

**CITY OF MARCO ISLAND  
ORDINANCE 02- 04**

**AN ORDINANCE TO ESTABLISH NEW LAND DEVELOPMENT CODE GENERAL PROVISIONS TO SUPERCEDE, REPLACE AND/OR SUPPLEMENT SUCH GENERAL PROVISIONS FOUND IN THE COLLIER COUNTY LAND DEVELOPMENT CODE (ORDINANCE 91-102, AS AMENDED) AND CURRENTLY APPLICABLE TO LAND DEVELOPMENT ON MARCO ISLAND; PROVIDING FOR TITLE AND CITATION; ESTABLISHING INTENT AND PURPOSE; PROVIDING FOR APPLICABILITY; PROVIDING FOR INTERPRETATIONS; PROVIDING FOR VESTED RIGHTS; PROVIDING FOR NONCONFORMITIES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR FEES; PROVIDING FOR AMENDMENTS; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Section 7.01 of the Marco Island City Charter recognized the Collier County Land Development Code (LDC) as the effective development regulations for Marco Island until such time as the City adopted its own Land Development Code; and

**WHEREAS**, Chapter 163, Florida Statutes, requires that a municipality adopt a Land Development Code within one year of Comprehensive Plan approval; and

**WHEREAS**, the City desires to adopt Land Development regulations that are consistent with, and will implement and advance the goals, objectives and policies of the adopted Comprehensive Plan; and

**WHEREAS**, the City desires to adopt a Land Development Code that will encourage innovative land use planning and development, that is in keeping with the small town, tropical ambiance, while maintaining appropriate controls and enforcement capabilities.

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

**SECTION ONE: TITLE AND CITATION**

This code shall be known as the "City of Marco Island Land Development Code" and may be cited and referred to herein as the "code" or "LDC." Citation to provisions contained in this code shall be referenced as "Sec. \_\_\_\_\_, LDC."

## **SECTION TWO: PURPOSE AND INTENT**

It is the purpose of the City Council to establish the standards, regulations and procedures for review and approval of all proposed development of property within the City of Marco Island, and to provide a development review process that will be comprehensive, consistent, and efficient in the implementation of the goals, objectives, and policies of the City of Marco Island Comprehensive Plan.

In order to foster and preserve 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 development 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.

The City Council deems it to be in the best public interest for all property and development to be conceived, designed, built, and used in accordance with good planning and design practices and the minimum standards set forth in this code.

## **SECTION THREE: APPLICABILITY**

The provisions of this code shall apply to all land, property and development within the corporate limits of the City of Marco Island. No development shall be undertaken without prior authorization pursuant to this code. Specifically, no building, structure, land or water shall hereafter be developed, or occupied, and no building, structure, or part thereof shall be erected, reconstructed, moved, located, or structurally altered except in conformity with the regulations set forth herein and for the zoning district in which it is located.

### *1. Relationship to Comprehensive Plan.*

The adoption of this ordinance is consistent with, compatible with and furthers the goals, policies, objectives, land uses, and densities or intensities contained and required in the Marco Island Comprehensive Plan, and it implements and directly advances the goals, policies and objectives of the such Comprehensive Plan. The City Council hereby declares and affirmatively states that in the event that any land development regulation, this code, or any provision hereof or amendment hereto is not consistent with the adopted Comprehensive Plan, as amended, the provisions of the Comprehensive Plan, as amended, shall govern any action taken with regard to an application

for a development order or other activity. Furthermore, any land development regulation, this code, or any provision hereof or amendment hereto shall be interpreted, construed and implemented in such a manner which will make it most consistent with the City of Marco Island Comprehensive Plan, as amended.

2. *Exceptions.*

- a. *Previously issued building permits.* The provisions of this ordinance and any amendments hereto shall not affect the validity of any lawfully issued and effective building permit issued prior to the effective date of this ordinance if:
- i. The development activity authorized by the permit has commenced prior to the effective date of this code or any amendment hereto, or will commence after the effective date of this ordinance but prior to the permit's expiration or termination; and
  - ii. The development activity continues without interruption in good faith until development is complete. If the building permit expires, any further development shall be in conformance with the requirements of this ordinance or any amendment hereto.
- b. *Time limits on previously approved development orders.* Any time limits on any development order approved prior to the adoption of this ordinance shall continue to run and shall not be enlarged, expanded or stayed by the adoption of this ordinance. Furthermore, any time limits required under this ordinance for any types of development orders which are more restrictive or shorter than the time limits remaining on previously approved development orders shall apply retroactively to all such previously approved development orders. However, the application of such more restrictive time limits under this ordinance to previously approved development orders shall commence to run on the effective date of this code.

**SECTION FOUR: INTERPRETATIONS**

1. *Authority.*

The Community Development Director shall have the authority to make all interpretations of the text of this code, the boundaries of

zoning districts on the official zoning atlas, and to make all interpretations of the text of the Comprehensive Plan and the boundaries of land use districts on the future land use map.

The Chief Building Official shall have the authority to make all interpretations of the text of this code on matters related to the building code, building permit requirements, building construction administrative code or building permits.

In cases where interpretations of both the Chief Building Official and Community Development Director are requested jointly, any conflict shall be resolved by the Community Development Director.

2. *Initiation.*

An interpretation may be requested by any affected person, resident, developer, land owner, government agency or department, or any person having a contractual interest in land in the City of Marco Island.

3. *Procedures.*

- a. Submission of request for interpretation. Before an interpretation shall be provided, a written request shall be submitted to the Community Development Director, or Chief Building Official, whichever is applicable, in a form established by him. A fee for the request and processing of the request shall be established at a rate set by the City Council from time to time and shall be charged to and paid by the applicant.
- b. Determination of completeness. After a request for interpretation has been received, the Community Development Director or the Chief building official whichever is applicable, shall determine whether the request is complete. If the community development director or chief Building Official, whichever is applicable, determines that the request is not complete, he shall serve a written notice on the applicant specifying the deficiencies. The Community Development Director or Chief Building Official, whichever is applicable, shall take no further action on the request for interpretation until the deficiencies are remedied.
- c. Notification of affected property owner. Where a site specific interpretation has been requested by a party other than the

affected property owner, the City of Marco Island shall notify the property owner that an interpretation has been requested concerning their property.

4. *Rendering of interpretation.*

After the request for interpretation has been determined complete, the Community Development Director or Chief Building Official, shall review and evaluate the request in light of the Comprehensive Plan, the future land use map, the code and/or the official zoning atlas, and building code related matters, whichever is applicable, and render an interpretation. The Community Development Director and the Chief Building Official may consult with the City Attorney and other city departments before rendering an interpretation. Prior to the release to the applicant of any interpretation, such proposed interpretation shall be reviewed by the City Attorney for legal form and sufficiency. Interpretations made pursuant to this section shall be rendered within 45 days of issuance of a determination of completeness.

5. *Form.*

The interpretation shall be in writing and shall be sent to the applicant by certified mail return receipt requested.

6. *Official record.*

The Community Development Director shall maintain an official record of all interpretations rendered by either the Community Development Director or Chief Building Official, which shall be available for public inspection during normal business hours.

a. Notice of interpretation. The Community Development Director shall provide public notification upon the issuance of an interpretation. For general interpretations of the building code, the Comprehensive Plan or Land Development Code, notice of the interpretation and appeal time-frame shall be advertised in a newspaper of general circulation in the City. For interpretations affecting a specific parcel of land, notice of the interpretation and appeal time-frame shall be advertised in a newspaper of general circulation, and mail notice of the interpretation shall be sent to all property owners within 300 feet of the property lines of the land for which the interpretation is effective.

b. Effective time limits of an interpretation. An interpretation

rendered by the Community Development Director or the Chief Building Official, as the case may be, shall remain in effect until the appropriate code section is amended to clarify the applicable provision or provisions which warranted the interpretation, or until such time as the interpretation is adopted, modified, or rejected as a result of an appeal to the board of zoning appeals and/or the building board of adjustments and appeals, by the applicant or other individual or entity. From the time the interpretation is rendered and the time the appropriate code section is amended, or in the case of an appeal, until such time as the board of zoning appeals and/or building board of adjustments and appeals has rendered its finding, no further request for interpretation regarding the same issue shall be permitted.

- c. Interpretations rendered by either the Community Development Director or the Chief Building Official are not final until the appeal period expires or the appeal, if filed, as concluded.

7. *Appeal to board of zoning appeals or construction board of adjustments and appeals.*

Within 30 days after receipt by the applicant or affected property owner of a written interpretation sent by certified mail return receipt requested by the Community Development Director or Chief Building Official, or within 30 days of publication of public notice of interpretation, the applicant, affected property owner, or aggrieved or adversely affected party may appeal the interpretation to the construction board of adjustments and appeals for matters relating to building and technical codes, or to the board of zoning appeals for all other matters in this code. For the purposes of this section, an affected property owner is defined as an owner of property located within 300 feet of the property lines of the land for which the interpretation is effective. An aggrieved or affected party is defined as any person or group of persons which will suffer an adverse effect to an interest protected or furthered by the City of Marco Island Comprehensive Plan, Land Development code, or building code(s). The alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in community good shared by all persons.

A request for appeal shall be filed in writing. Such request shall state the basis for the appeal and shall include any pertinent information, exhibits and other backup information in support of the appeal. A fee

for the application and processing of an appeal shall be established at a rate set by the City Council from time to time and shall be charged to and paid by the applicant. The board of zoning appeals or the construction board of adjustments and appeals, whichever is applicable, shall hold an advertised public hearing on the appeal and shall consider the interpretation of the Community Development Director or Chief Building Official, whichever is applicable, and public testimony in light of the Comprehensive Plan, the future land use map, the code or the official zoning atlas, or building code related matters, whichever is applicable. The board of zoning appeals or the building board of adjustments and appeals, whichever is applicable, shall adopt the Community Development Director's or Chief Building Official's interpretation, whichever is applicable, with or without modifications or conditions, or reject his interpretation. The board of zoning appeals or the building board of adjustments and appeals, whichever is applicable, shall not be authorized to modify or reject the Community Development Director's or Chief Building Official's interpretation unless such board finds that the determination is not supported by substantial competent evidence or that the interpretation is contrary to the Comprehensive Plan, the future land use map, the code or the official zoning atlas, or building code, whichever is applicable.

8. *Rules for interpretation of boundaries.*

Interpretations regarding boundaries of land use districts on the future land use map or boundaries of zoning districts on the official zoning atlas shall be made in accordance with the provisions of this section.

- a. District regulations extend to all portions of districts surrounded by boundaries. Except as otherwise specifically provided, a district symbol or name shown within district boundaries on the future land use map or the official zoning atlas indicates that district regulations pertaining to the district extend throughout the whole area surrounded by the boundary line.
- b. Where uncertainty exists as to the boundaries of land use districts as shown on the future land use map or boundaries of zoning districts as shown on the official zoning atlas, the following rules shall apply:
  - i. Boundaries indicated as approximately following the centerlines of dedicated streets, highways, alleys, or rights-of-way shall be construed as

following such centerline as they exist on the ground, except where variation of actual location from mapped location would change the zoning status of a lot or parcel, in which case the boundary shall be interpreted in such a manner as to avoid changing the zoning status of any lot or parcel. In case of a street vacation, the boundary shall be construed as remaining in its location except where ownership of the vacated street is divided other than at the center, in which case the boundary shall be construed as moving with the ownership.

- ii. Boundaries indicated as approximately following lot lines, public property lines, and the like shall be construed as following such lines; provided however, that where such boundaries are adjacent to a dedicated street, alley, highway, or right-of-way and the zoning status of the street, highway, alley, or right-of-way and the zoning status of the street, highway, alley, or right-of-way [sic] is not indicated, the boundaries shall be construed as running to the middle of the street, highway, alley, right-of-way.
- iii. Boundaries indicated as approximately following city or county limits shall be construed as following such city or county limits.
- iv. Boundaries indicated as following mean high-water lines or centerlines or [of] streams, canals, lakes, or other bodies of water shall be construed as following such mean high-water lines or centerlines. In case of a change in mean high-water line, or of the course or extent of bodies of water, the boundaries shall be construed as moving with the change, except where such moving would change the zoning status of a lot or parcel; and in such case the boundary shall be interpreted in such a manner as to avoid changing the zoning status of any lot or parcel.
- v. Boundaries indicated as entering any body of water but no continuing to intersect with other zoning

boundaries or with the limits of jurisdiction of the City of Marco Island shall be construed as extending in the direction in which they enter the body of water to intersection with other zoning boundaries or with the limits of city jurisdiction.

- vi. Boundaries indicated as following physical features other than those listed above shall be construed as following such physical features, except where variation of actual location from mapped location would change the zoning status of a lot or parcel, and in such manner as to avoid changing the zoning status of any lot or parcel.
- vii. Distances not specifically indicated on the official zoning atlas shall be determined by the scale of the map on the page of the atlas showing the property in question.

9. *Cases not covered above.*

In cases not covered above, or where the property or street layout existing on the ground is at variance with that shown on the official zoning atlas, the interpretation of the future land use map or the official zoning atlas shall be in accordance with the purpose and intent of the Comprehensive Plan and this code.

10. *Division of a lot of record by a boundary.*

Where a district boundary divides a lot of record at the time the boundary was established, and where the division makes impractical the reasonable use of the lot, the extension of the regulations for the front lot may be permitted as a conditional use for not to exceed 50 feet beyond the district line into the remaining portion of the lot.

11. *Continuity of zoning.*

In the event any unincorporated territory within Collier County shall seek annexation and hereafter become incorporated within the City of Marco Island, to insure that there shall be no lapse of zoning, then, any and all zoning regulations which may be in effect in such territory shall remain in full force and effect and shall continue to be administered and enforced by the city under this code until such time as municipal zoning within such territory shall be adopted and take

effect.

## SECTION FIVE: VESTED RIGHTS

### 1. *Administrative process*

An applicant claiming that certain property rights have been vested prior to the effective date of these regulations will be provided an administrative process that will ensure adequate procedural due process including notice, public hearing, and the right to present and rebut evidence. The Marco Island City Council, acting as the Board of Zoning Appeals (hereinafter BZA), subject to the procedures in this division shall issue formal findings of fact, conclusions of law, a finding of consistency or inconsistency with the Comprehensive Plan and the code and a determination of vested rights. The claim shall be administered as provided in this division.

### 2. *Application.*

An application for determination of vested rights shall be submitted in the form established by the Community Development Director. An application for determination of vested rights shall be filed, if at all, within one year of the effective date of this code. Failure to file such application for a property within the one-year period shall forever waive and bar all claims for vested rights or equitable estoppel for such property, it being the express intent of the city that such development rights be "amortized" over the one-year period, plus if applicable, the additional two-year limitation period established herein. An application fee in an amount to be determined by the City Council shall accompany and be part of the application. The application shall, at a minimum, include:

1. Name, address, and telephone number of the owner and authorized applicant if other than the owner;
2. Street address, legal description, and acreage of the property; and
3. All factual information and knowledge reasonably available to the owner and applicant to address the criteria established in this code.

### 3. *Determination of completeness.*

The Community Development Director shall determine whether the application submitted is complete. If he determines that the

application is not complete, the Community Development Director shall notify the applicant in writing of the deficiencies. The Community Development Director shall take no further steps to process the application until the deficiencies have been remedied.

4. *Review and determination or recommendation by the Community Development Director and City Attorney.*

After receipt of an application for determination of vested rights, the Community Development Director and the City Attorney shall review and evaluate the application in light of all of the criteria contained herein. Based on the review and evaluation, the community development director shall prepare a written recommendation to the BZA that the application should be denied, granted or granted with conditions. Such recommendation shall include findings of fact for each of the criteria established in this section to the extent that information is presented or obtained or inclusion is feasible or applicable.

5. *Review and determination of vested rights determination by the Board of Zoning Appeals.*

Upon receipt by the BZA of the application for determination of vested rights and the written recommendation of the Community Development Director, the BZA shall hold a public hearing on the application. At this hearing, the BZA shall take evidence and sworn testimony in regard to the criteria set forth in this section, and shall follow their rules of procedures, empowered to swear witnesses and take testimony under oath. Testimony shall be limited to the matters directly relating to the criteria and standards set forth in this section. The Community Development Director shall represent the city, shall attend the public hearing, and shall offer such evidence as is relevant to the proceedings. The owner of the property and its authorized agents, may offer such evidence at the public hearing as is relevant to the proceedings and criteria. The order of presentation before the Board of Zoning Appeals at the public hearing shall be as follows: (1) the city's summary of the application, written recommendation, witnesses and other evidence; (2) owner or applicant witnesses and evidence; (3) public witnesses and evidence; and (4) city rebuttal, if any.

6. *Issuance of vested rights determination by the Board of Zoning Appeals.*

At the conclusion of the public hearing, the BZA shall consider the application for determination of vested rights, the recommendation of the Community Development Director, and the evidence and testimony presented at the public hearing, in light of all of the criteria set forth in this section, and shall deny, grant, or grant with conditions the application for determination of vested rights for the property or properties at issue. The determination shall be entered into the public record and shall include findings of fact for each of the applicable criteria, conclusions of law for each of such criteria, and a determination denying, granting, or granting with conditions, in whole or in part, the vested rights.

Within seven (7) days of the public hearing, the Community Development Director shall advise the applicant in writing, return receipt required, of the action taken by the Board of Zoning Appeals.

7. *Appeal to Circuit Court.*

Within 30 days after issuance of the Board of Zoning Appeals determination of vested rights, the owner or its authorized attorney or agent, may appeal the determination of vested rights by the Board of Zoning Appeals to Circuit Court.

8. *Criteria for vested rights.*

This section is intended to strictly adhere to and implement existing Florida case law and statutory law as they relate to the doctrine of vested rights and equitable estoppel as applied to a local government exercising its authority and powers in zoning, the provision of adequate public facilities concurrent with development regulations, and related matters. It is the express intent of the City of Marco Island to require application of the provisions of this code to as much development and property as is legally possible without violating the legally vested rights which the owner may have obtained in accordance with Florida common law and statutory law, including F.S. § 163.3167(8). The criteria herein provided shall be considered in rendering a vested rights determination under this division. It is intended that each case be decided on a case-by-case factual analysis. An owner shall be entitled to a positive determination of vested rights only if he demonstrates by substantial competent evidence that he is entitled to complete his development without regard to the otherwise applicable provisions of this code based on the provisions of F.S. § 163.3167(8), or all three of the following requirements of the three-part test under Florida case law: (1) Upon some act or omission of

the city, (2) a property owner relying in good faith, (3) has made such a substantial change in position or has incurred such extensive obligations and expenses that that it would be highly inequitable and unjust to destroy the rights acquired.

9. *Limitation of determination of vested rights.*

A determination of vested rights which grants an application for determination of vested rights shall expire and be null and void unless either (1) construction is commenced pursuant to a final development order, final subdivision plat, or final site development plan, within two years after the issuance of the determination of the vested rights under this division, or (2) where substantial permanent buildings have been, or are being constructed or installed pursuant to a valid, unexpired, final development order, final subdivision plat, or final site development plan, shall continue in good faith until project completion. Failure to obtain a building permit within two years after the issuance of the determination of vested rights under this code shall rendered said vested rights to expire and become null and void. The aforementioned two-year time limitation on the determination of vested rights shall be stayed during any time periods within which commencement of construction pursuant to a final development order, final subdivision plat, or final site development plan is prohibited or deferred by the city solely as a result of lack of adequate public facilities to serve the property, pursuant to this code.

10. *Public notice.*

For purposes of this section due public notice shall mean at least 15 days' notice of the time, place and subject of such hearing published one time in a newspaper of general circulation in the area. Notice of the submission of an application for vested rights determination and, when applicable, of public hearings held pursuant to this division shall be prominently posted by the applicant on the property for which the vested rights determination is sought and shall be sent at the applicant's expense to property owners within 300 feet of the property lines of the subject property within 15 days of the date of receipt by the city of a completed application. Said notice shall briefly state the time and place of the hearing, the nature of the matter to be discussed and that written comments may be filed with the Community Development Director.

11. *Public participation.*

Affected parties may submit written comments and pertinent factual information and data to the Community Development Director. Such written comments and pertinent factual information and data may be submitted up to five days prior to the date set for the public hearing.

## SECTION SIX: NONCONFORMITIES

### 1. *Generally.*

Within the zoning districts established by the land development code or amendments that may later be adopted, there may exist lots, structures, uses of land, water and structures, and characteristics of use which were lawful before this code was adopted or amended, but which would be prohibited, regulated, or restricted under the terms of his code or future amendments. It is the intent of this division to permit these nonconformities to continue until they are voluntarily renovated or removed as required by this code, but not to encourage their survival. It is further the intent of the land development code that the nonconformities shall not be enlarged upon, expanded, intensified, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

### 2. *Declaration.*

Nonconforming uses are declared by this division to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land or water, or a nonconforming use of structure, land or water in combination shall not be extended or enlarged after the effective date of this code or relevant amendment thereto by attachment on a structure or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the district involved, except as provided for herein.

### 3. *Vested projects.*

To avoid undue hardship, nothing in this code shall be deemed to require a change in the plans, construction, or designated use of a building or property on which a building permit had been applied for prior to the effective date of adoption of relevant amendment of this code.

In addition, nothing in this code shall be deemed to require a change in the plans, construction, or designated use of any property for which a

development plan was lawfully required and approved prior to the effective date of adoption of relevant amendment of this code, provided that such plan shall expire two years from the date of said approval, or one year from the date of adoption of this code, whichever shall first occur, if no actual construction has been commenced; and thereafter, all development shall be in accordance with the zoning regulations then in effect. Any such approved plat or plan may be amended by approval of the city council, provided the degree of nonconformity with this code shall not be increased.

4. *Nonconforming lots of record.*

In any district, any permitted or permissible structure may be erected, expanded, or altered on any lot of record at the effective date of adoption or relevant amendment to this code.

- a. The minimum size yard requirements in any commercial district shall be equal to the height of the proposed principal structure, or the minimum side yard requirement in the district, whichever is lesser.

5. *Nonconforming uses of lands or waters or structures only.*

Where, at the effective date of adoption or relevant amendment of this code, lawful use of lands or waters exists which would not be permitted under this code, the use may be continued, so long as it remains otherwise lawful, provided:

- a. *Enlargement, increase, intensification, alteration.* No such nonconforming use shall be enlarged, intensified, increased, or extended to occupy a greater area of land, structure, or water than was occupied at the effective date of adoption or relevant amendment of this land development code, except a single-family, duplex, or mobile home use as provided for below.
- b. *Movement.* No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or relevant amendment of this land development code.
- c. *Discontinuance.* If any such nonconforming use ceases for any reason (except where governmental action impedes access to the premises) for a period of more than 180 consecutive days, any subsequent use of land shall conform to the regulations specified by this code for the district in which such land is

located.

Notwithstanding the above definitions of discontinuance relative to a nonconforming use of land or water or structure, where the use of land, water or a structure has ceased for a period of more than 90 consecutive days, and where such property or use is deficient in the required amount of paved, striped parking, including parking and access to the structure for the disabled; water management facilities; landscaping; and other site improvements as required by this Code, prior to the recommencement of any use of land, water or structure, said deficiencies as may apply shall be remedied, to the greatest extent possible given the physical constraints on the property, via the appropriate administrative processes, or as otherwise required by this Code.

- d. Subdivision or structural additions.* No land in nonconforming use shall be subdivided, nor shall any structures be added on such land except for the purposes and in a manner conforming to the regulations for the district in which such land is located; provided, however, that subdivision may be made which does not increase the degree of nonconformity of the use.
- e. Nonconformities not involving the use of a principal structure.* Nonconformities not involving the use of a principal structure, including, but not limited to, open storage, building supplies, vehicles, mobile homes, trailers, equipment and machinery storage, and the like, shall be discontinued within one year of the effective date of this code or relevant amendment of this code.

*6. Extension of use in building manifestly designed for such use.*

Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the effective date of adoption or relevant amendment of this code. Any nonconforming use which occupied a portion of a building not originally designed or intended for such use shall not be extended to any other part of the building. No nonconforming use shall be extended to occupy any land outside the building, nor any additional building on the same lot or parcel, not used for such nonconforming use at the effective date of adoption or relevant amendment of this code.

7. *Change in tenancy or ownership.*

There may be a change in tenancy, ownership, or management of a nonconforming use provided there is no change in the nature or character of such nonconforming use.

8. *Change in use.*

If no structural alterations are made, any nonconforming use of a structure, or of a structure and premises in combination may be changed to another nonconforming use of the same character, or to a more restricted nonconforming use, provided the board of zoning appeals, upon application to the community development director, shall find after public notice and hearing that the proposed use is equally or more appropriate to the district than the existing nonconforming use and that the relation of the structure to surrounding properties is such that adverse effect or occupants and neighboring properties will not be greater than if the existing nonconforming use is continued. In permitting such change, the board of zoning appeals may require appropriate conditions and safeguards in accordance with the intent and purpose of this code.

10. *Casual, temporary, or illegal use.*

The casual, temporary, or illegal use of land or structures, or land and structures in combination, shall not be sufficient to establish the existence of a nonconforming use or to create rights in the continuance of such use.

11. *Uses under conditional use provisions not nonconforming uses.*

All uses lawfully existing on the effective date of this code which are permitted as a conditional use in a district under the terms of this code shall not be deemed a nonconforming use in such district, but shall without further action be deemed to have a conditional use permit.

12. *Change to conforming use requires future conformity with district regulations.*

Where a structure, or structure and premises in combination, in or on which a nonconforming use is replaced by a permitted use shall thereafter conform to the regulations for the district in which the structure is located, and the nonconforming use shall not thereafter be resumed nor shall any other nonconforming use be permitted.

13 *Nonconforming structures.*

Where a structure lawfully exists at the effective date of the adoption of this ordinance or relevant amendment that could not be build under this code by reason of restrictions on lot area, lot coverage, height, yards, location on the lot, or requirements other than use concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity; provided, however, that the alteration, expansion, or replacement of nonconforming single-family dwellings, duplexes or mobile homes shall be permitted in accordance with this code.
- b. Should such nonconforming structure or nonconforming portion of a structure be destroyed by any means to an extent of more than 50 percent of its actual replacement cost at time of destruction, as determined by a cost estimate submitted to the Community Development Director, it shall not be reconstructed except in conformity with provisions of this zoning code or the City's Post-Disaster Redevelopment ordinance (Ord. 01-24).
- c. Should such structure be moved for any reason for any distance whatever, other than as a result of governmental action, it shall thereafter conform to the regulations of the district in which it is located after it is moved.
- d. Nonconforming residential structures, which for the purpose of this section shall mean detached single-family dwellings duplexes or mobile homes in existence at the effective date of this zoning code or its relevant amendment and in continuous residential use thereafter, may be altered, expanded, or replaced upon recommendation of the Marco Island planning board and approval of the board of zoning appeals by resolution.
- e. Notwithstanding the foregoing restrictions as to reconstruction, any residential structure or structures in any residential zone district may be rebuilt after destruction to the prior extent height and density of units per acre regardless of the percentage of destruction, subject to compliance with the applicable Building Code requirements in effect at the time of

redevelopment. In the event of such rebuilding, all setbacks and other applicable district requirements shall be met unless a variance there for is obtained from the board of zoning appeals. For the purpose of this division, a hotel, motel, or bootel shall be considered to be a residential structure.

- f. Since the size and nature of the alteration, expansion or replacement of such nonconforming structures may vary widely, a site plan, and if applicable, preliminary building plans indicating the proposed alteration, expansion or replacement shall be presented with each petition. Prior to granting such alteration, expansion or replacement of a nonconforming single-family dwelling, duplex or mobile home, the planning board and the city council shall consider and base its approval on the following standards and criteria:
  - i. The alteration, expansion or replacement will not increase the density of the parcel or lot on which the nonconforming single-family dwelling, duplex or mobile homes located;
  - ii. The alteration, expansion or replacement will not exceed the building height requirements of the district most closely associated with the subject nonconforming use;
  - iii. The alteration, expansion or replacement will not further encroach upon any nonconforming setback;
  - iv. The alteration, expansion or replacement will not decrease or further decrease the existing parking areas for the structure;
  - v. The alteration, expansion or replacement will not damage the character or quality of the neighborhood in which it is located or hinder the proper future development of the surrounding properties; and
  - vi. Such alteration, expansion or replacement will not present a threat to the health, safety or welfare of the community or its resident.

14. *Replacement of mobile homes.*

*Mobile home replacement.* Prior to issuance of any building permit for

replacement of a mobile home, the property owner or authorized agent shall provide the community development director, or his designee, with three copies of a scaled drawing of the subject parcel which indicates:

1. Proof of building permit issuance for structure being replaced.
2. The location of the structure to be replaced and its relationship to adjacent mobile homes and parcel boundaries.
3. Further, mobile homes located in either the C-4 or C-5 zoning district shall comply with replacement criteria contained in the Land Development Code.

15. *Destruction of major structure or structures.*

When nonconforming use status applies to a major structure or structures, or to a major structure or structures and premises in combination, removal or destruction of the structure or structures shall eliminate the nonconforming status of the land. "Destruction" of the structure for purposes of this subsection is hereby defined as damage to the extent of more than 50 percent of the replacement cost at the time of the destruction. Upon removal or destruction as set out in this section, the use of land and structures shall therefore conform to the regulations for the district in which such land is located.

16. *Repairs and maintenance.*

On any nonconforming structure or portion of a structure and on any structure containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing to an extent not exceeding 20 percent of the current assessed valuation of the structure (or of the nonconforming portion of the structure if a nonconforming portion of a structure is involved), provided that the cubic content of the structure existing at the date it becomes nonconforming shall not be increased except subject further to the exception provided herein.

17. *Nonconforming structures unsafe because of lack of maintenance.*

If a nonconforming structure or portion of a structure, or any structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance, and is declared by the

duly authorized official of Marco Island to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

18. *Nonconforming structures unsafe for reasons other than lack of maintenance.*

If a nonconforming structure or portion of a structure, or any structure containing a nonconforming use, becomes physically unsafe or unlawful for reasons other than this lack of repairs or maintenance, nothing contained herein shall be deemed to prevent the strengthening or restoring to a safe condition of such building or part thereof declared to be unsafe by the authorized official of Marco Island charged with the public safety; provided, however, that where such unsafe condition(s) or unlawfulness is the result of damage from destruction, the percentage of damage limitations set out above, as the case may be, shall apply.

## SECTION SEVEN: ENFORCEMENT

1. *General.*

The provisions of this code shall be enforced (1) by the code enforcement board and (2) by the city council through its authority to enjoin and restrain any person violating the code. The city manager, or his designee, shall have the right to inspect those lands, waters or structures affected by this code and to issue citations for violations.

The term "city manager" as used in this code shall mean the city manager or his/her designee.

2. *Violation.*

Whenever, by the provisions of this code, the performance of any act is required, or the performance of any act is prohibited, or whenever any regulation or limitation is imposed on the use or development of any land or water, or on the erection of a structure, a failure to comply with such provisions shall constitute a violation of this code.

3. *Complaints regarding violations.*

Whenever a violation of this code occurs, or is alleged to have occurred, any person may file a complaint. Such complaint stating

fully the causes and basis thereof shall be filed with the city manager. The city manager, or his designee, shall record properly such complaint, investigate, and take action thereon as provided by this code. He shall maintain as a public record, in his office, the dispositions made of the complaint.

4. *Liability.*

Any owner, tenant, or occupant of any land or structure, or part thereof, and any architect, engineer, builder, contractor, or any other agent, or other person, firm or corporation, either individually or through its agents, employees, or independent contractor, who violates the provisions of this code, or who participates in, assists directs, creates, or maintains any situation that is contrary to the requirements of this code, shall be held responsible for the violation and be subject to the penalties and remedies provided herein or as otherwise provide by statute or ordinance.

5. *Procedures upon discovery of violations.*

Upon the determination that any provision of this code is being violated, the city manager or his designee, may prosecute said violation before the Code Enforcement Board in accordance with the provisions of Ordinance No. 98-19 as may be amended from time to time, or its successor ordinance.

In cases where delay would seriously threaten the effective enforcement of this code or pose a danger to the public health, safety, or general welfare, the city manager may seek enforcement without prior written notice by invoking any of the remedies contained in this code or otherwise provided by law

Each calendar day that any violation continues after receipt of a written notice of such violation shall constitute a separate violation and a separate offense for purposes of the penalties and remedies specified herein.

In addition to the penalties and remedies above, the city manager may institute any appropriate actions or proceedings to prevent, restrain, correct, or abate a violation of this code, as provided by law.

6. *Civil penalties and remedies.*

- a. *Cease and desist orders.* The city manager is authorized to issue cease and desist orders in the form of written official notices sent by registered mail to the person(s) responsible for the violation.
- b. *Revocation of building permits, certificates of occupancy, or other development orders, permits or approvals.* The city manager may revoke any building permit, certificate of occupancy, development order, development permit, or development approval, whatsoever, in those cases where an administrative determination has been duly made that, relevant to the provisions and requirements of this code, false statements or misrepresentations existed as to material fact(s) in the application or plans upon which the permit or approval was based.
- c. *Suspension of building permits, certificates of occupancy, or other development orders, permits or approvals.* The city manager may, to the extent permitted by law, suspend any building permit, certificate of occupancy, development order, development permit, or development approvals whatsoever, where an administrative determination has been duly made that, relevant to the provisions and requirements of this code, an error or omission on either the part of the applicant or government agency existed in the issuance of the permit or approval. A valid permit or certificate shall be issued in place of the incorrect permit or certificate after correction of the error or omission.
- D. *Stop work order.* For any violation of the provisions of this code which constitutes a threat to life or to public or private property, the city manager shall have the authority to issue a stop work order in the form of a written official notice given to the owner of the subject property or to his agent or to the person doing the work where such a violation has been committed or exists. Upon notice from the City Manager that any action or work is occurring contrary to the provisions of this code, and it constitutes a threat to life or to public or private property, such action or work shall immediately be stopped. The notice shall state the conditions under which the action or work may be resumed. Where any emergency exists, oral notice given by the city manager shall be sufficient.

8. *Notice and appeal.*

All administrative decisions concerning the issuance, revocation, suspension, or stop work order, or other remedy pertaining to building permits, certificates of occupancy, development orders, development permits, or development approvals, whatsoever, shall be stated in official written notice sent by certified mail to the permit applicant. Decisions of the city manager may be appealed to the board of zoning appeals, code enforcement board, or building board of adjustments and appeals as may be applicable.

## **SECTION EIGHT: FEES**

### *1. Establishment of schedule of fees, costs and other charges.*

The city council shall, from time to time, establish and adopt by resolution, a schedule of fees and charges for application and document processing, public meetings, public hearings, other meetings and hearings, transcripts, approvals, denials, and development permits, development orders, development, construction, interpretations, enforcement, inspection services, sales of documents, review, resubmission, and any other zoning or development related services, and any other services provided or costs incurred by or on behalf of the city.

### *2. Maintenance and amendment of schedule.*

The schedule of fees, costs and other charges shall be maintained in the city clerk's office and shall be available for public inspection during normal business hours. Additional copies or part or all of the schedule of fees, costs and other charges may be maintained in other appropriate city departments. The schedule of fees, costs and other charges may be amended, modified or otherwise changed in accordance with standard resolution adoption and amendment procedures of the city council. Repeal, amendment or adoption of the schedule of fees, costs and other charges shall not be subject to procedures otherwise required for adoption or amendment of this code.

### *3. Payment of fees, costs, and other charges.*

The appropriate fees, costs, and other charges specified in the schedule of fees, costs and other charges shall be submitted with, and paid at the time of, initial application submission or other initial document submission except a otherwise specified in this code or the

schedule of fees, costs, and other charges. The applicant, or if no applicant, the person requesting the city service, document, or other item, shall be responsible for the payment of all fees, costs and other charges identified in the schedule of fees, costs and other charges, except as expressly provided otherwise in this code or the schedule of fees, costs, and other charges. The fees, costs, and other charges specified in the schedule of fees and costs and other charges shall be twice the amount listed for petitions or requests applied for after-the-fact, with the exception of minor after-the-fact encroachment requests. Until the applicable fees, costs and other charges have been paid in full, no action or activity of any type or kind shall be taken on an application, petition, or request. The provisions contained in this section shall not apply to any impact fee ordinance.

## **SECTION NINE: AMENDMENTS TO THIS CODE**

### *1. Timing.*

Unlimited amendments to this code may be made until June 30, 2002, and thereafter on a quarterly basis beginning July 1, 2002, except:

- a. Amendments to the Marco Island Official Zoning Atlas may be made more often than four (4) times through July 1, 2002.
- b. After July 1, 2002 amendments may be made to the Marco Island Official Zoning Atlas more often than four times per year if related to, and if submitted and reviewed in conjunction with the following types of development orders: Rezoning, PUD amendment, Development of Regional Impact (DRI) approval, DRI amendment, Conditional Use, Site Development Plan (SDP) approval, SDP amendment, subdivision approval (including plats, plans, and amendments), construction approval for infrastructure (including water, sewer, grading, paving), and Building Permit (for single family dwelling only).
- c. In case of emergency, amendments to this code may be made more often than four times per year if the additional code amendment receives the approval of five-sevenths of the members of the Council. For this purpose, "emergency" means any occurrence or threat thereof whether accidental or natural, caused by man, in war or peace, which results or may result in substantial injury or harm by the population or substantial damage to or loss of property or public funds.

- d. *Procedure* The procedure for amendment to this code shall be as provided herein. This code may only be amended in such a way as to preserve the consistency of the code with the comprehensive plan.

**SECTION TEN: INCORPORATION, CONFLICT AND SEVERABILITY**

- [A] It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this Ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article" or other appropriate word.
- [B] All sections or parts of sections of the Code of Laws and Ordinances of Collier County, Florida, all Collier County ordinances or parts of ordinances, and all Collier County resolutions or parts of resolutions made applicable by the City Charter in conflict herewith are hereby repealed to the extent of such conflict.
- [C] If any word, phrase, clause, subsection or section of this Ordinance is for any reason held unconstitutional or invalid by any court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

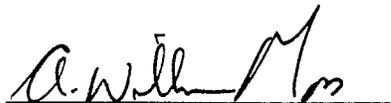
**SECTION ELEVEN: EFFECTIVE DATE**

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 7th day of January, 2002.

Attest:

CITY OF MARCO ISLAND, FLORIDA

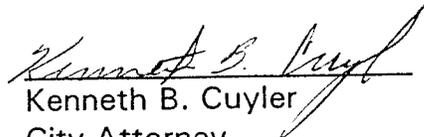


A. William Moss  
City Manager/City Clerk

By: 

E. Glenn Tucker, Chairman

Approved as to form and  
Legal sufficiency:

  
Kenneth B. Cuyler  
City Attorney