

**ORDINANCE 17-09**

**AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, RELATING TO LAND DEVELOPMENT; MAKING FINDINGS; AMENDING SECTION 30-10 BY ADOPTING NEW AND AMENDING EXISTING DEFINITIONS; REVISING SECTION 30-62 RELATING TO ADOPTION AND AMENDMENT PROCEDURES FOR LAND DEVELOPMENT CODE AMENDMENTS AND REZONING APPLICATIONS; REVISING SECTION 30-63 RELATING TO PLANNED UNIT DEVELOPMENT NOTICE REQUIREMENTS; REVISING SECTION 30-64, RELATING TO CONDITIONAL USE APPROVAL NOTICE, PROCEDURES AND STANDARDS; REVISING SECTION 30-65, RELATING TO VARIANCE APPROVALS, PROCEDURES AND NOTICE; AMENDING SECTION 30-69 REGARDING POWERS OF THE BOARD OF ZONING APPEALS; AMENDING SECTION 30-674.1 RELATING TO NOTICE AND HEARING PROCEDURES FOR SITE PLANS WITH DEVIATIONS; PROVIDING FOR SEVERABILITY/ INTERPRETATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Section 38-40(1), City Code of Ordinances, the Planning Board serves as the City's Local Planning Agency and Land Development Regulation Commission; and

**WHEREAS**, Section 163.3174(4)(c), Florida Statutes, provides:

(4) The local planning agency shall have the general responsibility for the conduct of the comprehensive planning program. Specifically, the local planning agency shall:

(c) Review proposed land development regulations, land development codes, or amendments thereto, and make recommendations to the governing body as to the consistency of the proposal with the adopted comprehensive plan, or element or portion thereof, when the local planning agency is serving as the land development regulation commission or the local government requires review by both the local planning agency and the land development regulation commission.

(emphasis added); and

**WHEREAS**, Section 163.3194(2) and (3)(a), Florida Statutes, provides:

(2) After a comprehensive plan for the area, or element or portion thereof, is adopted by the governing

body, no land development regulation, land development code, or amendment thereto shall be adopted by the governing body until such regulation, code, or amendment has been referred either to the local planning agency or to a separate land development regulation commission created pursuant to local ordinance, or to both, for review and recommendation as to the relationship of such proposal to the adopted comprehensive plan, or element or portion thereof. Said recommendation shall be made within a reasonable time, but no later than within 2 months after the time of reference. If a recommendation is not made within the time provided, then the governing body may act on the adoption.

(3)(a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

(emphasis added); and

**WHEREAS**, Section 30-62(8)b., Code of Ordinances of the City of Marco Island, Florida, provides:

8) *Other proposed amendments.* When pertaining to other proposed amendments of these zoning regulations, the planning board shall consider and study:

\* \* \*

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.

(emphasis added); and

**WHEREAS**, the Comprehensive Plan includes no goals, objectives, or policies which specifically relate to this Ordinance; and

**WHEREAS**, this Ordinance is consistent with the Florida's Community Planning Act, s. 163.3161, *et seq.*, Florida Statutes, and in particular s. 163.3181(1), Florida

Statutes, which encourages local governments "to provide effective public participation in the comprehensive planning process and to provide real property owners with notice of all official actions which will regulate the use of their property."; and

**WHEREAS**, this Ordinance is consistent with the Community Planning Act; and

**WHEREAS**, the Planning Board, sitting as the City's Local Planning Agency, has determined that the relationship of this Ordinance with the Comprehensive Plan is that it furthers the goals of the Community Planning Act and is not inconsistent with the City of Marco Island Comprehensive Plan; and

**WHEREAS**, Section 30-62(8)a., Code of Ordinances of the City of Marco Island, Florida, requires that the Planning Board determine the need and justification for a Land Development Code ("LDC") amendment; and

**WHEREAS**, the justification for this Ordinance is to provide clearer public hearing and notice procedures which are consistent with Florida law and to enhance governmental transparency and notice to affected citizens; and

**WHEREAS**, the need for this Ordinance is that the current procedures set forth in Section 30-62 of the LDC in some cases are inconsistent with Florida statutory requirements and this Ordinance will assist in providing better and more complete notice to the citizenry; and

**WHEREAS**, an additional purpose of this Ordinance is to correct grammar and clarify LDC procedures; and

**WHEREAS**, the Planning Board has found that, as a result of the foregoing, this Ordinance will promote the public health, safety, aesthetics, and welfare of the community; and

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

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

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

**SECTION 2. Amendment and Adoption.** That section 30-10 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

**Sec. 30-10. - Definitions.**

\* \* \*

(c) *Definitions enumerated.* The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

\* \* \*

*Authorized agent* means any 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.

\* \* \*

*Loading space, off-street* means a space logically and conveniently located for pickups and/or deliveries or for loading and/or unloading, scaled to delivery vehicles expected to be used and accessible to such vehicles when required off-street parking spaces are filled.

*Lot, corner* means a lot located at the intersection of two or more streets. A lot abutting a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than 135 degrees.

\* \* \*

*Navigable waterway* means any salt or brackish body of water, whether natural or manmade, which is tidal in nature, and is wide enough, deep enough, or free enough from obstructions to be traveled on by vessels and is connected to another navigable waterway. A navigable waterway does not include any portion of a cut-in boat slip created on a privately owned residential property; provided that said cut-in slip will comply with all federal and state requirements and permits, including, but not limited to the requirements and permits of the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers.

*Newspaper of general circulation* means a newspaper published at least on a weekly basis and printed in the language most commonly spoken in the area within which it circulates, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper whose primary function is to carry legal notices, or a newspaper that is given away primarily to distribute advertising. To be a newspaper of general circulation as required by s. 50.031, Florida Statutes, the newspaper shall have been in existence for one (1) year and shall have been entered as periodicals matter at a post office in the county where published, or in a newspaper which is a direct successor of a newspaper which together have been so published.

*NGVD* means National Geodetic Vertical Datum, 1929, as established by NOAA, which is adjusted and published from time to time. The most current adjustment shall apply with respect to this code.

\* \* \*

*Restaurant, walk-up* means a fast food facility with one or more walk-up windows. This type of facility has no indoor seating or drive-through windows, but may have outdoor seating.

*Right-of-way* means a strip of land, public or private, occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, storm drainageway, water main, sanitary or storm sewer main, or for similar special use. The usage of the term "right-of-way" for land platting purposes shall mean that every right-of-way, whether public or private, hereafter established and shown on a plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels.

\* \* \*

**SECTION 3. Amendment and Adoption.** That section 30-62 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

**Sec. 30-62. - Amendment procedures.**

(a) Submission of applications. This LDC or zoning code and the official zoning atlas may, from time to time, be amended, supplemented, changed or repealed. Applications in accordance with the procedures contained herein:

(1) Initiation of proposals for amendment. A zoning amendment may be proposed by:

(1) a. The city City council; , planning board, board of zoning appeals or any other department or agency of the city.

(2) The planning board;

(3) The city manager without first having approval of the city council;

or

(4) b. Any person other than those identified above; provided, however, that no person shall propose an amendment for the rezoning re-zoning of real property (except as agent or attorney for an owner) that he does not own. The name of the owner shall appear in each application.

(b) Review by the department.

(1) An application shall be reviewed by the director for completeness. Upon a determination by the director that the application is complete and that all required application fees have been paid, the department will review the application and assure that notice is given as required by the LDC and applicable state law for any required public hearings. In the case of petitions submitted by an applicant described in sub-section (a)(4), no application shall be deemed to be complete for review by the city until the application fee has been paid by the applicant. Application fees maybe set from time to time by resolution of the city council.

(2) The director will prepare a report to the city council and the planning board. The report shall analyze the effects of the application, analyze whether the application is consistent with the comprehensive plan, and analyze the effect of the various applicable review standards in this LDC upon the development permit application.

(3) Application annulment. If an applicant fails to act upon a submitted application within a 90-day period after receiving written comments from the department, the application will be deemed withdrawn by the applicant. The director may extend the 90-day requirement if reasonable progress is being made in revising the application. For good cause shown or excusable delay, if a request is made in

writing during the 90-day period, the director may extend the 90-day period until a reasonable time that the circumstances dictate.

(c) (2) Consideration by the planning board.

(1) All proposals for LDC zoning amendments or rezonings shall be considered first by the planning board. All proposals for LDC zoning amendments or rezonings shall be submitted in writing to the department office of the community development director accompanied by all pertinent information required by this LDC 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.

(2) (3) Notice and public hearing requirements.

a. Notice of the planning board public hearing with regard to a LDC amendment shall be given pursuant to sub-sections (f)(1), (3), and (4)a. of this LDC.

b. Notice of the planning board public hearing with regard to a rezoning shall be given pursuant to sub-sections (f)(1), (2), (3), and (4)a. of this LDC.

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:~~

1. ~~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 the city 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.~~

2. ~~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 ten 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.~~

~~1. — 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 1½ 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.~~

~~2. — The planning board shall hold one advertised public hearing. Notice of the time and place of the public hearing by the planning board shall 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.~~

~~3. — 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.~~

~~4. — 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.~~

~~e.—— 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.~~

~~1.—— 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.~~

~~2.—— 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.~~

~~3.—— 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.~~

~~1. 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.~~

~~2. 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).~~

~~3. 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.~~

~~4. 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.~~

~~5. 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.~~

~~6. 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.~~

~~(3) (4) *Planning board hearing and report to city council.* 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.*~~

~~a. *Staff report.* 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 or the matter referred back to staff for further consideration of such matters as the planning board may direct.~~

~~b. (6) *Rezoning; 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:~~

~~1. 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.~~

~~2. b. The existing land use pattern.~~

~~3. c. The possible creation of an isolated district unrelated to adjacent and nearby districts.~~

~~4. d. Whether existing district boundaries are illogically drawn in relation to existing conditions on the real property proposed for change.~~

~~5. e. Whether changed or changing conditions make the passage of the proposed amendment appropriate necessary.~~

6. f. Whether the proposed change will adversely influence living conditions in the neighborhood.

7. 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 hour volumes or projected types of vehicular traffic, including activity during construction phases of the development, or otherwise affect public safety.

8. h. Whether the proposed change will create a drainage problem.

9. i. Whether the proposed change will seriously reduce light and air to adjacent areas.

10. j. Whether the proposed change will adversely affect property values in the adjacent area.

11. k. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.

12. l. Whether the proposed change will constitute a grant of a special privilege to an individual real property owner as contrasted with the public welfare.

13. m. Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.

14. n. Whether the change suggested is out of scale with the needs of the neighborhood or the city.

15. o. Whether it is impossible to find other adequate sites in the city for the proposed use in districts already permitting such use.

16. 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.

17. q. The impact of development on the availability of adequate public facilities and services consistent with the levels of service adopted in the city comprehensive plan and as defined and implemented through the city's adequate public facilities ordinance, as amended.

18. r. Such other factors, standards, or criteria that the city council shall deem important in the protection of the public health, safety, aesthetics, and welfare.

c. Rezoning; Restrictions, stipulations and safeguards. The planning board may recommend that a petition to rezone real property may be approved subject to conditions of approval, including, but not limited to restricting the use of the real property to certain uses provided for in the requested zoning district. Restrictions, stipulations and safeguards attached to a rezoning 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.

~~(7) Provision of adequate public facilities.~~ The petitioner may provide all required community and public facilities and services in support of the requested rezoning 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.~~

d. (8) Amendment to the LDC; Nature of requirements of planning board report. Other proposed amendments. When pertaining to an amendment to the text of the LDC and other than a proposed rezoning, amendments of these zoning regulations, the planning board shall consider, and study, and make findings with regard to:

1. a. The need and justification for the change;

2. b. The relationship of the proposed LDC amendment to the purposes and goals, objectives, and policies, of the city's comprehensive, with appropriate consideration as to whether the proposed change will further the purposes of the LDC these zoning regulations and other city codes, regulations, and actions designed to implement the growth management plan.

d. (9) Planning board restrictions. Restrictions, stipulations and safeguards.

1. 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 article. 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.~~

e. (10) Status of planning board report and recommendations. The report and recommendations of the planning board required by this section article shall be advisory only and not be binding upon the city council.

(d) (11) City council action on planning board report.

(1) a. Upon receipt of the planning board's report and recommendations with regard to either a rezoning or an amendment to the LDC, the city council shall hold public hearings as required herein 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 at the beginning 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, the report of the planning board, and the staff report.

(2) b. In the case of all proposed rezonings changes or amendments to the LDC, such rezonings changes or amendments shall not be adopted except by the affirmative vote of four (4) members of the city council. All applications for a LDC amendment or a rezoning shall be considered and approved by the city council by ordinance.

(3) Rezoning. No rezoning shall be permitted to exceed the density of a zoning district permissible under the density rating system and the comprehensive plan.

(4) Notice.

a. Notice of city council hearings for a rezoning shall be afforded pursuant to sub-section (f)(1), (2), (3), and (4)b.

b. Notice of city council hearings for a LDC amendment shall be afforded pursuant to sub-section (f)(3) and (4)b.

c. The number of hearings to be required shall be as set forth in sub-section (f)(4)b. and s. 166.041(3), Florida Statutes.

(5) e. Failure of city council to act. If a planning board recommendation is not legislatively decided within 210 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 the city council may refer the application to the planning board for further study.

(e) Conduct of city council and planning board hearings.

(1) Continuation and Deferrals.

a. The city council or the planning board may continue or defer a scheduled public hearing to a date and time certain without further notice; provided, that the date and time of the continuance or deferral is announced at the originally scheduled hearing. Notice in compliance with Florida's Government-in-the-Sunshine Law, s. 286.011, Florida Statutes, must be given prior to the continued public hearing date.

b. If a quorum physically present at the advertised public hearing location is not obtained at the time of the advertised public hearing, the city manager or the department director (or said director's designee) may publicly announce the continuance of the public hearing without further notice; provided, that the location, date and time of the continuance or deferral is announced at the originally scheduled hearing. In addition, notice in compliance with Florida's Government-in-the-Sunshine Law, s. 286.011, Florida Statutes, must be given prior to the continued public hearing date.

(2) Rescheduled meeting dates. Prior to the advertised public hearing, if the city manager or the director determines that a quorum physically present at the meeting site can not be obtained, the city manager, the director, or the director's designee, may direct that the meeting will be continued until a specific date and time certain. Prior to the continued meeting, notice must be posted in a conspicuous location at the entrance to the meeting room where the meeting was scheduled to take place of the date and time to which the meeting was continued, and prior to the meeting, notice must be conspicuously posted on the city's internet web-site.

(3) Reliance on information presented by applicant. The city and its departments, boards, and agencies, shall have the right to rely on the accuracy of statements, documents, and all other information presented to them by the applicant, or the applicant's agent or consultants, in review of an application for development approval issued under this Code. The applicant shall execute an application form for the development permit which includes the following statement: Under penalties of perjury, I declare that I have read the foregoing application and all attachments thereto, and that the facts stated in it, are true," followed by the signature of the applicant making the declaration. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration. As provided in s. 92.525(3), Florida Statutes, a person who knowingly makes a false declaration is guilty of the crime of perjury by false written declaration, a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, Florida Statutes.

(4) Documents submitted at any public hearing. The public is hereby advised that any document, paper, letter, map, book, tape, photograph, film, sound recording, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, submitted at or before a public hearing as a part of said public hearing or with relation to a development permit application, is hereby declared to be a public record pursuant to chapter 119, Florida Statutes, and is automatically made a part of the record of the public hearing at which it was submitted. The original public record may not be returned to the person submitting the document, and all public hearing participants are hereby so advised.

(f) Public notice procedures. The following procedures are public notice requirements some or all of which are to be utilized for various types of development permits to the extent specifically required in this LDC.

(1) Posted Notice/Public Hearing Sign.

a. If required by this LDC, a sign which clearly announces the pending application(s) shall be posted on the property subject to the application in a prominent and conspicuous location clearly visible from an adjoining public right-of-way, or at such other location as designated by the director to ensure maximum exposure of the sign(s) to the public. A designated outparcel of a larger property which does not abut a public right-of-way, shall have the sign posted near the closest public right-of-way to the larger parcel.

b. The sign shall be erected by the department. Submission of an application by a property owner, or said owner's agent, shall constitute permission to post said sign. The sign shall be continuously maintained as posted by the applicant for the development permit advertised on the sign during the period prior to the advertised public hearing.

c. The sign must contain the following information:

1. A title stating NOTICE OF PUBLIC LAND USE HEARING. The title shall be in all capital letters with bold type at least three (3) inches in height;

2. The application number(s);

3. A description of the proposed application;

4. The planned public hearing dates, times and locations; and

5. The department's contact information.

d. The sign shall be posted at least fifteen (15) days prior to the first scheduled public hearing.

e. The sign shall be removed by the applicant within five (5) days after the application's final hearing advertised on the sign.

(2) Courtesy mailed notices.

a. If required by this LDC, courtesy notices shall be provided in addition to any legally required notice by state law. These notices are provided as a courtesy to certain persons that may be affected by a development permit application for the purpose of notifying those persons of the application and their ability to review submitted information and participate in public hearings. The failure of a property owner to receive a courtesy notice shall not be deemed as a failure to furnish or receive legally required written notice pursuant to this LDC. The failure of the applicant to send a courtesy notice shall be deemed as a failure to furnish legally required written notice pursuant to this LDC.

b. The cost of providing the courtesy notice as required by this LDC shall be the sole responsibility of the development permit applicant or said applicant's designated agent. Failure to comply with the provisions of this section in a timely manner may result in a postponement of the scheduled hearing until the notice is complete, or imposition by the department that a re-notice by the applicant must be accomplished at the applicant's sole expense.

c. A courtesy notice shall be mailed to all real property owners of real property any part of which is located within 300-feet of the real property subject to a development permit application. The 300-foot radius shall be measured in a straight line in all directions from the outermost boundary of the real property subject to a development permit application to any real property any part of which is within the 300-foot radius. Real property owners to whom a courtesy notice shall be given by mail shall be the real property owners of record as shown in the records of the Collier County property appraiser at the time of mailing of the notice. The failure of a property owner to receive a courtesy notice shall not be deemed as a failure to receive legally required written notice pursuant to this LDC subsection. The mailed notice shall be sent by first class U.S. certified mail, return receipt requested, postage prepaid, by the applicant. Notice need not be given to the Trustees of the Internal Improvement Fund as the owners of submerged bottoms of real property. When mailing receipts or returned certified mail receipt cards are received, they shall be promptly filed with the city.

d. If any part of the "common elements", as defined in s. 718.103, Florida Statutes, of a condominium or any part of the "common areas", as defined in s. 719.103, Florida Statutes, of a cooperative building, is within the required notice limits, notice shall be sent to the condominium or cooperative association as well as each unit owner in the subject building. If real property within an adjacent governmental jurisdiction is within the notice limits, notice shall be required to be given to each owner of a parcel of land within the adjacent jurisdiction.

e. The courtesy notice shall be deposited in and postmarked by the U.S. mail at least fifteen (15) days prior to the scheduled public hearing, being noticed. The courtesy notice shall be mailed postage prepaid, first class, certified U.S. mail, return receipt requested, by the applicant. Copies of all mailing receipts shall be promptly filed with the city. Return receipt cards shall be addressed to the city.

f. The mailed courtesy notice shall contain the following information:

1. A title stating NOTICE OF PUBLIC LAND USE HEARING, which shall be at the top of the notice page, conspicuously placed, in bold type with at least 72 point type;

2. A description of the application in layman's English language terms, that is the subject of the hearing, including the type(s) of approval requested, and the application number(s);

3. A statement that information regarding the application(s), including planned public hearing dates, times, and locations, and a written staff report may be obtained from the department.

4. A notification that any member of the public may attend the noticed meeting and be heard or may submit written comments prior to the meeting to the director or at the meeting.

5. A notice that the public hearing may be continued from time to time;



6. The department's contact information, including address, telephone number, and e-mail address; and

7. Wording consistent with s. 286.0105, Florida Statutes, as follows:

Pursuant to s. 286.0105, Florida Statutes, the City hereby advises you that if you or another person decide to appeal any decision made by the Planning Board or the City Council with respect to any matter considered at its meeting or this hearing that you or said person may need to insure that a verbatim record of the proceedings is made at your expense, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission into evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law;

and

8. Wording consistent with s. 286.26, Florida Statutes, as follows:

In accordance with the Americans with Disabilities Act and section s. 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this proceeding should contact the city clerk at least 48 hours prior to the proceedings at (239) 389-5000 for assistance.

g. The mailed courtesy notice shall contain a graphic representation of the site's location and surrounding area in sufficient detail to clearly locate the property.

(3) Advertised public hearing notice.

a. Planning board public hearing. Where the proposed amendment would rezone or change the zoning classification of land in the official zoning atlas or would amend the LDC, the planning board shall hold one public hearing noticed in a newspaper of general circulation at least fifteen (15) days prior to the public hearing. The advertisement shall contain all of the requirements set forth in sub-section (f)(2)f. of this section. The cost of the legal advertisement shall be the responsibility of the applicant. The city shall place the legal advertisement in a newspaper of general circulation.

b. City council public hearing. City council public hearings shall be advertised as follows:

1. Applications initiated by other than the city council, planning board, or city manager that change the zoning designation of a parcel or parcels of land in the official zoning atlas shall be enacted pursuant to s. 166.041(3)(a).

Florida Statutes. The advertisement shall contain all of the requirements set forth in sub-section (f)(2)f. of this section.

2. Applications initiated by the city council, planning board, or city manager that change the zoning designation of a parcel or parcels of land in the official zoning atlas consisting of ten (10) or more contiguous acres shall be enacted pursuant to s. 166.041(3)(c), Florida Statutes. The advertisement shall contain all of the requirements set forth in sub-section (f)(2)f. and g. of this section. Applications initiated by the city council, planning board, or city manager that change the zoning designation of a parcel or parcels of land in the official zoning atlas consisting of less than ten (10) contiguous acres of land shall be advertised pursuant to s. 166.041(3)(a), Florida Statutes and must be noticed as provided in section 166.041(3)(c)1., Florida Statutes.

3. Applications that amend LDC provisions other than those provisions that contain the actual list of permitted, conditional, or prohibited uses within a zoning category shall be enacted pursuant to s. 166.041(3)(a), Florida Statutes. The advertisement shall contain all of the requirements set forth in sub-section (f)(2)f. of this section.

4. Applications that amend the LDC provisions by changing the actual list of permitted, conditional, or prohibited uses within a zoning category shall be enacted pursuant to s. 166.041(3)(c), Florida Statutes. The advertisement shall contain all of the requirements set forth in sub-section (f)(2)f. of this section.

(h) (12) 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 rezone is compatible with, or provides appropriate transition from, adjacent districts of higher density or intensity; or a rezoning to planned unit development (PUD). The minimum ~~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 rezone petitions that provide eighty ~~80~~ percent (80%) or more affordable housing units.

b. Whenever the city council has denied an application for the rezoning of property, the planning board shall not thereafter:

1. Consider any further application for the same rezoning of any part or all of the same property for a period of 365 days ~~42 months~~ from the date of rendition of such denial action;

2. Consider an application for any other kind of rezoning of any part or all of the same property for a period of 180 days ~~six months~~ from the date of such action.

c. Except as otherwise provided within this section, all rezoning zoning approvals for which a final development order, such as a building permit or similar type of development order, has not been granted within the 1,826 days ~~fifth year~~ of the date of rendition of a rezoning ~~its~~ approval shall be evaluated to

determine if the zoning classification for the property should be changed to a lower, or other more suitable classification. ~~Yearly 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 to the city council on the status of the rezoned property advising the city council whether there are any properties that are subject to this provision. The purpose of the report will be to evaluate what procedural steps have been taken to develop affected real the property under its current zoning classification.

1. With regard to real property subject to this sub-paragraph c., should ~~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 which would deprive the property owner or developer of a vested right to develop.

2. With regard to real property subject to this sub-paragraph c., should ~~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, the city council shall elect one of the following:

i. To take no action with regard to extend the current zoning classification on the property for a maximum period of another 1,826 days ~~five years~~; at the end of which time, the property shall again be evaluated under the procedures as defined herein; or

ii. Direct the appropriate city staff to begin rezoning procedures for said property. The existing zoning classification of the property shall remain in effect until issuance of a development order relating to rezoning subsequent action by the city council board on the property.

3. In the case of developments of regional impact and planned unit developments, 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 s. 380.06, Florida Statutes F.S. § 380.06 or the planned unit development ordinance.

(i) Waiver of time limits. The time limits of subsection (h) above may be waived by four (4) affirmative votes of the city council when such action is deemed necessary to prevent injustice or to facilitate the proper development of the city.

(j) (13) 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.

(j) Waiver of time limits. The time limits of subsection (13) above may be waived by four (4) affirmative votes of the city council when such action is deemed necessary to prevent injustice or to facilitate the proper development of the city.

(k) Rezoning; Provision of adequate public facilities. The petitioner may provide all required community and public facilities and services in support of the requested rezoning in any one of the following manners:

(1) Petition for a rezoning 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

(2) Petition for a rezoning at such time as all required existing community and public facilities and services have been provided at the private expense of the petitioner; or

(3) Post a surety in lieu of completed improvements to guarantee that all of the required community and public facilities and services will be timely provided; or

(4) Facilities for parks and schools through land dedication or fee in lieu of such dedication; or

(5) Other method acceptable to city council.

~~(15) 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 4. Amendment and Adoption.** That section 30-63 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

**Sec. 30-63. - Planned unit development (PUD) procedures.**

(b) *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 article and in accordance with the following special procedures:

(1) *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:

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.

(2) *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.

(3) *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.

(4) Application annulment. If an applicant fails to act upon a submitted application within a 90-day period after receiving written comments from the department, the application will be deemed withdrawn by the applicant. The director may extend the 90-day requirement if reasonable progress is being made in revising the application. For good cause shown or excusable delay, if a request is made in writing during the 90-day period, the director may extend the 90-day period until a reasonable time that the circumstances dictate.

(c) (e) 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 as provided in section 30-62(f)(1), (2), (3), and (4)a. of this LDC. 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

prehearing conference. The planning board hearing shall be conducted, continued, or rescheduled pursuant to section 30-62(e) of this LDC.

(d) *Planning board recommendation.* The planning board shall make written findings as required by section 30-62(c)(3)b. and 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:

(1) 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.

(2) 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.

(3) Conformity of the proposed PUD with the goals, objectives and policies of the growth management plan.

(4) 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.

(5) The adequacy of usable open space areas in existence and as proposed to serve the development.

(6) The timing or sequence of development for the purpose of assuring the adequacy of available improvements and facilities, both public and private.

(7) The ability of the subject property and of surrounding areas to accommodate expansion.

(8) 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.

(e) *Action by city council.* Unless the PUD application is withdrawn by the applicant, the city council shall, upon receipt of the planning board's recommendation, advertise and hold a public hearing on the application. Notice of the city council's public hearing shall be given as provided in section 30-62(f)(1), (2), (3), and (4)b.1. or 2., as appropriate. The notice and hearing shall be on the application and PUD master plan of development as recommended by the planning board to city council. The city council public hearing shall be conducted, continued, or rescheduled pursuant to section 30-62(e) of this LDC. The city council shall either grant the proposed rezoning to PUD; approve with conditions or modifications; or deny the application for PUD rezoning.

\* \* \*

**SECTION 5. Amendment and Adoption.** That section 30-64 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

**Sec. 30-64. - Conditional use procedures.**

(a) Nature of a conditional use. 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, aesthetics, welfare, morals, order of comfort, convenience, appearance, or the general welfare. Such uses may be permissible in a zoning district as a conditional use if specific provision for such conditional use is made in the this zoning district 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 ~~quasi-judicial~~ in nature.

(b) ~~(4)~~ Written petition.

(1) A written petition for a 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 city council ~~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 LDC zoning code, will be consistent with the comprehensive growth management plan, will not be injurious to the neighborhood or to adjoining properties, or otherwise detrimental to the public health, safety, aesthetics, appearance, or welfare. No petition shall be deemed to be complete for review by the city until the application fee has been paid by the petitioner. Application fees may be set from time to time by resolution of the city council.

(2) Material to be submitted by a petitioner with a conditional use application Such material shall include, but is not limited to, the following, where applicable:

a. Conceptual site development plans at an appropriate scale with all dimensions in legible format, showing the proposed placement of structures on the property, points of ingress and egress, height of structures, parking locations and parking spaces, architectural elevations of structures, provisions for ingress and egress, off-street parking and off-street loading areas, refuse and service areas, and required yards and setbacks, 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; -

b. Plans showing proposed locations for utilities. Plans providing for screening and buffering with reference as to type, dimensions, and character; -

c. Proposed landscaping and provisions for trees protected by city regulations; -

d. Proposed signs and lighting, including type, dimensions, and character; -

e. 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 state department of transportation Land Use Cover and Forms Classification System and shall be depicted on an the aerial photograph. Information obtained by ground-truthing surveys shall take precedence over photographic evidence; and -

f. Where this LDC zoning—code places additional requirements on specific conditional uses, the petitioner shall demonstrate that such requirements are met.

(3) Concurrent processing of petitions. 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 article.

(4) Application annulment. If a petitioner applicant fails to act upon a submitted petition within a 90-day period after receiving written comments from the department, the petition will be deemed withdrawn by the petitioner. The director may extend the 90-day requirement if reasonable progress is being made in revising the petition. For good cause shown or excusable delay, if a request is made in writing during the 90-day period, the director may extend the 90-day period until a reasonable time that the circumstances dictate.

(c) Planning board public hearing.

(1) (2) Notice and public hearing. Notice and public hearing by the planning board and the board of zoning appeals shall be as provided for under section 30-62(f)(1), (2), (3), and (4)a. of this LDC. ~~30-62(3)a.~~ All testimony given shall be under oath and the action by city council shall be quasi-judicial quasi-judicial in nature.

(2) (3) Standards for approval Findings. Before any conditional use shall be recommended for approval to the city council board of zoning appeals, the planning board shall make findings that the proposed conditional use meets the following standards, as may be applicable:

a. ~~That 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:~~

b. a. That the grant of the conditional use is consistent with the Consistency with this code and comprehensive plan. A conditional use shall not be presumed to be consistent with the comprehensive plan merely because the use is listed in the LDC as a conditional use in a given zoning district;

c. b. That there is proper and adequate ingress to ~~ingress and egress from~~ 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; -

e. ~~The effect the conditional use would have on neighboring properties in relation~~

d. That the proposed conditional use is compatible ~~Compatibility~~ with adjacent properties and other property in the district. The conditional use, as depicted on the conceptual site plan, must be compatible with adjacent and nearby uses, developments, structures, and neighborhoods and will not alter the character of



the community and neighborhood or be contrary to emerging development trends in the community and the neighborhood;

e. *Building orientation.* That buildings are oriented so as to enhance the appearance of the streetscape. Mass, bulk and scale of all structures shall be compatible with other structures and uses in the neighborhood.

~~(3) (4) *Conditions and safeguards.*~~

a. In recommending approval of any conditional use, the planning board may also recommend appropriate conditions and safeguards in conformity with this LDC 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 LDC zoning code.

b. Development of the conditional use shall be accomplished as set forth on the conceptual site plan. This is an automatic condition of approval of all conditional uses.

~~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.~~

~~(4) *Conduct of hearing; Denial.*~~

a. Any party may appear in person, by agent or attorney, or may submit written comments at the hearing or prior to the hearing in writing to the director.

b. The hearing shall be conducted according to the provisions of section 30-62(e).

c. If the planning board shall recommend denial of a conditional use, it shall state fully on the record its reason for doing so. Such reasons shall take into account the factors stated in subsection (c)(2) 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.

~~(5) *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.~~

~~(6) *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 subsection (3) 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.~~

~~(5) (7) *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 city council board of zoning appeals.~~

~~(d) (8) *City council Board of zoning appeals action on planning board report.*~~

(1) Upon receipt of the planning board's report and recommendations, the city council board of zoning appeals shall conduct a public hearing and approve,

by resolution, or deny a petition for a conditional use. The approval of a conditional use petition shall require four (4) affirmative votes of said board.

(2) Conduct of hearing.

a. The hearing shall be conducted according to the provisions of section 30-62(e).

b. Notice shall be given pursuant to section 30-62(f)(1), (2), (3), and (4)b.1. of this LDC. However, the conditional use shall be approved or denied by resolution.

c. Approval of the conditional use shall be based on the standards set forth in sub-section (c)(2).

(e) Termination; extension.

(1) Any conditional use shall expire 365 days from the date of rendition of the development order granting approval by the city council, if by that date the use for which the conditional use was granted has not been commenced construction.

(2) Any conditional use shall expire 365 days following the discontinuance of the use for which the conditional use was approved.

(3) The city council may grant a maximum of three 365 day extensions of an approved conditional use upon written request of the petitioner. Each extension must be requested in writing with reasons for the extension prior to the expiration of the original conditional use.

(f) (9) 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.

(g) (10) Changes and amendments. For good cause shown, the ~~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 6. Amendment and Adoption.** That section 30-65 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

**Sec. 30-65. - Variance procedures.**

(a) Purpose. ~~In specific cases, variance from the terms of this zoning code safety or welfare.~~ A variance from the terms of this LDC 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, aesthetics, 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, aesthetics, safety or welfare; or a literal enforcement of the LDC 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 city council ~~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, aesthetics, safety or welfare. A variance from the terms of this LDC zoning code may be granted based on the requirements of this section.

\* \* \*

(c) *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 five 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 ~~20~~ percent (20%) of the required yard, not to exceed a maximum of 2.5 feet.

(3) Structures for which a certificate of 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 twenty-five ~~25~~ percent (25%) of the required yard, not to exceed a maximum of five (5) feet. Further, the ~~community development~~ director may administratively approve vertical encroachments not to exceed 50 inches.

(d) *Recycling in commercial districts.* An administrative variance may be granted for site plan alterations made for the placement of structures up to five (5) feet from any side or rear property line in order to accommodate recycling operations. Structures typically found in service function areas will be eligible for such relocation. Any such administrative variance, in addition to approval by the ~~community development~~ director, will also require the approval of the fire official.

(e) *Procedure for request for minor after-the-fact encroachments.*

(1) The property owner, or his agent, shall submit to the ~~community development~~ director a signed and sealed survey certified to and for reliance by the city 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 thirty ~~(30)~~ 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 thirty (30) 30 days after the date of the denial letter.

(f) Procedure for petition for variance.

a. Written petition. A written petition for a variance shall be submitted by the applicant to the community development director, together with payment of an application fee which may be set from time to time by resolution of the city council. If an applicant fails to act upon a submitted petition within a 90-day period after receiving written comments from the department, the application will be deemed withdrawn by the applicant. The director may extend the 90-day requirement if reasonable progress is being made in revising the application. For good cause shown or excusable delay, if a request is made in writing during the 90-day period, the director may extend the 90-day period until a reasonable time that the circumstances dictate.

(g) b. Planning board public hearing.

(1) Notice of planning board public hearing. Notice of the public hearing before the planning board shall be is given as provided in sub-section 30-62(f)(2), (3), and (4)a. of this LDC 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.

(2) c. Conduct of hearing. Planning board public hearing.

a. 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 at the hearing or prior to the hearing in writing to the community development director.

b. The hearing shall be conducted according to the provisions of section 30-62(e).

c. Approval of the variance shall be based on the standards set forth in sub-section (g)(3).

(3) d. Standards for approval of a variance Findings. Before any variance shall be recommended for approval to the city council board of zoning appeals, the planning board shall consider and be guided by the following standards in making a determination:

a. 1. That Are there are special conditions and circumstances existing which are peculiar to the location, size and characteristics of the land, structure, or building involved; -

b. 2. That Are there are 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; -

c. 3. ~~That Will~~ a literal interpretation of the provisions of this LDC works an zoning code work unnecessary and undue hardship on the applicant or creates a create practical difficulty difficulties on the applicant; -

d. 4. ~~That Will~~ the variance, if granted, will 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; -

e. 5. ~~That Will~~ granting the variance requested will not confer on the petitioner any special privilege that is denied by this LDC these zoning regulations to other lands, buildings, or structures in the same zoning district; -

f. 6. ~~That Will~~ granting the variance will 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; -

g. 7. ~~That there are~~ Are there natural conditions or physically induced conditions that ameliorate the goals and objectives of the regulation such as natural preserves, lakes, golf course, or similar circumstances; and etc.

h. 8. ~~That the Will~~ granting of the variance will be consistent with the comprehensive growth management plan.

(4) e. *Conditions and safeguards.* In recommending approval of any variance, the planning board may recommend appropriate conditions and safeguards in conformity with this LDC zoning code including, but not limited to, reasonable time limits within which the action for which the variance is required shall begin 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 fifty 50 percent (50%) of the actual replacement cost of the structure at the time of its destruction, any reconstruction shall conform to the provisions of this LDC 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 LDC zoning code.

(5) 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 subsection (g)(3) ~~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.

(6) 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 city council ~~board of zoning appeals~~.

(h) City council action on planning board report.

(1) Upon receipt of the planning board's report and recommendations, the city council shall conduct a public hearing and approve, by resolution, or deny a petition for a variance.

(2) Conduct of hearing.

a. The hearing shall be conducted according to the provisions of section 30-62(e).

b. Notice shall be given pursuant to section 30-62(f)(2), (3), and (4)b.1. of this LDC.

~~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.~~

~~c. 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 director prior to the hearing or to city council board of zoning appeals at the hearing.~~

~~d. j. City council 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 sub-section (g)(3) section 2.7.5.6 [sic], the city council board of zoning appeals shall approve, by resolution, or deny a petition for a variance.~~

~~e. k. Conditions and safeguards. In granting any variance, the city council board of zoning appeals may prescribe appropriate conditions and safeguards in conformity with this LDC 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 city council board may stipulate that in the case of destruction of the encroaching structure, for any reason, to an extent equal to or greater than fifty 50 percent (50%) of the actual replacement cost of the structure at the time of its destruction, any reconstruction shall conform to the provisions of this LDC 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 LDC zoning code.~~

~~f. l. Limitations on power to grant variances. Under no circumstances shall the city council board of zoning appeals grant a variance to permit a use not permitted under the terms of this LDC 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 7. Amendment and Adoption.** That section 30-69 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

**Sec. 30-69. - Same—Powers and duties.**

The board of zoning appeals shall have the following powers and duties:

(1) To hear, review and approve, approve with conditions, or deny ~~zoning variances, conditional uses, nonconforming use amendments, certain boat dock extension petitions or appeals of certain boat dock extension petitions, flood variances and off-street parking and shared parking agreements~~ in accordance with the terms of the code.

(2) To hear, review and approve, approve with conditions, or deny appeals from interpretations made by the ~~community development director or administrative~~

decisions pertaining to the comprehensive growth management plan, the future land use map, the land development code, or the official zoning atlas by the ~~community development director or his/her designee(s)~~.

(3) To make its special knowledge and expertise available upon written request and authorization of the city council to any official, department, board, or commission of the city.

(4) To recommend to the city council additional or amended rules of procedure not inconsistent with this division to govern the board of zoning appeals' proceedings.

**SECTION 8. Amendment and Adoption.** That section 30-674.1 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

**Sec. 30-674.1 – Redevelopment projects; Site plan with deviations.**

(e) *Conduct of city council and planning board hearings.* Hearings shall be conducted as set forth in LDC section 30-62(e).

(f) *Public hearing.* The planning board shall hold at least one public *quasi-judicial* hearing to review the proposed site plan with deviations and forward its recommendation to the City Council.

(2) *Public Notice.* Notice of the planning board and city council hearings shall be given as provided in LDC section 30-62(f)(3) and (4).

**SECTION 9. Severability/Interpretation.**


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

(b) In interpreting this Ordinance, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text. Asterisks (\* \* \*) indicate a deletion from the Ordinance of text, which continues to exist in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

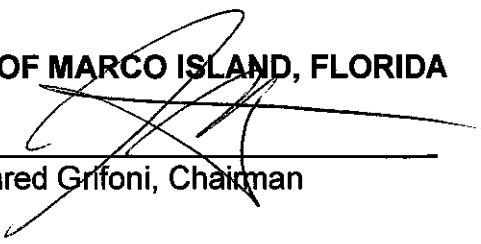
**SECTION 10. Effective Date.** This Ordinance shall be effective immediately upon adoption by the City Council on second reading.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 4<sup>th</sup> day of December 2017.

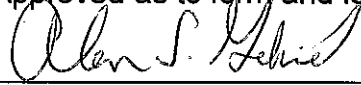
**ATTEST:**

  
\_\_\_\_\_  
Laura M. Litzan, City Clerk

**CITY OF MARCO ISLAND, FLORIDA**

By:   
\_\_\_\_\_  
Jared Grifoni, Chairman

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
Alan L. Gabriel, City Attorney