

ORDINANCE NO. 98- 5

AN ORDINANCE IMPLEMENTING THE LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT SET FORTH IN SECTIONS 163.3220 - 163.3243, FLORIDA STATUTES; PROVIDING FOR SHORT TITLE AND APPLICABILITY; PROVIDING STATEMENT OF INTENT; PROVIDING FOR THE USE OF DEVELOPMENT AGREEMENTS; PROVIDING FOR APPLICATIONS; SETTING FORTH REQUIREMENTS OF A DEVELOPMENT AGREEMENT; PROVIDING FOR TERMS; PROVIDING FOR NOTICE AND HEARINGS; PROVIDING FOR AMENDMENT, CANCELLATION AND RECORDATION OF AGREEMENTS; PROVIDING FOR PERIODIC REVIEW; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNING LAWS AND POLICIES; PROVIDING FOR ENFORCEMENT; PROVIDING DEFINITIONS; PROVIDING FOR MODIFICATION OR REVOCATION; PROVIDING FOR COMPUTATION OF TIME; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Sections 163.3220-163.3243, Florida Statutes (1997), set forth the Florida Local Government Development Agreement Act (the "Act"); and

WHEREAS, the Act authorizes local governments to enter into development agreements with developers ("Development Agreement"), subject to the procedures and requirements of the Act; and

WHEREAS, the Act provides that the Act shall be regarded as supplemental and additional to the powers conferred upon local governments by other laws and shall not be regarded as in derogation of any powers now existing;

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

SECTION ONE: Statement of Intent.

It is the intent of this Ordinance to set forth the procedures and requirements necessary for the City of Marco Island (the "City") to consider and enter into Development Agreements.

SECTION TWO: Short Title; Applicability.

A. This Ordinance shall be known and may be cited as the "Marco Island Development Agreement Ordinance".

B. This Ordinance shall be applicable to and effective within the boundaries of the City of Marco Island, Florida.

SECTION THREE: Use of Development Agreements.

A Development Agreement may be considered and entered into in accordance with the provisions of this Ordinance, to transfer and limit land use intensities and densities from one waterfront commercially-zoned property to another waterfront commercially-zoned property and to otherwise govern the development of the properties subject to the Agreement.

SECTION FOUR: Applications for Development Agreements.

A. Applications for Development Agreements shall be submitted to the City in the form of a letter request. The City may require an applicant to submit such information as the City considers necessary to process the application. Unless otherwise provided as part of the application form, each application shall be accompanied by the form of Development Agreement proposed by the applicant. The City Council shall establish by resolution, the schedule of fees and charges imposed for filing and processing of each application. Said schedule of fees may from time to time be amended by resolution without further amendment to this Ordinance.

B. Only a qualified applicant may file an application to enter into a Development Agreement. A qualified applicant is a person who has legal or equitable interest in the real property within the boundaries of the City of Marco Island which is the subject of the Development Agreement and submits proof of such qualification to the satisfaction of the City as part of the application process. If there is a question as to the sufficiency of the applicant's

interest in the subject real property, the City may require such information and verification as deemed necessary by the City to establish the applicant's interest.

C. If the City determines that an application is insufficient, the City shall provide the applicant with a statement of any additional information required and the processing of such application shall remain pending until such additional information is provided and the application is found sufficient and complete by the City.

SECTION FIVE: Requirements of a Development Agreement.

- A. A Development Agreement shall, at a minimum, include the following:
1. A legal description of the lands subject to the Development Agreement and the names of all legal and equitable owners;
 2. The duration of the Agreement.
 3. The development uses permitted on the lands, including population densities, and building intensities and height;
 4. The land use designations of the property as set forth in the Marco Island Master Plan of the Future Land Use Element of the Collier County Growth Management Plan;
 5. The current zoning of the property and the way in which such zoning has been determined to be consistent with the Growth Management Plan;
 6. A description of public facilities that will service the development, including who shall provide such facilities;
 7. The date any new facilities, if needed, will be constructed;
 8. A schedule, where applicable, to assure public facilities are available concurrent with impacts of the development;

9. A description of any reservations or dedications of land for public purposes;
10. A description of all local development permits approved or needed to be approved for the development of the land;
11. A finding that the development permitted or proposed is consistent with the comprehensive plan and land development regulations applicable to Marco Island;
12. Such conditions, terms, restrictions, or other requirements determined to be necessary by the City for the public health, safety, or welfare of its citizens;
13. A statement indicating that the failure of the Agreement to address a particular permit, condition, term, or restriction shall not relieve the developer of the necessity of complying with the law governing said permitting requirements, condition, term, or restriction;
14. With respect to any public facilities to be designed and/or constructed by the developer, statement that the design and construction shall be in compliance with all applicable Federal, State, and City standards and requirements in order to insure the progress, quality and cost effectiveness of construction of the public facilities, to resolve in a timely manner design and construction related problems which may occur, and to protect the safety and welfare of the public. The standards and requirements shall include, but not be limited to, guarantees of performance and quality and project controls (including scheduling, quality controls, and quality assurance).

B. A Development Agreement shall be implemented through the adoption of Planned Unit Development (PUD) zoning on the property to which land use intensities and densities are transferred may provide that the entire development or any phase thereof be commenced or concluded within a specific period of time.

C. A Development Agreement may provide for signage, provision of off-street parking and landscaping for the properties to be in accordance with the Agreement.

D. With respect to developer commitments that would be eligible for impact fee credits, nothing herein shall affect the eligibility to qualify for credits under appropriate impact fee ordinances.

SECTION SIX: Term.

The term of a Development Agreement shall not exceed five (5) years or such time as the Act may provide. A Development Agreement may be extended by mutual consent of the City Council and the developer, subject to the notice and hearing requirement of Section Seven of this Ordinance. The term of any one extension shall not exceed five years.

SECTION SEVEN: Notices and Hearings.

A. Notice of intent to consider a Development Agreement shall be provided:

1. By the applicant publishing an advertisement approximately seven (7) days before each public hearing on the application in a newspaper of general circulation and readership in Collier County.
2. By the applicant mailing notice by certified mail, return receipt requested to all owners of property, as reflected on the current year's tax roll, lying within 300 feet in every direction of the subject parcels. Notice shall be mailed at least fifteen (15) calendar days prior to the first hearing on the application.

B. The form of the notices of intent to consider a Development Agreement shall specify:

1. The day, date, time and place of each hearing on the proposed Development Agreement and the body conducting the hearing;
2. The location of the lands subject to the Development Agreement;
3. The development uses proposed on the property, including the proposed population densities and proposed building intensities and height; and
4. Instructions in a form approved by the City for obtaining further information regarding the request, including the fact that a copy of the proposed Development Agreement can be obtained at the City's Community Development Department Office.

C. The applicant shall provide proof of notification by submittal to the City of the following:

1. An affidavit of publication from the newspaper which shall be submitted at least three workdays prior to each public hearing; and
2. A list of all owners of property lying within three hundred feet in every direction of the subject parcel and any additional affected property owners together with the return receipts for the mailed notice which shall be submitted to the City at least three workdays prior to the first hearing on the application.

D. The Marco Island Planning Advisory Board shall conduct one (1) hearing and the City Council shall conduct one (1) public hearing on each application. The public hearings may take place during the regularly scheduled Planning Advisory Board and City Council meetings. The day, time, and place of the second public hearing (held by the City Council) shall be

announced at the first public hearing (held by the Planning Advisory Board). At the conclusion of the second public hearing, the City Council shall approve, approve with modifications, or deny the proposed Development Agreement.

SECTION EIGHT: Amendment and Cancellation of Agreement by Mutual Consent.

A Development Agreement may be amended or canceled by mutual consent of the parties to the Agreement or by their successors in interest. Prior to amending a Development Agreement, the Planning Advisory Board and the City Council shall hold public hearings on the proposed amendment in accordance with the notice and hearing provisions of Section Seven of this Ordinance.

SECTION NINE: Recordation.

Within fourteen (14) days after the City enters into the Development Agreement, the Clerk to the City Council shall have the Agreement recorded in the Public Records of Collier County. A copy of the recorded Development Agreement shall be submitted to the State Department of Community Affairs within fourteen (14) days after the Agreement is recorded. If the Agreement is amended, canceled, modified, extended, or revoked, the Clerk shall have notice of such action recorded in the public records and such recorded notice shall be submitted to the State Department of Community Affairs

SECTION TEN: Periodic Review.

A. The City through its Community Development Department shall review the development subject to the Development Agreement every twelve (12) months, commencing twelve (12) months after the effective date of the Agreement.

B. The City shall begin the review process by giving notice to the developer that the City intends to undertake a periodic review of the development.

C. Upon receipt of such notice of review, the developer shall submit to the City a monitoring and compliance report which shall address each and every requirement or commitment of the Development Agreement including its status and the degree to which compliance has or has not been reached. In addition to the compliance report by the developer, the City shall make such other review as it deems appropriate or necessary.

D. If the City finds and determines that the developer has complied in good faith with the terms and conditions of the Agreement during the period under review, the review for that period shall be considered concluded.

E. If the City makes a preliminary finding that there has been a failure to comply with the terms of the Development Agreement, the City Council shall conduct a public hearing at which the developer shall be given the opportunity to demonstrate good faith compliance with the terms of the Agreement. If the City Council finds and determines on the basis of substantial competent evidence that the developer has not complied with the terms and conditions of the Agreement during the period under review, the City Council may modify or revoke the Agreement.

SECTION ELEVEN: Severability.

If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION TWELVE: Governing Laws and Policies.

A. The laws and policies governing the development of the land applicable to Marco Island at the time of the execution of the Development Agreement shall govern the development of the land for the duration of the Development Agreement.

B. The City of Marco Island may apply subsequently adopted laws and policies to a development that is subject to a Development Agreement only if the City Council has held a public hearing and determined:

1. They are not in conflict with the laws and policies governing the Development Agreement and do not prevent development of the land uses, intensities, or densities in the Development Agreement;
2. They are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a Development Agreement;
3. They are specifically anticipated and provided for in the Development Agreement;
4. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of the Development Agreement;
or
5. The Development Agreement is based on substantially inaccurate information supplied by the developer.

C. This section does not abrogate any rights that may vest pursuant to common law.

SECTION THIRTEEN: Enforcement.

Any party, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes, or the state land planning agency may file an action for injunctive relief in the circuit court of Collier County to enforce the terms of a Development Agreement or to challenge compliance of the Development Agreement with the provisions of sections 163.3220 - 163.3243, Florida Statutes.

SECTION FOURTEEN: Definitions.

The definitions set forth in Section 163.3221 of the Act (Section 163.3221, Florida Statutes) are incorporated by reference for purposes of this Ordinance as if fully set forth herein.

SECTION FIFTEEN: Modification or Revocation of a Development Agreement to Comply with Subsequently Enacted State and Federal Law.

If state or federal laws are enacted after the execution of a Development Agreement which are applicable to and preclude the parties' compliance with the terms of a Development Agreement, such Agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws.

SECTION SIXTEEN: Computation of Time.

If any filing deadline set forth herein falls on a Saturday, Sunday, or legal holiday, the deadline shall extend until the end of the next day that is not a Saturday, Sunday, or legal holiday.

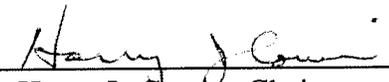
SECTION SEVENTEEN: Effective Date.

PASSED AND DULY ADOPTED by the City Council of Marco Island, Florida, this 1st day of June, 1998.

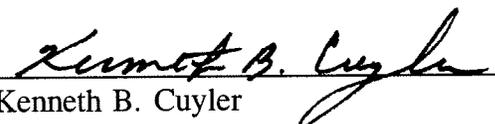
ATTEST:

CITY OF MARCO ISLAND, FLORIDA


A. William Moss
Clerk Manager/City Clerk

By: 
Harry J. Cowin, Chairman

Approved as to form and
legal sufficiency:


Kenneth B. Cuyler
City Attorney
132933_1.WPS

Marco Island Eagle

Published Weekly

Marco Island, Florida

Affidavit of Publication

State of Florida

County of Collier

Before the undersigned authority, personally appeared Cheryl Ferrara, who on oath says that he is the Publisher of Marco Island Eagle, a weekly newspaper, published at Marco Island, Collier County, Florida, that the attached copy of advertising, being a Legal Notice

in matter of Public Hearing, 2nd Reading in the _____ Court was published in said newspaper in the issues of May 20, 1998

Affidavit further says that the said Marco Island Eagle is a newspaper published at Marco Island, in said Collier County, Florida and that said newspaper has heretofore been continuously published in said Collier County, Florida, each week, and has been entered as second class mail matter at the post office in Marco, in said Collier County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Cheryl S. Ferrara

Sworn to and subscribed before this 20th day of May, A.D. 1998.

Carol J. Ziska

Notary Public
Notary Carol J. Ziska
Notary Public, State of Florida
Commission No. CC 406522
My Commission Expires 9/12/98
Bonded Through Fla. Notary Service & Bonding Co.

My Commission Expires _____

PUBLIC HEARING, 2nd READING
CITY OF MARCO ISLAND

The City Council of Marco Island, meeting on Monday, June 1, 1998, at the Marco Island YMCA, Florida will hear on 2nd reading Ordinance No. _____ as follows:

AN ORDINANCE IMPLEMENTING DEVELOPMENT AGREEMENT ACT SET FORTH IN THE FLORIDA STATUTES; PROVIDING FOR THE ENFORCEMENT OF DEVELOPMENT AGREEMENTS; SETTING FORTH REGULATIONS; PROVIDING FOR THE RECORDATION OF AGREEMENTS; PROVIDING FOR THE REVIEW OF AGREEMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR COMPUTATION OF EFFECTIVE DATE.

Members of the public are invited to attend this Ordinance.

S:
A. William Moss
City Manager
City of Marco Island

see it

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