

**ORDINANCE 18-03**

**AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, RELATING TO AMENDMENT OF DEVELOPMENT RELATED REGULATIONS; MAKING FINDINGS; REVISING SECTION 30-10, CITY CODE, RELATING TO THE DEFINITIONS OF "COMPACT", "CONTIGUOUS", AND "UNIFIED"; AMENDING SECTION 30-672 PERMITTING CLUSTERING OF DEVELOPMENT AND REQUIRING DEVELOPMENT SITES TO BE COMPACT AND CONTIGUOUS; PROVIDING EXCEPTIONS; REPEALING SECTION 38-76 RELATING TO THE TRANSFER OF DEVELOPMENT RIGHTS; TERMINATING THE MORATORIUM ON THE TRANSFER OF DEVELOPMENT RIGHTS PROVIDED FOR BY ORDINANCE NO. 17-01, MARCO ISLAND CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY/ INTERPRETATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Ordinance No. 17-01, a moratorium on the transfer of density or intensity units, rights, or credits, pursuant to Sections 30-972 and 38-76, City Code of Ordinances of Marco Island, was made effective; and

**WHEREAS**, the foregoing moratorium was to be effective for 365 days from the date of adoption (March 6, 2017), or until adoption or revision of regulations relating to the transfer of density or intensity of use rights or credits, whichever event shall first occur; and

**WHEREAS**, it is the intent of the City Council that upon this Ordinance becoming effective, the aforesaid moratorium shall be terminated; and

**WHEREAS**, based upon study and deliberation by the City Council, it is the intent of this Ordinance to repeal the program permitting the transfer of density rights or credits as set forth in Section 38-76, City Code of Ordinances of Marco Island; and

**WHEREAS**, the City Council and the Planning Board find that during the effective period of Section 38-76, City Code of Ordinances of Marco Island, which in the case of Section 38-76 has been since 1998, no density transfer has occurred. See Ord. Nos. 98-5 (adopted March 2, 1998) and 02-24 (Adopted Sept. 3, 2002), City of Marco Island, Florida; and

**WHEREAS**, Section 30-972 of the LDC provides:

An owner of land located within areas designated with the ST overlay, may seek to transfer some or all of the residential development rights from one parcel of land to another parcel located in the urban designated area of unincorporated Collier County, as an alternative to the development. The lands to which the development rights are to be transferred shall be

referred to as receiving lands and those lands from which development rights are transferred shall be referred to as sending lands. Owners of eligible sending land seeking to transfer development rights shall adhere to provisions contained in the Collier County Land Development Code.

**WHEREAS**, “ST” areas are areas designated as highly environmentally sensitive areas for “special treatment”; and

**WHEREAS**, Section 30-972 permits the transfer of density out of ST environmentally sensitive areas into unincorporated Collier County; and

**WHEREAS**, the City Council finds that the transfer of development rights program to prevent environmental harm should be permitted to continue, and the transfer of development rights program moratorium with regard to Section 30-972 should be terminated; and

**WHEREAS**, as required by Section 30-62(8)a., Code of Ordinances of the City of Marco Island, Florida, the City Council and the Planning Board find that based upon the non-use of the density transfer program in Section 38-76, there appears little public interest or use in the program; and

**WHEREAS**, Future Land Use Element Policy 1.1.4.5 provided:

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

**WHEREAS**, Future Land Use Element Policy 1.1.4.5 was repealed by Ord. No. 18-01 and is no longer effective; and

**WHEREAS**, Objective 1.7 of the Future Land Use (“FLU”) Element of the Comprehensive Plan states:

Objective 1.7: The City will enforce existing and future Land Development regulations to eliminate and/or reduce uses of land inconsistent with the Future Land Use Map and the community’s character; and

**WHEREAS**, continuation of the transfer of density rights program could result in density on parcels of real property inconsistent with the Future Land Use Map and the other provisions of the Comprehensive Plan; and

**WHEREAS**, as required by Section 30-62(8)b., Code of Ordinances of the City of Marco Island, Florida, the Planning Board, also sitting as the City’s Local Planning

Agency, has also found that this Ordinance is consistent with the City of Marco Island Comprehensive Plan and in particular Future Land Use Element Objective 1.7; and

**WHEREAS**, as required by Section 163.3194, Florida Statutes, and Section 30-62(8)b., of the LDC, the Planning Board, sitting as the Local Planning Agency, has determined that the repeal of Section 38-76, City Code of Ordinances of Marco Island, is consistent with the Comprehensive Plan; and

**WHEREAS**, current development practice in Marco Island is to permit the clustering of density on parcels of land constituting several lots; provided, that said lots are compact and contiguous; and

**WHEREAS**, as required by Section 30-62(8)a., Code of Ordinances of the City of Marco Island, Florida, the Planning Board finds that the amendment to Section 30-672 is in the best interests of the community to continue to permit the clustering of density on compact and contiguous parcels of land in an effort to promote open space and better land use planning;

**WHEREAS**, Section 30-672(b) codifies current practice and code interpretation in Marco Island; and

**WHEREAS**, Objective 1.2 of the Parks and Open Spaces Element states:

Objective 1.2: To seek additional recreational and open space sites on Marco Island and maintain and enhance the existing sites; and

**WHEREAS**, the Planning Board finds that proposed Section 30-672(b) will assist in providing open space and will allow the enhancement of existing undeveloped sites subject to development; and

**WHEREAS**, the Planning Board finds that proposed Section 30-672(b) is consistent with the Comprehensive Plan, and in particular Objective 1.7 of the Future Land Use Element and Objective 1.2 of the Parks and Open Space Element; and

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

**WHEREAS**, the City Council has found that this Ordinance will promote the public health, safety, aesthetics, and welfare.

**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 in this Ordinance as if specifically set forth herein.

**SECTION 2. Amendment.** That section 30-10 of the Code of Ordinances, 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:

\* \* \*

*Commercial vehicle* means any vehicle used in conjunction with a commercial or business activity, or possessing the following characteristics: Any motor vehicle not recreational in nature having a rated load capacity of greater than one ton, exceeding 7½ feet in height, seven feet in width, and/or 25 feet in length. The display of lettering or a similar sign upon a vehicle shall not in and of itself make a vehicle commercial.

*Compact when referring to a parcel of land means concentration of a piece of property in a single area and precludes any action which would create enclaves within the parcel of land, or finger areas in serpentine patterns of the parcel of real property, excepting those created by water bodies.*

*Comprehensive plan* means the adopted plan approved in accordance with F.S. ch. 163, as amended, and F.A.C. ch. 9J-5, and consisting of two parts: (1) Goals, objectives and policies; and (2) supporting data and analysis. Said plan is referred to as the city comprehensive plan.

\* \* \*

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

*Contiguous* means that a substantial part of a boundary of one parcel of land sought to be developed is coterminous with a substantial part of a boundary of another parcel of land. Notwithstanding the foregoing, contiguity cannot be established in a corridor fashion, by use of a corridor of land to gain contiguity, or by a point of land to point of land connection.

*Continuing care retirement community (CCRC)* means a living environment providing shelter, food, and either nursing care or personal service as defined in F.S. § 400.402(17), whether such nursing care or personal services are provided in the facility or in another setting designated by the agreement for continuing care, to an individual not related by consanguinity or affinity to the provider furnishing such care, upon payment of an entrance fee, which is licensed by the department of insurance of the state pursuant to F.S. ch. 651.

\* \* \*

*Tree fund* means a city account dedicated to the purchase and planting of trees and irrigation in city parks, rights-of-way, medians, public open spaces and other facilities.

*Unified* when referring to a parcel or parcels of land means that the parcel or parcels of land are under common ownership or common control through a declaration of covenants, conditions, and restrictions recorded in the Public Record of Collier County. To reinforce the “unification” of property, the city may require a property or home owners association.

*Use* means the purpose of [for] which land or water or a structure thereon is designated, arranged, designed or intended to be occupied or utilized or for which it is occupied or maintained. The use of land or water in the various zoning districts is governed by this land development code.

\* \* \*

**SECTION 3. Amendment.** That section 30-672 of the Code of Ordinances, Marco Island, Florida, is hereby amended to read as follows:

**Sec. 30-672. - Applicability and exceptions.**

(a) All development, except as otherwise provided herein, is subject to the provisions of this article. The provisions of this article shall not apply to the following land use activities and represents the sole exceptions thereto:

- (1) Single-family detached and two-family housing structure(s) on a lot(s) of record.
- (2) Underground construction consisting of utilities, communications and similar underground construction activities within the public right-of-way and/or recorded easements.
- (3) Accessory and ancillary facilities for a golf course such as restrooms, irrigation systems, and pump houses.
- (4) Construction trailers and storage of equipment and materials following issuance of a building permit for the use to which said activities are a function of.
- (5) Model homes and sales centers.
- (6) Project entryway signs, walls, gates and guardhouses.

While the above land use activities shall be exempt from the provisions of this article, said land use activities are subject to all other provisions of the land development code and other city regulations, such as, but not limited to, landscaping, tree removal, development standards and the submission requirements attendant to obtaining temporary use permits/approvals and building permits.

(b) Development must occur on a unified compact and contiguous development site. Development on such a site may be clustered to preserve wetlands or open space, provide parking, or otherwise. Except for off-site parking areas, or as provided in section

30-383 with regard to planned unit developments, portions of a development site separated by an intervening pre-existing public street right-of-way shall not be permitted, and such sites shall be considered to be separate development sites.

[INTERPRETATION NOTE: The foregoing sub-section is a clarifying amendment to clarify existing law.]

**SECTION 4. Amendment.** That section 38-76 of the Code of Ordinances, Marco Island, Florida, is hereby amended to read as follows:

**Sec. 38-76. - Use and purpose. (Repealed Ord. No. 18-01 adopted 1/8/2018).**

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

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

~~(2) From a waterfront commercially zoned property to a commercially zoned property located in the town-center mixed use district.~~

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

~~(1) Must demonstrate to the city that the property in question to receive a density transfer must already possess at least 50 percent of the required density as a prerequisite to purchasing density transfer credits.~~

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

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

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

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

**SECTION 5. Moratorium Terminated.** The moratorium on transfer of development rights or credits and density or intensity of use credits or rights imposed pursuant to Ordinance No. 17-01 of the City of Marco Island, as provided for in Section 3. of the aforesaid Ordinance, is hereby terminated.

**SECTION 6. 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) That 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 exists 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.

(c) Sections 2. through 4. of this Ordinance shall be codified. Sections 1. and 4. through 7. of this Ordinance shall not be codified.


**SECTION 7. Effective Date.** That Sections 1., 2., 3., 6., and 7. of this Ordinance shall take effect upon adoption on second reading. Sections 4. and 5. of this Ordinance shall take effect immediately following Section 2. of Ordinance No. 18-01 (changing the Comprehensive Plan Future Land Use Map designation of the Subject Property from PUD to Communities Facilities) becoming effective. The City Clerk is directed to insert the appropriate Ordinance No. in the foregoing sentence.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 8<sup>th</sup> day of January 2018.

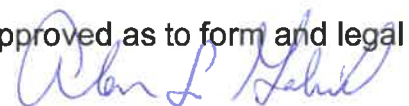
**ATTEST:**

  
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Laura M. Litzan, City Clerk

**CITY OF MARCO ISLAND, FLORIDA**

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

Approved as to form and legal sufficiency:

  
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Alan L. Gabriel, City Attorney

