

CITY OF MARCO ISLAND

ORDINANCE 02- 08

AN ORDINANCE TO ESTABLISH NEW ZONING ADMINISTRATIVE AND PROCEDURAL REGULATIONS TO SUPERSEDE, REPLACE AND/OR SUPPLEMENT ZONING ADMINISTRATIVE AND PROCEDURAL REGULATIONS FOUND IN THE COLLIER COUNTY LAND DEVELOPMENT CODE (ORDINANCE 91-102, AS AMENDED), AND CURRENTLY APPLICABLE TO ZONING ADMINISTRATION ON MARCO ISLAND; ESTABLISHING INTENT AND PURPOSE; PROVIDING FOR AMENDMENT PROCEDURES; PROVIDING FOR PLANNED UNIT DEVELOPMENT (PUD) PROCEDURES; PROVIDING FOR CONDITIONAL USE PROCEDURES; PROVIDING FOR VARIANCE PROCEDURES; PROVIDING FOR BUILDING PERMIT AND CERTIFICATE OF OCCUPANCY PROCESS; PROVIDING FOR AFFORDABLE HOUSING DENSITY BONUS PROGRAM; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; PROVIDING FOR PENALTIES FOR VIOLATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, state law requires municipalities to adopt Land Development Regulations within one year of Comprehensive Plan adoption; and

WHEREAS, the Marco Island Planning Board, as the Local Planning Agency, has conducted all required public hearings related to this ordinance, and has forwarded this ordinance to City Council with a recommendation of approval.

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

SECTION ONE: INTENT AND PURPOSE.

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

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

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

SECTION TWO: AMENDMENT PROCEDURES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTICE OF ZONING CHANGE

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

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

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

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

NOTICE OF (TYPE OF) CHANGE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. *Limitations on the rezoning of property.*

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

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

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

SECTION THREE: PLANNED UNIT DEVELOPMENT (PUD) PROCEDURES.

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

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

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

pedestrian systems within 200 feet of the proposed PUD;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Should the Community Development Director determine that the

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

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

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

8. *Changes and amendments.*

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

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

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

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

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

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

Development Director may be appealed to City Council.

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

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

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