

ORDINANCE 19-11

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, RELATING TO THE LAND DEVELOPMENT CODE; MAKING FINDINGS; AMENDING SECTION 30-62 TO PROVIDE FOR A NEIGHBORHOOD INFORMATION MEETING; REVISING THE NOTICE REQUIREMENTS FOR PUBLIC HEARING SIGNS IN SECTION 30-62(f)(1); PROVIDING FOR INCLUSION IN THE CITY CODE; PROVIDING FOR SEVERABILITY / INTERPRETATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, City Council has determined that a Neighborhood Information Meeting (NIM) shall be required at the discretion of the Director of the Department of Community Affairs for amendments, which may have a greater impact on the community; and

WHEREAS, City Council has determined that a 32 square foot sign shall be posted and maintained by the applicant during the period prior to the advertised public hearing; and

WHEREAS, pursuant to Section 30-62(c)(3)d. of the Land Development Code, the Planning Board finds that the need and justification for this Ordinance is to provide a better source of information to the general public for potentially controversial, complicated, or large projects wherein the general public can be given an opportunity to learn about a project before public hearings commence; and

WHEREAS, the Planning Board further finds that this Ordinance will improve public participation in the development review process; 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, the Planning Board, in its capacity as the Local Planning Agency, and pursuant to Section 30-62(c)(3)d. of the Land Development Code, has reviewed the City's Comprehensive Plan, and finds that this proposed Ordinance is generally consistent with the Comprehensive Plan and recommends approval by the City Council; and

WHEREAS, the City Council finds that the provisions of Section 30-62 need revision and adopts the findings of the Planning Board.

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

SECTION 1. Recitals. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true, correct, and reflective of the legislative intent underlying this Ordinance.

SECTION 2. City Code Amended. That Section 30-62 (b), (c)(2), and (f) of the Land Development Code of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-62. - Amendment procedures.

* * *

(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 subsection (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.

(4) Neighborhood Information Meeting (NIM). All rezoning applications require a NIM at applicants' expense which will usually be held at least thirty (30) days prior to the first public hearing on application. The applicant is to provide to the director within not more than fifteen (15) days after the holding of the NIM an audio recording and a summary transcript of the NIM to the City as part of the application.

(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. 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. of this LDC.

c. Neighborhood Information Meeting (NIM). Advertisement for the NIM shall be noticed in a newspaper of general circulation at least fifteen (15) days prior to the NIM as provided in section 30-62(f)(3)a. Courtesy notices are also required. The mailed notice shall be sent fifteen (15) days prior to the NIM 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 in the manner set forth in section 30-62(f)(2).

d. A copy of any such notice required by this paragraph (2) shall be kept available for public inspection during regular business hours of the office of clerk to city council once said notice is filed with the clerk.

* * *

(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 32 square foot sign, with a minimum of 1 inch wide by 4 inch high letters, 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 applicant at the their expense 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 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 15 days prior to the first scheduled public hearing.

e. The sign shall be removed by the applicant within five 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 or neighborhood information meetings. 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 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 F.S. § 718.103, of a condominium or any part of the "common areas", as defined in F.S. § 719.103, 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 15 days prior to the scheduled public hearing or neighborhood information meeting, 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.

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 or neighborhood information meeting 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 F.S. § 286.0105, 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 F.S. § 286.26, as follows:

In accordance with the Americans with Disabilities Act and section F.S. § 286.26, 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.

In the event of a neighborhood information meeting (NIM), the notice shall omit the contact of the city clerk and the city's telephone and in place thereof insert the name of the applicant coordinating the meeting and the applicant's phone number; and

9. The legal description or street address of the property subject to the application.

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; Neighborhood information meeting (NIM) notice.* 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 15 days prior to the public hearing.

The advertisement shall contain all of the requirements set forth in sub-sections (f)(2)f.2.—~~9.~~ ~~8.~~ 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.

In the event of a neighborhood information meeting (NIM), the meeting shall be advertised in a newspaper of general circulation at least fifteen (15) days prior to the neighborhood information meeting. The advertisement shall contain all of the requirements set forth in sub-sections (f)(2)f.2.—9. 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 applicant shall place the legal advertisement in a newspaper of general circulation and supply proof of publication to the director within not more than fifteen (15) days after the neighborhood information meeting. The responsibility for the form of the advertisement complying with this provision shall be that of the applicant.

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 F.S. § 166.041(3)(a). The advertisement shall contain all of the requirements set forth in subsections (f)(2)f.2.—~~9.~~ ~~8.~~ of this section with a title substantially as follows and advising of a "Notice of Land Use Change."

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 or more contiguous acres shall be enacted pursuant to F.S. § 166.041(3)(c). The advertisement shall contain all of the requirements set forth in subsections (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 contiguous acres of land shall be advertised pursuant to F.S. § 166.041(3)(a), and must be noticed as provided in F.S. § 166.041(3)(c)1.

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 F.S. § 166.041(3)(a). The advertisement shall contain all of the requirements set forth in subsection (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 F.S. § 166.041(3)(c). The advertisement shall contain all of the requirements set forth in subsection (f)(2)f. of this section.

* * *

SECTION 3. Codification. It is the intention of the City Council that the amendments to the City of Marco Island Code of Ordinances made by this Ordinance shall constitute a revised Section 30-62 of the City of Marco Island Code of Ordinances, that the sections of this Ordinance may be renumbered and re-lettered as necessary, and that the word "Ordinance" may be changed to "Section", "Article" or other appropriate word by the codifier.

SECTION 4. Severability.

(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 of this Ordinance, and this Ordinance shall be read and 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 5. Effective Date. This Ordinance shall become effective upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND on this 15th day of April 2019.

ATTEST:

CITY OF MARCO ISLAND, FLORIDA

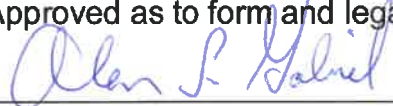


Laura M. Litzan, City Clerk

By: 

Erik Brechnitz, Chairman

Approved as to form and legal sufficiency:



Alan L. Gabriel, City Attorney

