrangement has been made concerning the following matters, where applicable:
 - i. Consistency with this code and comprehensive plan.
 - ii. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
 - iii. The effect the conditional use would have on neighboring properties in relation to noise, glare, economic or odor effects.
 - iv. Compatibility with adjacent properties and other property in the district.
- D. *Conditions and safeguards.* In recommending approval of any conditional use, the Planning Board may also recommend appropriate conditions and safeguards in conformity with this zoning code. Violation of such conditions and safeguards, which are made a part of the terms under which the conditional use is granted, shall be deemed a violation of this zoning code.

In addition, any conditional use shall expire one year from the date of approval, if by that date the use for which the conditional use was granted has not been commenced.

Further, any conditional use shall expire one year following the discontinuance of the use for which the conditional use was approved.

- E. *Extensions.* The Board of Zoning Appeals may grant a maximum of three one-year extensions of an approved conditional use upon written request of the petitioner. Each extension must be requested and approved prior to the expiration of the original conditional use.
- F. *Denial.* If the Planning Board shall recommend denial of a conditional use, it shall state fully in its record its reason for doing so. Such reasons shall take into account the factors stated in section 4.C or such of them as may be applicable to the action of denial and the particular regulations relating to the specific conditional use requested, if any.
- G. *Status of Planning Board report and recommendations.* The report and recommendations of the Planning Board required above shall be advisory only and shall not be binding upon the Board of Zoning Appeals.
- H. *Board of Zoning Appeals action on Planning Board report.* Upon receipt of the Planning Board's report and recommendations, the Board of Zoning Appeals shall approve, by resolution, or deny a petition for a conditional use. The approval of a conditional use petition shall require four affirmative votes of said board.
- I. *Conditional uses for school or religious purposes.* A use that has been approved as part of a preliminary subdivision plat (formerly subdivision master plan) or a planned unit development for schools, religious or eleemosynary uses shall be exempt from the provisions of this section. Such uses must comply with the provisions for site development plan approval, as applicable, and all other zoning requirements.
- J. *Changes and amendments.* The Community Development Director may approve minor changes in the location, siting, or height of buildings, structures, and improvements authorized by the conditional use.

Additional uses or expansion of permitted uses not shown on the conceptual site development plan or otherwise specifically provided for in the conditional use application shall require submission, review and approval of a new conditional use application.

SECTION FIVE: VARIANCE PROCEDURES.

- 1. *Purpose.* In specific cases, variance from the terms of this zoning code safety or welfare. A variance from the terms of this zoning code may

be granted based on the requirements of this section may be granted where said variance will not be contrary to the public interest, safety, or welfare and where owing to special conditions peculiar to the property; a diminution of a regulation is found to have no measurable impact on the public interest, safety or welfare; or a literal enforcement of the zoning code would result in unnecessary and undue hardship, or practical difficulty to the owner of the property and would otherwise deny the property owner a level of utilization of his/her property that is consistent with the development pattern in the neighborhood and clearly has no adverse effect on the community at large or neighboring property owners.

The Board of Zoning Appeals, based upon the evidence given in public hearing, and the findings of the Planning Board should determine to the maximum extent possible if the granting of the variance will diminish or otherwise have detrimental effect on the public interest, Safety or welfare. A variance from the terms of this zoning code may be granted based on the requirements of this section.

2. *Types of variances authorized.* A variance is authorized for any dimensional development standard, including the following: height, area, and size of structure; height of fence; size of yards and open spaces; landscaping and buffering requirements; size, height, maximum number of, and minimum setback for signs; architectural and site design standards; and minimum requirements for off-street parking facilities.

3. *Exemptions.*

Minor after-the-fact yard encroachments may be approved administratively by the Community Development Director. For the purposes of this subsection, minor yard encroachments shall be divided into three classifications:

1. Structures for which a certificate of occupancy, or a final development order has not been granted. The Community Development Director may administratively approve minor after-the-fact yard encroachments not to exceed a maximum of 5 inches.
2. Structures for which a certificate of occupancy, or a final development order was granted after January 1, 1987. The Community Development Director may administratively approve minor after-the-fact yard encroachments of up to twenty percent of the required yard, not to exceed a maximum of 2.5 feet.
3. Structures for which a certificate or occupancy, or a final development order was granted before January 1, 1987. The Community Development Director may administratively approve minor after-the-fact yard encroachments of up to 25 percent of the required yard, not to exceed a maximum of 5 feet. Further, the Community Development Director may administratively approve vertical encroachments not to exceed 50 inches.

4. *Procedure.*

1. The property owner, or his agent, shall submit to the Community Development Director a signed and sealed survey identifying the exact location and size of the encroachment; a statement of how and when the encroachment was created; a statement of current ownership, and ownership at the time the encroachment was created; any other factors which may show that the encroachment was not intentionally created; and the applicable fee as listed in the schedule of fees.
2. The Community Development Director shall review the request for minor after-the-fact encroachments, and shall within 30 days of receipt of the request and application fee, notify the applicant in writing of its approval or denial based upon information provided by the applicant as described above.
3. If denied by the Community Development Director, all fees for the request for minor after-the-fact encroachments may be applied toward a variance request, if the variance request is received within 30 days after the date of the denial letter.

A. *Written petition.* A written petition for a variance shall be submitted by the applicant to the Community Development Director.

B. *Notice of Planning Board public hearing.* Notice of public hearing before the Planning Board is given at least 15 days in advance of the public hearing. The owner of the property for which variance is sought, or his agent or attorney designated by him on his petition, shall be notified by mail. Notice of the public hearing shall be prominently posted on the property for which the variance is sought. Notice of the public hearing shall be advertised in a newspaper of general circulation in the City at least one time 15 days prior to the hearing.

Notice of the time and place of the public hearing before the Planning Board shall be given at least 15 days in advance of the hearing by mail to all owners of property within 300 feet of the property lines of the land for which a variance is sought.

C. *Planning Board public hearing.* The public hearing shall be held by the Planning Board. Any party may appear in person, by agent or attorney, or may submit written comments to the Community Development Director.

D. *Findings.* Before any variance shall be recommended for approval to the Board of Zoning Appeals, the Planning Board shall consider and be guided by the following standards in making a determination:

- i. Are there special conditions and circumstances existing which are peculiar to the location, size and characteristics of the land, structure, or building involved.

- ii. Are there special conditions and circumstances which do not result from the action of the applicant such as pre-existing conditions relative to the property which is the subject of the variance request.
- iii. Will a literal interpretation of the provisions of this zoning code work unnecessary and undue hardship on the applicant or create practical difficulties on the applicant.
- iv. Will the variance, if granted, be the minimum variance that will make possible the reasonable use of the land, building or structure and which promote standards of health, safety or welfare.
- v. Will granting the variance requested confer on the petitioner any special privilege that is denied by these zoning regulations to other lands, buildings, or structures in the same zoning district.
- vi. Will granting the variance be in harmony with the intent and purpose of this zoning code, and not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
- vii. Are there natural conditions or physically induced conditions that ameliorate the goals and objectives of the regulation such as natural preserves, lakes, golf course, etc.
- viii. Will granting the variance be consistent with the growth management plan.

E. *Conditions and safeguards.* In recommending approval of any variance, the Planning Board may recommend appropriate conditions and safeguards in conformity with this zoning code including, but not limited to, reasonable time limits within which the action for which the variance is required shall be begun or completed, or both. In the case of after-the-fact variances, the Planning Board may recommend, as a condition of approval, that in the case of the destruction of the encroaching structure, for any reason, to an extent equal to or greater than 50 percent of the actual replacement cost of the structure at the time of its destruction, any reconstruction shall conform to the provisions of this Code in effect at the time of reconstruction. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this zoning code.

F. *Recommendation of denial.* If the Planning Board recommends denial of a variance, it shall state fully in its record its reason for doing so. Such reasons shall take into account the factors stated in section 5.4.D, or such of them as may be applicable to the action of denial

and the particular regulations relating to the specific variance requested if any.

- G. *Status of Planning Board report and recommendations.* The report and recommendation of the Planning Board required above shall be advisory only and shall not be binding upon the Board of Zoning Appeals.
- H. *Notice of Board of Zoning Appeals public hearing.* Upon completion of the public hearing before the Planning Board, the petition shall be heard by the Board of Zoning Appeals. Notice of public hearing shall be given at least 15 days in advance of the public hearing before the Board of Zoning Appeals. The owner of the property for which the variance is sought, or his agent or attorney designated by him on his petition, shall be notified by mail. Notice of public hearing shall be advertised in a newspaper of general circulation in the City at least one time 15 days prior to the hearing.
- I. *Board of Zoning Appeals public hearings.* The public hearing shall be held by the Board of Zoning Appeals. Any party may appear in person by agent or attorney; or may submit written comments to the Board of Zoning Appeals.
- J. *Board of Zoning Appeals action.* Upon consideration of the Planning Board's report, findings and recommendations, and upon consideration of the standards and guidelines set forth in section 2.7.5.6, the Board of Zoning Appeals shall approve, by resolution, or deny a petition for a variance.
- K. *Conditions and safeguards.* In granting any variance, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this zoning code, including, but not limited to, reasonable time limits within which action for which the variance is required shall be begun or completed, or both. In the case of after-the-fact variances, the board may stipulate that in the case of destruction of the encroaching structure, for any reason, to an extent equal to or greater than 50 percent of the actual replacement cost of the structure at the time of its destruction, any reconstruction shall conform to the provisions of this Code in effect at the time of reconstruction. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this zoning code.
- L. *Limitations on power to grant variances.* Under no circumstances shall the Board of Zoning Appeals grant a variance to permit a use not permitted under the terms of this zoning code in the zoning district involved, or any use expressly or by implication prohibited, by the terms of these regulations in the said zoning district.

SECTION SIX: BUILDING PERMIT AND CERTIFICATE OF OCCUPANCY COMPLIANCE PROCESS.

1. *Zoning action on building permits.* The Community Development Director or designee shall be responsible for determining whether applications for building permits, as required by the Marco Island building code, are in accord with the requirements of this zoning code and the land development code, and no building permit shall be issued without approval that plans submitted conform to applicable zoning regulations, and other land development regulations. No building or structure shall be erected, moved, added to, altered, utilized or allowed to exist without first obtaining the authorization of the required building permit(s), inspections and certificate(s) of occupancy as required by the Marco Island building code and no building permit application shall be approved for the erection, moving, addition to, or alteration of any building or structure except in conformity with the provisions of this zoning code and the land development code unless he shall receive a written order from the Board of Zoning Appeals in the form of an administrative review of the interpretation or variance as provided by this code or unless he shall receive a written order from a court or tribunal of competent jurisdiction.

2. *Application for building permit.* All applications for building permits shall, in addition to containing the information required by the building official, be accompanied by plot and construction plans drawn to scale, showing the actual shape and dimensions of the lot to be built upon; the sizes and locations on the lot of buildings already existing, if any; the size and location on the lot of the building or buildings to be erected, altered, or allowed to exist; the existing use of each building or buildings or parts thereof; the number of families the building is designed to accommodate; the location and number of required off-street parking and off-street loading spaces; approximate location of trees protected by City regulations; and such other information with regard to the lot and existing proposed structures as provide for the enforcement of this land development code. In the case of application of [for] a building permit on property adjacent to the Gulf of Mexico, a survey, certified by a land surveyor or engineer licensed in the State of Florida, and not older than 30 days shall be submitted. If there is a storm event or active erosion on a specific parcel of land for which a building permit is requested, which the site development review director determines may affect the density of the property, a more recent survey may be required. Where ownership or property lines are in doubt, the site development review director may require the submission of a survey, certified by a land surveyor or engineer licensed in the State of Florida. Property stakes shall be in place at the commencement of construction.

3. *Construction and use to be as provided in applications; status of permit issued in error.* Building permits or certificates of occupancy issued on the basis of plans and specifications approved by the site development review director authorize only the use, arrangement, and

construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Use, arrangement, or construction different from that authorized shall be deemed a violation of this land development code.

Statements made by the applicant on the building permit application shall be deemed official statements. Approval of the application by the site development review director shall, in no way, exempt the applicant from strict observance of applicable provisions of this land development code and all other applicable regulations, ordinances, codes, and laws.

A building permit issued in error shall not confer any rights or privileges to the applicant to proceed to or continue with construction, and the City shall have the power to revoke such permit until said error is corrected.

4. *Adequate public facilities required.* No building permit or certificate of occupancy shall be issued except in accordance with the Adequate Public Facilities required in the Land Development Code.
5. *Improvement of property prohibited prior to issuance of building permit.* No site work, removal of protected vegetation, grading, improvement of property or construction of any type may be commenced prior to the issuance of a building permit where the development proposed requires a building permit under this land development code or other applicable City regulations. Exceptions to this requirement may be granted by the community development director for an approved subdivision or site development plan to provide for distribution of fill excavated on site or to permit construction of an approved water management system, to minimize stockpiles and hauling off-site or to protect the public health, safety and welfare where clearing, grading and filling plans have been submitted and approved meeting the warrants of the Land Development Code; removal of exotic vegetation shall be exempted upon receipt of a vegetation removal permit for exotics.
6. *Zoning and land use approval required prior to or simultaneously with issuance of building permit or occupancy of land and space.* A zoning certificate, attesting to compliance with all aspects of the zoning provisions of the land development code, shall be required prior to obtaining a building permit or to occupying any space of land or buildings or for the conduct of a business in all zoning districts. The following zoning certificate review procedure shall provide for the issuance of a zoning certificate.

For the purposes of determining compliance with the zoning provisions of the land development code, an approval of a site development plan pursuant to the Land Development Code, authorizes the issuance of a zoning certificate. Said zoning certificate shall constitute a statement of compliance with all applicable provisions of the land development code, including the uses of the building space upon which applicable

off-street parking and loading requirements were based, however, issuance of a zoning certificate shall not exempt any person from full compliance with any applicable provision of the land development code.

In subdivided buildings each space for which a use is proposed requires a zoning certificate for that particular space, independent of any approval conferred upon the building and the land pursuant to the Land Development Code and of a zoning certificate issued for the building and the land, shall be required.

A zoning certificate shall be required for any use of land or buildings located in residential zoning districts, which involve the conduct of a commercial or other non-residentially allowed uses of land or buildings.

SECTION SEVEN: AFFORDABLE HOUSING DENSITY BONUS

1. *Purpose and intent.* This section is intended to implement and be consistent with the Comprehensive Plan, Rule 9J-5, F.A.C., and the Housing Program Interlocal Agreement by providing for moderate, low and very low income housing through the use of density bonuses which allow an increase in the number of residential dwelling units per acre allowed on property proposed for development, thereby decreasing the per unit cost and development. This objective is accomplished by implementing an AHDB program which consists of an AHDB rating system and an AHDB monitoring program. The purpose of the AHDB rating system is to provide increased residential densities to developers who guarantee that a portion of their housing development will be affordable by households of moderate, low or very low income, thus expanding housing opportunities for moderate, low and very low income households throughout the unincorporated City. The purpose of the AHDB monitoring program is to provide assurance that the program is properly implemented, monitored, and enforced, and that useful information on affordable housing may be collected.

2. *Affordable housing density bonus program.*
 - A. The provision of affordable housing units may add up to eight dwelling units per gross acre to the base density of four residential dwelling units per gross acre, for a total of 12 residential dwelling units per gross acre, plus any other density bonuses available, and minus any density reduction for traffic congestion or coastal management area required, pursuant to the growth management plan, not to exceed a total of 16 dwelling units per gross acre.

 - B. *General requirement.* In order to qualify for the AHDB for a development, the developer must apply for and obtain the AHDB from the City for a development in accordance with this section, including the AHDB rating system, the AHDB monitoring program, and the limitations on the AHDB.

- C. *Preapplication conference.* Prior to submitting an application for AHDB, a preapplication conference may be scheduled with the Community Development Director and Collier County Housing staff. The preapplication conference provides an opportunity to familiarize the applicant with the AHDB program and provides an opportunity for the City staff to obtain a clear understanding of the proposed development. The AHDB rating system, the AHDB monitoring program, the imitations, criteria, procedures, standard conditions, standard forms, and other information will be discussed and made available to the applicant. Depending on the type of development proposed, the application may take the form of or be combined with, an application for a planned unit development (PUD), a rezone, or an AHDB development agreement.
- D. *.Application.* An application for AHDB for a development shall be submitted to the Community Development Director in the form established by the Community Development Director. One additional copy of the application as otherwise required shall be provided for the housing and urban improvement director. The application shall, at a minimum, include:
- i. Zoning districts proposed by the applicant, if any, on the property and acreage of each;
 - ii. The total number of residential dwelling units in the proposed development, categorized by number of bedrooms and whether the unit is to be rented or owner-occupied;
 - iii. The total number of AHDB units requested, categorized by number of bedrooms and whether the unit is to be rented or owner-occupied;
 - iv. Total number of affordable housing units proposed in the development categorized by level of income, number of bedrooms, and rental units and owner-occupied units:
 - a. Moderate income households (one bedroom, two bedrooms, or three bedrooms or more).
 - b. Low income households (one bedroom, two bedrooms, or three bedrooms or more).
 - c. Very low income households (one bedroom, two bedrooms, or three bedrooms or more).
 - d. Total affordable housing units (one bedroom, two bedrooms, or three bedrooms or more).
 - v. Gross density of the proposed development;
 - vi. Whether the AHDB is requested in conjunction with an application for a planned unit development (PUD), an application for rezoning or an AHDB development agreement;
 - vii. Any other information which would reasonably be needed to address the request for AHDB for the development pursuant to the requirements set forth in this section.
- E. *Staff review and recommendation by the Community Development Director.* After receipt of a completed application for AHDB, the

Community Development Director shall review and evaluate the application in light of the AHDB rating system, the AHDB monitoring program and the requirements of this division, and shall recommend to the Planning Board and City Council to deny, grant, or grant with conditions, the application. The recommendation of the housing and urban improvement director shall include a report in support of his recommendation.

- F. *Review and recommendation by the Planning Board.* Upon receipt by the Planning Board of the application for AHDB and the written recommendation and report of the Community Development Director, the Planning Board shall schedule and hold a properly advertised and duly noticed public hearing on the application. If the application has been submitted in conjunction with an application for a PUD, then the hearing shall be consolidated and made a part of the public hearing on the application for the PUD before the Planning Board, and the Planning Board shall consider the application for AHDB in conjunction with the application for the PUD. If the application has been submitted in conjunction with an application for a rezoning, then the hearing shall be consolidated and made a part of the public hearing on the application for rezoning before the Planning Board, and the Planning Board shall consider the application for AHDB in conjunction with the application for rezoning. In the event that the application for AHDB has not been submitted in conjunction with an application for PUD or an application for rezoning, then the application for AHDB shall nonetheless be treated as a rezoning on the property and shall comply with the requirements for a rezoning, as well as the requirements of this section. After the close of the public hearing, the Planning Board shall review and evaluate the application in light of the requirements of this division and the requirements for a rezoning, and shall recommend to the City Council that the application be denied, granted or granted with conditions. However, in the event that the application for AHDB does not change the densities or intensities of use or the zoning on the property and does not require a rezoning or PUD application, then the application for AHDB shall comply with the requirements for development agreements under the Marco Island Development Agreement Ordinance [Code ch. 38, art. III], as well as the requirements of this section, in lieu of compliance with the rezoning requirement referenced in this section.
- G. *Review and determination by City Council.* Upon receipt by City Council of the application for AHDB and the written recommendation and report of the Community Development Director and the recommendation of the Planning Board, City Council shall schedule and hold a properly advertised and duly noticed public hearing on the application. If the application has been submitted in conjunction with an application for a planned unit development (PUD), then the hearing shall be consolidated and made a part of the public hearing on the application for the planned unit development (PUD) before the City Council, and the City Council shall consider the application for AHDB in conjunction with the application for the planned unit development (PUD). If the application has been submitted in conjunction with an application for a rezoning, then the hearing shall be consolidated and

made a part of the public hearing on the application for rezoning before the City Council, and City Council shall consider the application for AHDB in conjunction with the application for rezoning. In the event that the application for AHDB has not been submitted in conjunction with an application for planned unit development (PUD) or an application for rezoning, then the application for AHDB shall nonetheless be treated as a rezoning on the property and shall comply with the requirements for a rezoning as well as the requirements of this section. After the close of the public hearing, City Council shall review and evaluate the application in light of the requirements of this division and the requirements for a rezoning, and shall deny, grant, or grant with conditions, the application in accordance with the AHDB rating system and the AHDB monitoring program. However, if the application for AHDB does not change the densities or intensities of use or the zoning on the property and does not require a rezoning or planned unit development application, then the application for AHDB shall comply with the requirements for development agreements under the Marco Island Development Agreement Ordinance [Code ch. 38, art. III] as well as the requirements of this division, in lieu of compliance with the rezoning requirements referenced in this section.

- H. *Affordable housing density bonus rating system.* The AHDB rating system shall be used to determine the amount of the AHDB which may be granted for a development, based on household income level, number of bedrooms per affordable housing unit, type of affordable housing units (owner-occupied or rental, single-family or multifamily) and percentage of affordable housing units in the development. To use the AHDB rating system, tables A and B, below, shall be used. Tables A and B shall be reviewed and updated, if necessary, on an annual basis by City Council or its designee.
- i. First, choose the household income level (moderate, low, or very low) of the affordable housing unit(s) proposed in the development, and the type of affordable housing units (owner-occupied or rental, single-family or multifamily, where applicable) to be provided, as shown in table A. Then, referring again to table A, choose the number of bedrooms proposed for the affordable housing unit(s). An AHDB rating based on the household income level and the number of bedrooms is shown in table A.
 - ii. After the AHDB rating has been determined in table A, locate it in table B, and determine the percentage of that type of affordable housing unit proposed in the development compared to the total number of dwelling units in the development. From this determination, table B will indicate the maximum number of residential dwelling units per gross acre that may be added to the base density. These additional residential dwelling units per gross acre are the maximum AHDB available to that development. Developments with percentages of affordable housing units which fall in between the percentages shown on table B shall receive an AHDB equal to the lower of the two percentages it lies between, plus one-tenth of a residential

dwelling unit per gross acre for each additional percentage of affordable housing rental units in the development. For example, a development which has 24 percent of its total residential dwelling units as affordable housing units, and which has an AHDB rating of "4" will receive an AHDB of 4.4 residential dwelling units per gross acre for the development.

- iii. Where more than one type of affordable housing unit (based on level of income and number of bedrooms shown in table A) is proposed for a development, the AHDB for each type shall be calculated separately in table B. After the AHDB calculations for each type of affordable housing unit have been completed in table B, the AHDB for each type of unit shall be added to those for the other type(s) to determine the maximum AHDB available for the development. In no event shall the AHDB exceed eight dwelling units per gross acre.

TABLE A. AFFORDABLE HOUSING DENSITY BONUS RATING

| <i>Level of Household Income</i> | <i>Number of Bedrooms/Unit Efficiency and</i> | | |
|--|---|----------|------------------|
| | <i>1</i> | <i>2</i> | <i>3 or More</i> |
| Moderate (only owner-occupied, single-family) | 0 | 1 | 1 |
| Low (owner-occupied or rental, single-family or multifamily) | 2 | 3 | 4 |
| Very low (owner-occupied or rental, single-family or multi-family) | 3 | 4 | 5 |

TABLE B. AFFORDABLE HOUSING DENSITY BONUS
(ADDITIONAL AVAILABLE DWELLING UNITS PER GROSS ACRE)

| <i>AHDB Rating</i> | <i>% of Affordable Housing Units</i> | | | |
|--------------------|--------------------------------------|------------|------------|------------|
| | <i>10%</i> | <i>20%</i> | <i>30%</i> | <i>40%</i> |
| 1 | 0 | 0 | 1 | 2 |
| 2 | 0 | 1 | 2 | 3 |
| 3 | 2 | 3 | 4 | 5 |
| 4 | 3 | 4 | 5 | 7 |
| 5 | 4 | 5 | 7 | 8 |

- I. *Limitations on affordable housing density bonus.* Anything to the contrary notwithstanding, the following limitations and conditions shall apply to all of the AHDB for .a development:
 - i. *Affordable housing density bonus development agreement required.* The AHDB shall be available to a development only when an AHDB development agreement has been entered into by the developer/applicant and City Council, and such agreement has been approved by the City attorney and City Council pursuant to the public hearing process established in this division prior to execution. Amendments to such agreement shall be processed in the same manner as the original agreement. The AHDB development agreement shall include, at a minimum, the following provisions:
 - a. Legal description of the land subject to the agreement and the names of its legal and equitable owners.
 - b. Total number of residential dwelling units in the development.
 - c. Minimum number of affordable housing units, categorized by level of household income, type of unit (single-family or multifamily, owner-occupied or rental), and number of bedrooms, required in the development.
 - d. Maximum number of AHDB dwelling units permitted in the development.
 - e. Gross residential density of the development.
 - f. Amount of monthly rent for rental units, or the price and conditions under which an owner-occupied unit will be sold, for each type of affordable housing unit in accordance with the definition for each type of affordable housing rental unit (moderate, low, and very low).
 - g. The foregoing notwithstanding, any rent charged for an affordable housing unit rented to a low or very low-income family shall not exceed 90 percent of the rent charged for a comparable market rate dwelling in the same or similar development. Comparable market rate means the rental amount charged for the last market rate dwelling unit of comparable square footage, amenities, and number of bedrooms, to be rented in the same development.
 - h. No affordable housing unit in the development shall be rented to a tenant whose household income has not been verified and certified in accordance with this division as

moderate, low, or very low-income family. Such verification and certification shall be the responsibility of the developer and shall be submitted to the housing and urban improvement director for approval. Tenant income verification and certification shall be repeated annually to assure continued eligibility.

- i. No affordable housing unit that is to be sold, leased with option to purchase, or otherwise conveyed in the development shall be sold, leased with option to purchase, or otherwise conveyed to a buyer whose household income has not been verified and certified in accordance with this division as moderate, low, or very low income family. Such verification and certification shall be the responsibility of the developer and shall be submitted to the housing and urban improvement director for approval. It is the intent of this division to keep housing affordable; therefore, any person who buys an affordable housing unit must agree, in a lien instrument to be recorded with the Clerk of the Circuit Court of Collier County, Florida, that if he sells the property (including the land and/or the unit) within 15 years after his original purchase at a sales price in excess of five percent per year of his original purchase price that he will pay to the City an amount equal to one-half of the sales price in excess of five percent increase per year. The lien instrument may be subordinated to a qualified first mortgage.
- j. No affordable housing unit is any building or structure in the development shall be occupied by the developer, any person related to or affiliated with the developer, or a residential manager.
- k. When the developer advertises, rents, sells or maintains the affordable housing unit, it must advertise, rent, sell and maintain the same in nondiscriminatory manner and make available any relevant information to any person who is interested in renting or purchasing such affordable housing unit. The developer shall agree to be responsible for payment of any real estate commissions and fees. The affordable housing units in the development shall be identified on all building plans submitted to the county and described in the application AHDB.
- l. The developer shall not disclose to persons, other than the potential tenant, buyer or lender of the particular affordable housing unit or units, which units in the development are designated as affordable housing units.
- m. The square footage, construction and design of the affordable housing units shall be the same as market rate

dwelling units in the development.

- n. The AHDB agreement and authorized development shall be consistent with the growth management plan and land development regulations of Marco Island that are in effect at the time of development. Subsequently adopted laws and policies shall apply to the AHDB agreement and the development to the extent that they are not in conflict with the number, type of affordable housing units and the amount of AHDB approved for the development.
 - o. The affordable housing units shall be intermixed with, and not segregated from. The market rate dwelling units in the development.
 - p. The conditions contained in the AHDB development agreement shall constitute covenants, restrictions, and conditions, which shall run with the land and shall be binding upon the property and every person having any interest therein at anytime and from time to time.
 - q. The AHDB development agreement shall be recorded in the official records of Marco Island, Collier County, Florida subsequent to the recordation of the grant deed pursuant to which the developer acquires fee simple title to the property.
 - r. Each affordable housing unit shall be restricted to remain and be maintained as the type of affordable housing rental unit (moderate, low or very low income) designated in accordance with the AHDB development agreement for at least 15 years from the issuance of a certificate of occupancy for such unit.
 - s. The developer and owner of the development shall provide onsite management to assure appropriate security, maintenance and appearance of the development and the dwelling units where these issues are a factor.
- J. *Compliance with the Comprehensive Plan and land development Code.* The AHDB shall be available to a development only to the extent that it otherwise complies and is consistent with the Comprehensive Plan and the land development Code, including the procedures, requirements, conditions and criteria for planned unit development (PUDs) and rezonings, where applicable.
- K. *Minimum number of affordable housing units.* The minimum number of affordable housing units that shall be provided in a development pursuant to this division shall be ten affordable housing units.
- L. *Nontransferable.* The AHDB is not transferable between development or properties.

- M. *Phasing.* In the case where a development will occur in more than one phase, the percentage of affordable housing units to which the developer has committed for the total development shall be maintained in each phase on the property. For example, if the total development's AHDB is based on the provision of ten percent of the total dwelling units as affordable housing rental units for low income households with two bedrooms per unit, then each phase must maintain that same percentage (ten percent in this case) cumulatively.
- N. Affordable housing density bonus monitoring program.
- i. *Annual progress and monitoring report.* The AHDB for a development shall be subject to the AHDB monitoring program set Development Director with an annual progress and monitoring report regarding the delivery of affordable housing rental units throughout the period of their construction, rental and occupancy for each of the developer's developments which involve the AHDB in a form developed by the Community Development Director. The annual progress and monitoring Report shall, at a minimum, require an information reasonably helpful to insure compliance with this division and provide information with regard to affordable housing. To the extent feasible, the director shall maintain public records of all dwelling units (AHDB and affordable housing units) constructed pursuant to the AHDB program, all affordable housing units constructed pursuant to the AHDB program, other records and information as Community Development director believes may be necessary or desirable to monitor the success of the AHDB program and the degree of compliance therewith. Failure to complete and submit the monitoring report to the housing and urban improvement director within 60 days form the due date will result in a penalty of up to \$50.00 per day per incident or occurrence unless a written extension not to exceed 30 days is requested prior to expiration of the 60-day submission deadline.
- O. *Income verification and certification.*
- i. *Eligibility.* The determination of eligibility of moderate, low, and very low-income families to rent or buy and occupy affordable housing units is the central component of the AHDB monitoring program. Family income eligibility is a three-step process: (1) submittal of an application by a buyer or tenant; (2) verification of family income; and (3) execution of an income certification. All three shall be accomplished prior to a buyer or tenant being qualified as an eligible family to rent or purchase and occupy an affordable housing unit pursuant to the AHDB program. No person shall occupy an affordable housing unit provided under the AHDB program prior to being qualified at the appropriate level of income (moderate, low or very low income).

The developer shall be responsible for accepting applications

from buyers or tenants, verifying income and obtaining the income certification for its development which involves AHDB, and all forms and documentation must be provided to the Community Development Director prior to qualification of the buyer or tenant as a moderate, low or very low income family. The director shall review all documentation provided, and may verify the information provided from time to time. Prior to occupancy by a qualified buyer or tenant, the developer shall provide to the director, at a minimum, the application for affordable housing qualification, including the income verification form and the income certification form, and the purchase contract, lease, or rental agreement for that qualified buyer or tenant. At a minimum, the lease shall include the name, address and telephone number of the head of household and all other occupants, a description of the unit to be rented, the term of the lease, the rental amount, the use of the premises, and the rights and obligations of the parties. Random inspections to verify occupancy in accordance with this division may be conducted by the director.

- ii. *Application.* A potential buyer or tenant shall apply to the developer, owner, manager, or agent to qualify as a moderate, low, or very low-income family for the purpose of renting and occupying an affordable housing rental unit pursuant to the AHDB program. The application for affordable housing qualification shall be in a form provided by the director and may be a part of the income certification form.
- iii. *Income verification.* The Community Development Director or the developer shall obtain written verification from the potential occupant (including the entire household) to verify all regular sources of income to the potential tenant (including the entire household). The written verification form shall include, at a minimum, the purpose of the verification, a statement to release information, employer verification of gross annual income or rate of pay, number of hours worked, frequency of pay, bonuses, tips and commissions and a signature block with the date of application. The verification may take the form of the most recent year's federal income tax return for the potential occupants (including the entire household), a statement to release information, tenant verification of the return, and a signature block with the date of application. The verification shall be valid for up to 90 days prior to occupancy. Upon expiration of the 90-day period, the information may be verbally updated from the original sources for an additional 30 days, provided it has been documented by the person preparing the original verification. After this time, a new verification form must be completed.
- iv. *Income certification.* Upon receipt of the application and verification of income, an income certification form shall be executed by the potential buyer or tenant (including the entire household) prior to sale or rental and occupancy of the

affordable housing unit by the owner or tenant. Income certification that the potential occupant has a moderate, low, or very low household income qualifies the potential occupant as an eligible family to buy or rent and occupy an affordable housing unit under the AHDB program. The income certification shall be in a form provided by the Community Development Director.

- P. *Violations.* It is a violation of this section to rent, sell or occupy, or attempt to rent, sell or occupy, an affordable housing rental unit provided under the AHDB program except as specifically permitted by the terms of this section, or to knowingly give false or misleading information with respect to any information required or requested by the Community Development Director or by other persons pursuant to the authority which is delegated to them by this section.

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 City Charter in conflict herewith are hereby repealed to the extent of such conflict.

SECTION NINE: PROVIDING FOR PENALTIES FOR VIOLATION

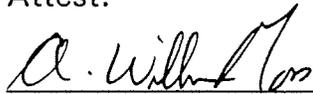
- 1] Pursuant to Section 162.22, Florida Statutes, a person found to be in violation of this Ordinance may be charged with a fine, not to exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days. Each violation or non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered as a separate offense.
- [2] Violation of this Ordinance may also be prosecuted before the Marco Island Code Enforcement Board.

SECTION TEN: EFFECTIVE DATE.

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

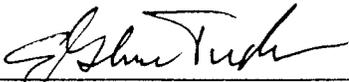
Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida, this 4th day of February 2002.

Attest:



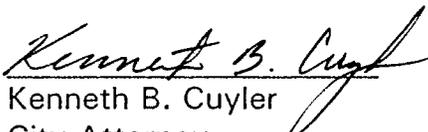
A. William Moss
City Manager/City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

E. Glenn Tucker, Chairman

Approved as to form and
Legal sufficiency:



Kenneth B. Cuyler
City Attorney