

**CITY OF MARCO ISLAND
ORDINANCE NO. 11- 05**

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 38, ARTICLE III DEVELOPMENT AGREEMENTS TO TRANSFER AND LIMIT LAND USE INTENSITIES AND DENSITIES FROM A WATERFRONT COMMERCIAL LOCATION TO A COMMERCIAL LOCATION WITHIN THE TOWN CENTER MIXED USE DISTRICT SHOWN ON THE FUTURE LAND USE MAP, PROVIDING FOR DEFINITIONS, STANDARDS, REPEAL OF CONFLICTING PROVISIONS AND SEVERABILITY 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 home rule powers to enable them to conduct municipal government, perform municipal functions, render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Section 1.02 of the Marco Island City Charter empowers the City to adopt, amend, or repeal ordinances, resolutions and codes as may be required for the benefit of residents and governance of the City; and

WHEREAS, Chapter 38, Article III of the Marco Island Code of Ordinances provides for procedures and requirements necessary for the City to consider and enter into development agreements; and

WHEREAS, Section 38-76 allows, as part of a development agreement, the transfer of density from a waterfront commercially zoned property to another waterfront commercially zoned property; and

WHEREAS, City Council has determined that the use of density in non-waterfront commercially zoned property, located in the Town Center Mixed Use District, is desirable for the purpose of encouraging a pedestrian-friendly environment through redevelopment opportunities, such as hotel development; and

WHEREAS, the Marco Island Planning Board, sitting as the Local Planning Agency, held a duly advertised public hearing on April 1, 2011 and determined that the proposed changes contained in this Ordinance are consistent with the City of Marco Island Comprehensive Plan and Florida law, and recommended adoption of this Ordinance to the City Council; and

WHEREAS, after reviewing the City of Marco Island Planning Board's recommendation, the recommendation of City staff, and comments from the public, the City Council finds that the proposed amendments to its Code of Ordinances are in compliance and consistent with Florida law and its adopted Comprehensive Plan; and

WHEREAS, the City Council further finds that adoption of this Ordinance is in the best interest of the residents of the City of Marco Island.

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

SECTION 1. Recitals. The foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true, correct and reflective of the legislative intent underlying this Ordinance and are hereby made a specific part of this Ordinance.

SECTION 2. Amendment and Adoption. The amendments to the Code of Ordinances contained in this Ordinance are hereby amended or created and adopted as follows:

Sec. 38-71. Title of article.

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

Sec. 38-72. Definitions.

The definitions set forth in F.S. § 163.3221 are incorporated by reference for purposes of this article as if fully set forth in this article.

Sec. 38-73. Computation of time.

If any filing deadline set forth in this article 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.

Sec. 38-74. Intent of article.

It is the intent of this article to set forth the procedures and requirements necessary for the city to consider and enter into development agreements.

Sec. 38-75. Applicability of article.

This article shall be applicable to and effective within the boundaries of the city.

Sec. 38-76. Use and purpose.

A development agreement may be considered and entered into in accordance with the provisions of this article to transfer and limit land use ~~intensities and~~ residential densities as follows:

(A) From one waterfront commercially zoned property to another waterfront commercially zoned property; and

(B) From a waterfront commercially zoned property to a commercially zoned property located in the Town Center Mixed Use District.

Such development agreement shall be approved in accordance with Sec. 38-80(d) and to otherwise govern the development of the properties subject to the agreement.

Sec. 38-77. Application.

(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. The schedule of fees may from time to time be amended by resolution without further amendment to this article.

(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 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.

Sec. 38-78. Contents; implementation.

(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 city's master plan of the Future Land Use Element of the county's 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 ensure that 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 the city.

(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 such permitting requirement, condition, term, or restriction.

(14) With respect to any public facilities to be designed and/or constructed by the developer, a statement that the design and construction shall be in compliance with all applicable federal, state, and city standards and requirements in order to ensure 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 may be implemented through the adoption of planned unit development (PUD) zoning on the property to which land use intensities and densities are transferred and 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 in this section shall affect the eligibility to qualify for credits under appropriate impact fee ordinances.

Sec. 38-79. Term.

The term of a development agreement shall not exceed five years or such time as F.S. §§ 163.3220--163.3243 may provide. A development agreement may be extended by mutual consent of the city council and the developer, subject to the notice and hearing requirements of section 38-80. The term of any one extension shall not exceed five years.

Sec. 38-80. Notices and hearings.

(a) Notice of intent to consider a development agreement shall be provided:

(1) By the applicant publishing an advertisement approximately seven days before each public hearing on the application in a newspaper of general circulation and readership in the 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 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 300 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 city planning advisory board shall conduct one hearing and the city council shall conduct one 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. Where transfer of density is proposed in connection with a development agreement in accordance with Sec. 38-76, the following factors shall be considered by the Planning Board and by the City Council, in determining whether a proposed development agreement for density transfer should be approved:

(1) whether the location of the property to which density will be transferred is appropriate based on consideration of the relevant policies of the City's future land use plan and future development plans for the location;

(2) whether an increase in residential density at the proposed location is compatible with neighboring uses; and

(3) the extent to which the increase in residential density will impact public services and provisions for mitigation of identified impacts to public services.

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SECTION 3. Inclusion in the Code of Ordinances. It is the intention of the City Council and it is hereby ordained that the amendments to the City of Marco Island Code of Ordinances made by this Ordinance shall become part of the City of Marco Island Code of Ordinances, that the sections of this Ordinance may be renumbered and relettered as necessary, and that the word "Ordinance" may be changed to "Section, "Article" or other appropriate word.

SECTION 4. Conflicts. All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with the provisions of this Ordinance are hereby repealed.

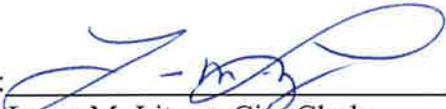
SECTION 5. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6. Effective Date. This Ordinance shall be effective immediately upon adoption by the City Council on second reading.

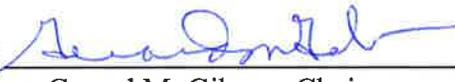
ADOPTED BY THE CITY COUNCIL of the City of Marco Island on this 6th day of June, 2011.

Attest:

CITY OF MARCO ISLAND FLORIDA

By: 

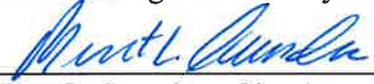
Laura M. Litzan, City Clerk

By: 

Gerard M. Gibson, Chairman

(SEAL)

Reviewed for legal sufficiency:

By: 

Burt L. Saunders, City Attorney