

ORDINANCE 18-10

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, RELATING TO LAND DEVELOPMENT; MAKING FINDINGS; 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; PROVIDING FOR SEVERABILITY/ INTERPRETATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, during the adoption of Ordinance 17-09, certain scrivener's errors occurred; and

WHEREAS, this Ordinance is intended to clarify scrivener's error noted in Ordinance 17-09; and

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(c)(3)d., 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 plan, 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 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(c)(3)d., 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 correct certain scrivener’s errors and 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 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 30-62 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-62. - Amendment procedures.

* * *

(c) *Consideration by the planning board.*

* * *

(2) *Notice requirements.*

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

* * *

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

* * *

(4) *Notice.*

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

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

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

* * *

(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.

* * *

(2) *Courtesy mailed notices.*

* * *

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 clerk. Return receipt cards shall be addressed to the city clerk at city hall.

* * *

(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.2.-8. ~~(f)(2)f.~~ of this section with a title substantially as follows and advising of a "NOTICE OF LAND USE CHANGE." The cost of the legal advertisement shall be the responsibility of the applicant. The city clerk 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.2.-8. (f)(2)f. of this section with a title substantially as follows and advising of a "NOTICE OF LAND USE CHANGE."

(g) Reserved.

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* * *

SECTION 3. 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.

* * *

(c) *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), and (3)a. 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.

* * *

(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, 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), and (3)b.1. or 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 4. 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.

* * *

(c) *Planning board public hearing.*

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

* * *

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

* * *

(2) *Conduct of hearing.*

* * *

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

* * *

SECTION 5. 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.

* * *

(g) *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) and (3)a. 30-62(f)(2), (3), and (4)a. of this LDC.

* * *

(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.*

* * *

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

* * *

SECTION 6. Severability/Interpretation.

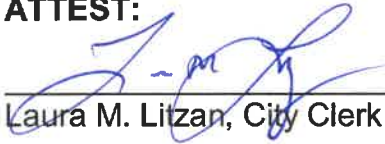
(a) If any term, section, clause, sentence or phrase of this Ordinance is for any reason held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the other or remaining terms, sections, clauses, sentences, or phrases portions 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) 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 7. 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 18th day of June 2018.

ATTEST:



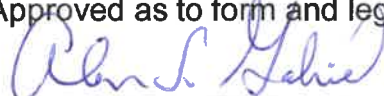
Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

Jared Grifoni, Chairman

Approved as to form and legal sufficiency:



Alan L. Gabriel, City Attorney

