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ORDINANCE 15-10

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA RELATING TO DEVELOPMENT AGREEMENTS AND DENSITY TRANSFERS; MAKING FINDINGS; REVISING SECTION 38-76, CITY CODE, RELATING TO DENSITY TRANSFERS; REVISING SECTION 38-79, CITY CODE, RELATING TO THE TERM OF DEVELOPMENT AGREEMENTS; REVISING SECTION 38-82, CITY CODE, REMOVING THE REQUIREMENT OF FILING WITH THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND REVISING RECORDING REQUIREMENTS; PROVIDING FOR SEVERABILITY/INTERPRETATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Policy 1.1.4.5 of the Future Land Use ("FLU") Element of the Comprehensive Plan states:

Policy 1.1.4.5: The City shall not unduly restrict existing or future density transfer programs as long as the overall density of the Island is not increased.

WHEREAS, in 2007 the City considered its Evaluation and Analysis Report ("EAR") for amendment to the City's Comprehensive Plan and for submission to the Florida Department of Community Affairs (said Department now being known as the Department of Economic Opportunity);

WHEREAS, as part of the EAR, the City Council amended Policy 1.1.5.1 of the FLU Element of the Comprehensive Plan to require that the overall island-wide maximum density would be reduced effective January 1, 2009 by 3.2%;

WHEREAS, the Growth Management Department (formerly known as the Community Development Department), was assigned the responsibility for initiating land development code amendments to promote and achieve density reductions;

WHEREAS, FLU Element Policies 1.1.5, 1.1.5.1 and 1.1.5.2 state:

Policy 1.1.5: The City shall reduce the overall maximum net density below of four (4) units per acre (not including water) for the 6,883 acres of land within the City's boundaries.

Policy 1.1.5.1: The City shall reduce the overall island-wide maximum density by 3.2% (762 dwelling units) effective January 1, 2009, pursuant to Table 2.1.

44 Policy 1.1.5.2: The Community Development Director is responsible
45 for initiating land development code amendments to promote and
46 achieve the density reduction stated in Policy 1.1.5.1 effective January
47 1, 2009.
48

49 **WHEREAS**, during the same time period and through 2012, the City studied providing a
50 reallocation of residential density in waterfront areas and to commercially zoned property in the
51 Town Center mixed use district in part to accommodate hotel development. *See* Memorandum To
52 Planning Board Members from City Planner Kris Van Lengen, Midtown District; Density Transfer
53 Discussion (Dec. 10, 2010); City Council Workshop Minutes (Jan. 18, 2011); Report of Land Use
54 consultant James C. Nicholas (Feb. 24, 2011); Item 4(A), Planning Board Minutes (Mar. 4, 2011);
55 Item 4(A), Planning Board Minutes (Apr. 1, 2011); and Ord. No. 11-05 (adopted June 6, 2011);
56

57 **WHEREAS**, the City Council ultimately agreed to adopt Ordinance No. 11-05, City of
58 Marco Island, Florida, amending Section 38-76 to provide for density transfers subject to City
59 approval by use of a statutory development agreement pursuant to the Florida Local Government
60 Development Agreement Act, Section 163.3220 *et seq.*, Florida Statutes;
61

62 **WHEREAS**, Section 38-76, City of Marco Island, Code of Ordinances, also provides a way
63 in which density transfers may be tracked and memorialized through a recorded development
64 agreement;
65

66 **WHEREAS**, Section 38-76, City of Marco Island, Code of Ordinances, also provides a way
67 in which the City may monitor and regulate density transfers to be consistent with FLU Element
68 Policies 1.1.4.5, 1.1.5, 1.1.5.1 and 1.1.5.2 and the principals of density reduction citywide;
69

70 **WHEREAS**, this Ordinance proposes an amendment to Section 38-76 to provide clarifying
71 concepts for the implementation of density transfer process through the use of statutory
72 development agreements by allowing certain density transfers subject to City approval and
73 providing for the "retirement" of certain density credits;
74

75 **WHEREAS**, this Ordinance also revises Section 38-79 and 38-82 to be consistent with the
76 Florida Local Government Development Agreement Act, Section 163.3220 *et seq.*, Florida Statutes,
77 and Section 26, Chapter 2011-139, Laws of Florida;
78

79 **WHEREAS**, the Planning Advisory Board, also sitting as the City's Local Planning
80 Agency, hereby finds that this Ordinance is consistent with the City of Marco Island
81 Comprehensive Plan and in particular Future Land Use Elements 1.1.4.5, 1.1.5, 1.1.5.1 and 1.1.5.2;
82

83 **WHEREAS**, the Planning Advisory Board finds that this Ordinance will promote the public
84 health, safety, and welfare by improving economic opportunity within the City while promoting a
85 means to monitor overall density reduction; and
86

87 **WHEREAS**, the City Council adopts the findings of the Planning Advisory Board, also
88 sitting as the City's Local Planning Agency.

89
90 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF**
91 **MARCO ISLAND, FLORIDA:**

92
93 **SECTION 1. Recitals.** Each and all of the foregoing recitals be and the same are hereby
94 incorporated in this Ordinance as if specifically set forth herein.

95
96 **SECTION 2. Amendment and Adoption.** That section 38-76 of the Code of Ordinance, Marco
97 Island, Florida, is hereby amended to read as follows:

98
99 **Sec. 38-76. – Use and purpose.**

100
101 (a) A development agreement may be considered and entered into in accordance with
102 the provisions of this article to transfer and limit land use residential densities as follows:

103 (1) From one waterfront commercially zoned property to another waterfront
104 commercially zoned property; and

105
106 (2) From a waterfront commercially zoned property to a commercially zoned
107 property located in the Town Center mixed use district.

108
109 (b) To utilize a development agreement for density transfer, the owner of property,
110 including either the legal or equitable owner of the property:

111
112 (1) Must demonstrate to the City that the property in question to receive a density
113 transfer must already possess at least fifty percent (50 %) of the required density as a prerequisite to
114 purchasing density transfer credits.

115
116 (2) May purchase up to fifty percent (50%) of the total density credits that the
117 receiving property has from a waterfront commercially zoned property, providing as a condition of
118 approval, that the owner of the property receiving a density transfer must also purchase a minimum
119 of thirty percent (30%) of the transferred density credits from the city, if the credits are available for
120 sale, at the currently established market price.

121
122 (3) Must agree that density credits purchased from the city will be retired and
123 will be transferred to the property owner/purchaser of the density credits.

124
125 (4) Must agree that credits purchased which were applicable to a specific
126 waterfront commercially zoned property must be used within two (2) years (730 days) of the date of
127 recording of the development agreement approving the transfer of credits, with a possible extension
128 of one (1) year (365 days) with approval from the City Council when the property owner/purchaser
129 of the density credits demonstrates that the extension of time would be in the public interest.

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

133
134 (c) The development agreement, if approved by the city, must be executed by the city,
135 the owner of the property transferring density credits, and the owner of the property receiving
136 density credits. Any mortgagee or other holder of a security interest in the real property transferring
137 or receiving density credits must join in and consent to the development agreement. The
138 development agreement must include a provision that any property transferring development credits
139 to another property relinquishes all rights to the density credits transferred.

140
141 **SECTION 3. Amendment and Adoption.** That section 38-79 of the Code of Ordinance, Marco
142 Island, Florida, is hereby amended to read as follows:

143
144 **Sec. 38-79. - Term.**

145
146 The term of a development agreement shall not exceed thirty (30) years ~~five years~~ or such time
147 as F.S. §§ 163.3220—163.3243 may provide. A development agreement may be extended by
148 mutual consent of the city council and the developer, subject to the notice and hearing requirements
149 of section 38-80. ~~The term of any one extension shall not exceed five years.~~

150
151 **SECTION 4. Amendment and Adoption.** That section 38-82 of the Code of Ordinance, Marco
152 Island, Florida, is hereby amended to read as follows:

153
154 **Sec. 38-82. - Recording; Effective date of agreement ~~filing with state department of~~**
155 **~~community affairs.~~**

156
157 Within fourteen (14) days after the city enters into a development agreement, the city clerk
158 ~~to the city council~~ shall have the agreement recorded in the public records of the Collier County
159 ~~county. A copy of the recorded development agreement shall be submitted to the state department~~
160 ~~of community affairs within 14 days after the agreement is recorded.~~ If the agreement is amended,
161 canceled, modified, extended, or revoked, the clerk shall have the amendatory, canceling,
162 modifying, extending or revoking agreement notice of such action recorded in the public records
163 ~~and such recorded notice shall be submitted to the state department of community affairs. Neither~~
164 ~~the agreement, nor any amendatory, canceling, modifying, extending or revoking agreement shall~~
165 be effective until recorded in the public records of Collier County.

166
167 **SECTION 5. Severability/Interpretation.**

168
169 (a) If any term, section, clause, sentence or phrase of this Ordinance is for any
170 reason held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, the
171 holding shall not affect the validity of the other or remaining terms, sections, clauses, sentences, or
172 phrases portions of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid,
173 illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

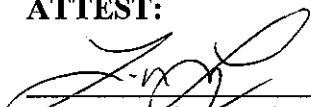
174

175 (b) That in interpreting this Ordinance, underlined words indicate additions to existing text,
176 and ~~stricken-through~~ words include deletions from existing text. Asterisks (* * * *) indicate a
177 deletion from the Ordinance of text, which exists in the Code of Ordinances. It is intended that the
178 text in the Code of Ordinances denoted by the asterisks and not set forth in this Ordinance shall
179 remain unchanged from the language existing prior to adoption of this Ordinance.
180

181 **SECTION 6. Effective Date.** This Ordinance shall be effective immediately upon adoption by the
182 City Council on second reading.
183

184 ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 4th day of
185 May 2015.
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187
188 **ATTEST:**

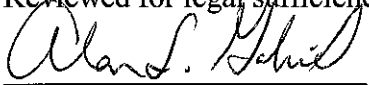
189 
190 _____
191 Laura M. Litzan, City Clerk
192

CITY OF MARCO ISLAND FLORIDA

By 

Larry Sacher, Chairman

193
194 Reviewed for legal sufficiency:

195 
196 _____
197 Alan L. Gabriel, City Attorney
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