

**CITY OF MARCO ISLAND  
ORDINANCE 02- 35**

**AN ORDINANCE TO ESTABLISH NEW LAND DEVELOPMENT CODE DEFINITIONS TO SUPERCEDE, REPLACE AND/OR SUPPLEMENT DEFINITIONS CURRENTLY FOUND IN THE COLLIER COUNTY LAND DEVELOPMENT CODE (ORDINANCE 91-102, AS AMENDED); ESTABLISHING INTENT AND PURPOSE; PROVIDING FOR GENERAL PROVISIONS; PROVIDING FOR DEFINITIONS; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary 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 consistent with the adopted Comprehensive Plan; 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: PURPOSE AND INTENT.**

The purpose of this ordinance is to provide definitions for certain terms and expressions contained in the land development code which expand upon, and/or provide clarity, for application on Marco Island, Florida. In the interpretation and application of any provision of this ordinance, it shall be held to be the minimum requirement adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of this ordinance, the land development code, the comprehensive plan, or any other law or regulation in effect in the City of Marco Island, Florida, imposes greater restrictions upon the subject matter than any other provision of this ordinance, the land development code, the comprehensive plan, or any other law or regulation in effect in the City of Marco Island,

Florida, the provision imposing the greater restriction or regulation shall be deemed to be controlling.

It is the intent of the ordinance that in all circumstances, the provisions of these regulations shall be interpreted and construed to be consistent with the comprehensive plan. Where any provision(s) of this ordinance are determined to be in conflict with the comprehensive plan, the comprehensive plan shall control.

Further, all provisions, terms, phrases and expressions contained in this ordinance shall be liberally construed in order that the true intent and meaning of City Council may be fully carried out.

## SECTION TWO: GENERAL PROVISIONS.

1. Text. In case of any difference of meaning or implication between the text of this Code and any figure, the text shall control.
2. Computation of time. The time within which an act is to be done shall be computed by excluding the first and including the last day; if the last day is a Saturday, Sunday or legal holiday, that day shall be excluded.
3. Day. The word "day" shall mean a calendar day.
4. Gender. Words importing the masculine gender shall be construed to include the feminine and neuter.
5. Month. The word month shall mean 30 calendar days, unless a calendar month is indicated.
6. Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.
7. Number. A word importing the singular number only may extend and be applied to several persons and things as well as to one person and thing. The use of the plural number shall be deemed to include any single person or thing.
8. Shall, may. The word "shall" is mandatory; "may" is permissive.

9. Tense. Words used in the past or present tense include the future as well as the past or present.

10. Week. The word "week" shall be construed to mean seven calendar days.

11. Written or in writing. The term "written" or "in writing" shall be construed to include any representation of words, letters or figures whether by printing or other form or method of writing.

12. Year. The word "year" shall mean 365 calendar days, unless a fiscal year is indicated, or unless a calendar year is indicated.

### SECTION THREE: DEFINITIONS.

*Abutting property or adjacent property:* Properties having a boundary line or a portion of a boundary line in common with no intervening public street or right-of-way.

*Access:* The principal means of ingress and egress to a lot from a publicly dedicated right-of-way, private right-of-way, or approved vehicular access easement.

*Accessory use or structure:* A use or structure of a nature customarily incidental and subordinate to the principal use or structure and, unless otherwise provided, on the same premises.

*Adult day care center:* Any building or buildings or other place, whether operated for profit or not, which undertakes through its ownership or management to provide for a part of the 24-hour day, basic services to three or more adults not related to the owner/operator by blood or marriage, who require such services.

*Affordable housing:* Means a qualified dwelling unit or project, which is offered for sale or rent and meets specific eligibility criteria as contained in the housing element of the Comprehensive Plan.

*Affordable housing density bonus (AHDB):* An award of a number of residential dwelling units per gross acre in a development which allows the base density to be increased by density bonuses related to the provision of affordable housing. (See Chapter 30-67).

*Affordable housing density bonus (AHDB) program:* The program which implements the affordable housing density bonus provisions of the Comprehensive Plan. (See Chapter 30-67).

*Affordable housing density bonus (AHDB) rating system:* See Chapter 30-67.

*Affordable housing owner-occupied unit:* See Chapter 30-67.

*Affordable housing rental unit:* See Chapter 30-67.

*Alley:* A public or approved private way which affords a secondary means of access to abutting commercial properties and which is not intended for general traffic circulation.

*Alter or alteration (mangrove):* To cut, remove, defoliate, or otherwise destroy mangroves, but shall not mean selective trimming of mangroves as defined in Rule 17-321.020(12), F.A.C.

*Annual update and inventory report or AUIR:* The City report on public facilities. (See Concurrency Management, Chapter 30, Article X).

*Applicant:* The owner of record of property, or his authorized agent, making a submission to the city pursuant to this Code.

*Assisted listing facility (ALF):* Any building(s), section of a building, distinct part of a building, residence, private home, boarding home, or other place, whether operated for profit or not, which undertakes through its ownership or management to provide for a period exceeding 24 hours, housing, food service, and one or more personal services for four or more adults, not related to the owner or administrator by blood or marriage, who require such services and to provide limited nursing services, when specifically licensed to do so pursuant to F.S. § 400.407. The facility shall be licensed and approved as such by Florida department of health and rehabilitative services. A facility offering personal services or limited nursing services for fewer than four adults is within the meaning of this definition if it formally or informally advertises to or solicits the public for residents or referrals and holds itself out to the public to be an establishment which regularly provides such services.

*Authorized agent:* Any person authorized in writing by the owner of record to act on the behalf of the owner of record of a particular parcel of land.

*Base density:* The number of residential dwelling units per gross acre permitted.

*Beach:* Means the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and landward of the mean high water line.

*Bicycle path:* That portion of a street, cross-walkway and the like, paved or otherwise, intended for the use of bicycles, and if properly sized, for pedestrians.

*Boat dock:* (See Chapter 54, Article IV).

*Boat yard and ways:* A premises or site used as a commercial establishment for the provision of all such facilities as are customary and necessary to the construction, reconstruction, repair, maintenance or sale of boats, marine engines or marine equipment and supplies of all kinds including, but not limited to, rental of covered or uncovered boat slips or dock space or enclosed dry storage space or marine railways or lifting or launching services, and for dredge or barge dockage and storage.

*Boatel:* A facility offering transient lodging accommodations normally on a daily rate for boat travelers. These accommodations include wet boat slips, where guests may or may not sleep on their boat, that are normally combined with a hotel/motel and its accessory uses, such as a restaurant.

*Bottle club:* A private establishment where patrons may purchase bottles of liquor or bring their own and keep them for consumption after legal closing hours.

*Buildable area:* The portion of a lot or parcel remaining after required yards have been provided. Buildings may be placed in any part of the buildable area, but limitations on the percentage of the lot that may be covered by buildings may require open space within the buildable area.

*Building:* Means any structure, either temporary or permanent, built for the support, shelter, or enclosure of persons, chattels, or property of any kind. This term shall include tents, trailers, mobile homes or any vehicles serving in any way the function of a building. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a building permit.

*Building, height of:* The overall height of a building as measured from the required flood elevation or average sidewalk elevation, whichever is higher, to (1) the top of the roof for flat roofs, (2) the deck lines for mansard roofs, or (3) the average height between eaves and ridge for gable, hip and gambrel

roofs. For properties for which there is no FEMA finished floor elevation required, the starting point shall be the greater of the following:

- a. 18 inches above the State Department of Environmental Protection requirement for the first habitable floor structural support.
- b. 18 inches above the elevation of the average crown of the adjacent road(s); or
- c. The average natural grade (the natural contours of a land area generally unaltered by man's intervention).

*Bulkhead:* A retainer wall or structure designed to prevent erosion of land by water action.

*Bulkhead line:* A fixed line established in or along the Gulf of Mexico, a river, watercourse, or other body of water, in order to fix and establish the distance from the shoreline within which filling may be permitted and bulkheads constructed.

*Care unit:* A residential treatment facility, where, for compensation (if applicable), persons under care receive food, lodging and some form of on-site therapeutic care on a daily basis. This type of care may involve psychiatric, psychological, medical, physiological therapies, behavior modification and other such services. This type of facility shall contain 15 or more persons under care, plus resident supervisors as required by subsection 10A-5.019, Florida Administrative Code, and shall permit all of the list of uses as permitted by group care facilities (category I and category II), (i.e., assisted living facilities; foster care facilities; facilities for: aged persons, developmentally disabled persons (as defined in F.S. § 393.063(11), as amended), physically disabled or handicapped persons (as defined in F.S. § 760.22(7)(a), as amended); crisis and attention care; displaced adult care; homeless shelters; mental and emotional health care; offender halfway houses; spouse abuse care; substance abuse care; and youth shelters).

*Carport:* An accessory structure, consisting of a roof and supporting members, such as columns or beams, not enclosed from the ground to the roof on at least two sides, and designed or used for the storage of motor-driven vehicles.

*Certified archaeologist:* An archaeologist who meets the professional qualifications standards outlined in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation.

*Certified survey:* Certified survey, map of survey, sketch of survey, plat of survey, right-of-way survey, or other similar titles shall mean any drawing of

a parcel or tract of real property used for the purpose of depicting the results of a field survey. Each survey drawing shall state the type of survey it depicts as defined in Rule 21 HH-6, Minimum Technical Standards, and be certified by a professional land surveyor.

*Change of occupancy:* The discontinuance of an existing use and the substitution therefor of a use of a different kind or class. Change of occupancy is not intended to include a change of tenants or proprietors unless accompanied by a change in the type of use.

*Child care center:* An establishment which provides for the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his individual needs, and for which a payment, fee or grant is made for care. This definition includes such terms as day nurseries, day care service, day care agency, nursery school, or play school. The term does not include summer camps or family day care homes.

*Club, private:* Those associations and organizations of a civic, fraternal or social character not operated or maintained for profit, and to which there is no unrestricted public access or use.

*Coastal construction control line (CCCL):* The Collier County coastal construction control line as depicted on the State of Florida department of natural resources, division of beaches and shores, March, 1985, aerial map as adopted in Collier County Ordinance 80-19 (1980), or any subsequent modifications.

*Commercial equipment:* Any equipment commonly used in a commercial business, regardless if said equipment is actually owned or utilized by a business.

*Commercial vehicle:* Any vehicle used in conjunction with a commercial or business activity, or possessing the following characteristics: Any motor vehicle not recreational in nature having a rated load capacity of greater than one ton, exceeding seven and one-half feet in height, seven feet in width, and/or 25 feet in length. The display of lettering or a similar sign upon a vehicle shall not in and of itself make a vehicle commercial.

*Comprehensive plan:* The adopted plan approved in accordance with Chapter 163, F.S, as amended, and Administrative Rule 9J-5, and consisting of two parts (1) Goals, Objectives & Policies; and (2) Supporting Data and Analysis. Said plan is referred to as the City of Marco Island Comprehensive Plan.

*Conditional use:* A use that would not be appropriate generally or without restriction throughout a zoning district, but which if controlled as to number, area, location, or relation to the neighborhood would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or the general welfare. Such uses may be permissible in a zoning classification or a district as a conditional use if specific provision for such a conditional use is made in this Land Development Code.

*Condominium:* That form of ownership of real property which is created pursuant to the provisions of F.S. ch. 718.

*Conservation area:* A parcel containing an archaeological site, a native habitat, either wetland or upland, or a threatened or endangered species, which shall be subject to a limited development compatible with conservation of the natural resources therein.

*Conservation easement:* An easement granted for limited use purpose maintaining in perpetuity a conservation or preserve area, and for which a dedication shall be granted.

*Continuing care retirement community (CCRC):* A living environment providing shelter, food, and either nursing care or personal service as defined in § 400.402(16) F.S., whether such nursing care or personal services are provided in the facility or in another setting designated by the agreement for continuing care, to an individual not related by consanguinity or affinity to the provider furnishing such care, upon payment of an entrance fee, which is licensed by the department of insurance of the State of Florida pursuant to § 651 F.S.

*dbh (diameter at breast height):* The diameter of the trunk, limb, or stem material measured at the point or points of the tree located 4<sup>1</sup>/<sub>2</sub> feet from where the tree emerges from the substrate. In the case of multi-trunked trees, the dbh is measured by the sum of diameters of each trunk at the point or points located 4<sup>1</sup>/<sub>2</sub> feet from where the tree emerges from the substrate.

*Density, residential:* The number of residential dwelling units permitted per gross acre of land and determined by dividing the number of units by the total area of residential land within the boundaries of a lot or parcel.

*Destination resort hotels:* A transient lodging facility where generally patrons stay for several days in order to utilize, enjoy or otherwise participate in certain amenities, natural or man-made, such as frontage on or access to the



Gulf of Mexico, ability to use a golf course or courses, and other recreational amenities all of which serve to encourage occupancy by persons who primarily patronize the destination resort hotels for those specific purposes as opposed to a visitor to the area in general or otherwise conducting a business activity.

*Developer:* Any person, including a governmental agency, or his designated agents, successors, or assigns, undertaking any development as defined in this Code.

*Development:* Has the meaning given it in F.S. § 380.04(1).

*Development agreement:* Has the meaning contemplated in Chapter 38, Article III.

*Development order:* Any order, permit, determination, or action granting, denying, or granting with conditions an application for any final local development order, building permit, temporary use permit, temporary construction and development permit, sign permit, spot survey, electrical permit, plumbing permit, occupational license, boat dock permit, HVAC permit, right-of-way permit, construction approval for infrastructure (including water, sewer, grading, paving), approved development of regional impact (DRI), zoning ordinance amendment, comprehensive plan amendment, flood variance, coastal construction control line variance, vegetation removal permits, site development plan approval, subdivision approval (including plats, plans, variances, and amendments), rezoning, PUD amendment, certification, conditional use (provisional use), variance, or any other official action of the City having the effect of permitting development as defined in this Code.

*Dock facility:* (See Chapter 54, Article IV).

*Dormitory housing:* A room or rooms, partitioned or open, which may or may not provide cooking facilities and provides sleeping quarters for a number of unrelated persons. Dormitory housing shall meet all applicable requirements of the city's building codes.

*Drinking establishment:* An establishment deriving 51 percent or more of its gross revenue from the sale and on-premise consumption of alcoholic beverages. Drinking establishments may include bars, cocktail lounges, taverns and other similar establishments.

*Dwelling:* Any building, or part thereof, intended, designed, used or occupied in whole or in part as the residence or living quarters of one or more persons,

permanently or temporarily, continuously or transiently, with cooking and sanitary facilities.

*Dwelling, duplex:* A single, freestanding, conventional building on a single lot, which contains only two dwelling units and is intended, designed, used and occupied as two dwelling units under single ownership, or where each dwelling unit is separately owned or leased but the lot is held under common ownership.

*Dwelling, multiple-family:* A group of three or more dwelling units within a single conventional building, attached side by side, or one above another, or both, and wherein each dwelling unit may be individually owned or leased initially on land which is under common or single ownership.

For purposes of determining whether a lot is in multiple-family dwelling use, the following considerations shall apply:

- a. Multiple-family dwelling uses may involve dwelling units intended to be rented and maintained under central ownership and management, or cooperative apartments, condominiums, and the like and may include the fee ownership of land beneath each dwelling unit following development from a common base of ownership.
- b. Guesthouses and servants' quarters shall not be considered as dwelling units in the computation of subsection a above.
- c. Any multiple-family dwelling in which dwelling units are available for rental for periods of less than one week shall be considered a tourist home, a motel, motor hotel, or hotel, as the case may be, and shall only be permitted in districts where specifically designated.
- d. For the purpose of this Land Development Code, timeshare estate facilities shall be considered as intended primarily for transient occupancy and shall only be permitted in districts where specifically designated.

*Dwelling, single-family or one-family:* A building which (1) contains only one dwelling unit; (2) is intended, designed, used and occupied by no more than one family; (3) meets the minimum width across any front, side or rear elevation of 24 feet; and (4) meets the minimum floor area and maximum height requirements of this Code. The following conditions are as much a part of the definitions as the principal definition: