

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

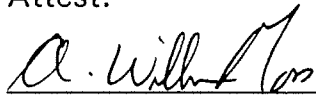
- 1] Pursuant to Section 162.22, Florida Statutes, a person found to be in violation of this Ordinance may be charged with a fine, not to exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days. Each violation or non-compliance shall be considered a separate and 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 4<sup>th</sup> day of February 2002.

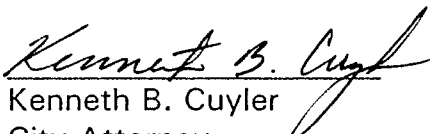
Attest:

  
\_\_\_\_\_  
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