



Planning Board Staff Report

Meeting Date: August 7, 2020

TO: Planning Board

FROM: Daniel J. Smith, AICP – Director of Community Affairs

DATE: July 31, 2020

RE: Discussion: Proposed changes to the City of Marco Island Code of Ordinances Chapter 38 – Planning, creating an application methodology and general review requirements for amendments to the Comprehensive Plan.

APPLICANT:

City of Marco Island Staff

PROJECT DESCRIPTION:

Staff initiated change amending Chapter 38 of the Code of Ordinances. This change was initiated due to the need for a review methodology (processing, noticing, and hearing with associated fees) for amendments to the City's Comprehensive Plan. Florida State Statutes allow for a comprehensive plan amendment (**ss.163.3184**) which also includes a section allowing for a Small Scale Amendment (land area 10 acres or less). Unfortunately, the City has no procedure for application and review.

Staff has had inquiries regarding the process under State requirements and believes this process must be codified in our laws for consistency.

PROPOSED ORDINANCE:

Sec. 38-1. - Comprehensive plan adopted.

The Marco Island Comprehensive Plan, attached to Ordinance No. 01-02, was is hereby adopted on January 22, 2001 by reference. The adopted Marco Island Comprehensive Plan consists shall consist of Part I (Goals, Objectives, and Policies) which includes various maps and the future land use map ("FLUM"). Part II (Data and Analysis) was approved shall be recognized and approved as a non-adopted companion and support document of the city's comprehensive plan, but Part II was not adopted as a part of the Comprehensive Plan. A list of individual amendments to the comprehensive plan and their scope is set forth in the comprehensive plan. The Marco Island Comprehensive Plan has been amended by Ordinance No. 03-04 (adopted April 7, 2003); Ordinance No. 03-07 (adopted April 7, 2003); Ordinance No. 03-09 (adopted June 16, 2003); Ordinance No. 04-04 (adopted March 15, 2004); Ordinance

~~No. 08-03 (adopted March 3, 2008); Ordinance No. 08-16 (adopted December 1, 2008); Ordinance No. 08-17 (adopted December 1, 2008); Ordinance No. 09-06 (adopted July 20, 2009); Ordinance No. 09-16 (adopted December 7, 2009); Ordinance No. 10-17 (adopted December 6, 2010); Ordinance No. 14-02 (adopted March 17, 2014); and Ordinance No. 18-01 (adopted January 8, 2018).~~

SECTION 3. Amendment and Adoption. That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a section, to be numbered 38-2, which section reads as follows:

Sec. 38-2. - Short title.

This chapter may be commonly referred to as the "Marco Island Comprehensive Planning Code".

SECTION 4. Amendment and Adoption. That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a section, to be numbered 38-3, which section reads as follows:

Sec. 38-3. - Definitions.

As used in this part, and unless the context clearly indicates to the contrary, the following terms shall be defined as set forth below:

Administration Commission means Governor and the Cabinet.

Capital improvement means physical assets constructed or purchased to provide, improve, or replace a public facility and which are typically large scale and high in cost. The cost of a capital improvement is generally nonrecurring and may require multiyear financing. Physical assets that have been identified as existing or projected needs in the individual comprehensive plan elements shall be considered capital improvements.

Compatibility means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.

Comprehensive plan means and refers to the city comprehensive plan designated in section 38-1, code of ordinances of the city of Marco Island, Florida.

Density means an objective measurement of the number of residential, commercial hotel, motel, timeshare, and assisted living units allowed per unit of land.

Developer means any person, including a governmental agency, undertaking any development as defined in the act.

Development has the same meaning as in ss. 163.3164 or 380.04, F.S.

Director is defined as set forth in section 38-10 of the code of ordinances.

Goal means the long-term end toward which programs or activities are ultimately directed.

Intensity means an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below ground; the measurement of the use of or demand on natural resources; or the measurement of the use of or demand on facilities and services.

Internal consistency means that the goals, objectives, and policies of the comprehensive plan are not in conflict with one another. They should be coordinated, related, and consistent. "Internal consistency" does not require that all goals, objectives, and policies of a comprehensive plan take action in the direction of realizing each and every other goal, objective, and policy of the plan. In addition, to be internally consistent with the comprehensive plan, an amendment to the comprehensive plan relating to the land uses, densities or intensities, capacity or size, timing, and other aspects of development of specific property must be compatible with the type and densities or intensities of use permitted by the comprehensive plan on contiguous property.

Land means the earth, water, and air, above, below, or on the surface of the land, and includes any improvements or structures customarily regarded as land.

Land development regulations is defined as set forth in section 38-30-10 of the code of ordinances.

Land use means the development that has occurred on the land, the development that is proposed by a developer on the land, or the use that is permitted or permissible on the land under the comprehensive plan or element or portion thereof, land development regulations, or the land development code, as the context may indicate.

Large scale amendment shall mean and refer to an amendment to the comprehensive plan other than a small scale amendment to the comprehensive plan.

Level of service means an indicator of the extent or degree of service provided by, or proposed to be provided by, a facility based on and related to the operational characteristics of the facility. Level of service shall indicate the capacity per unit of demand for each public facility.

LDC is defined as set forth in section 38 30-10 of the code of ordinances.

Local government means Collier County or any municipality.

Local planning agency means and refers to the planning board designated in section 38-40(1), code of ordinances of the city of Marco Island, Florida.

Newspaper of general circulation is defined as set forth in section 38 30-10 of the code of ordinances.

Objective means a part of the comprehensive plan designated as such that is a specific, measurable, intermediate end that is achievable and marks progress toward a goal.

Parcel of land means any quantity of land capable of being described with such definiteness that its locations and boundaries may be established, which is designated by its owner or developer as land to be used, or developed as, a unit or which has been used or developed as a unit.

Person is defined as set forth in section 38 30-10 of the code of ordinances.

Policy means the way in which programs and activities are conducted to achieve an identified goal.

Public facilities is defined as set forth in section 38 30-10 of the code of ordinances.

Small scale amendment shall mean and refer to any proposal to amend the comprehensive plan that is commonly referred to as a "small scale amendment." A small scale amendment is an amendment that involves a use of ten (10) acres or less; and the proposed amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity; provided, however, that text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment shall be permissible under this section.

State land planning agency means and refers to the State of Florida department, division, or bureau designated in the act as the state agency that reviews comprehensive plans and amendments thereto.

SECTION 5. Amendment and Adoption. That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a section, to be numbered 38-4, which section reads as follows:

Sec. 38-4. - Purpose and intent.

The city council hereby declares that the purpose and intent of this chapter is to provide for the city a comprehensive plan which will guide future growth and development; encourage the most appropriate use of land, water, and other resources; promote and protect the public health, safety, comfort, good order, appearance, convenience, aesthetics, and general welfare; prevent the overcrowding of land, avoid undue concentration of population; provide adequate and energy-efficient transportation, water, sewage, drainage, fire protection, law enforcement, schools, parks, recreation facilities, housing, and other services, public facilities and resources; and conserve and protect natural resources within and outside the city to the extent specified in the comprehensive plan or in an interlocal agreement with Collier County, while protecting private property rights by the adoption of this chapter and cooperation between the planning and development activities of the city, Collier County, other local governments, regional agencies

such as the regional planning council or water management district, state government, and private property owners.

SECTION 6. Amendment and Adoption. That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a section, to be numbered 38-5, which section reads as follows:

Sec. 38-5. - Legal status of comprehensive plan.

(a) Generally. To the extent consistent with the act, the comprehensive plan shall be interpreted as setting forth general guidelines and principles for the growth and development of the city. Findings, goals, policies, and objectives within the comprehensive plan shall be internally consistent, and any reading of the comprehensive plan shall suggest an internal inconsistency

(b) Conflicts with other regulations. The comprehensive plan is cumulative and supplemental to existing city regulations for the development of land. Where the comprehensive plan conflicts with existing land development regulations, the comprehensive plan shall supersede existing land development regulations to the effect of the conflict until such existing land development regulations are amended to be consistent with the comprehensive plan. The city council shall be the final determiner as to consistency.

SECTION 7. Amendment and Adoption. That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a section, to be numbered 38-6, which section reads as follows:

Sec. 38-6. - Comprehensive plan amendment application.

(a) Application by city. A proposal to amend the comprehensive plan may be initiated by the city council, or the city manager, by filing a written proposal with the director as set forth herein. The written proposal shall be classified as an "application" as that term is used in this chapter. Applications filed pursuant to this subsection (a) shall be classified as administrative applications of the city and shall be required to submit an application as set forth in subsections (c) and (d), but shall be exempt from the requirements of subsection (d)(15) hereof relating to application fees.

(b) Application by a real property owner, or governmental agency. Every applicant, including but not limited to a fee simple owner of real property of the specific parcel of land directly and specifically affected by the proposed application, shall be required to file an application pursuant to the requirements of subsections (c) and (d) hereof. Every application that relates to the land use or specific development of a parcel(s) of land must be submitted and executed by the aforesaid real property owner (or said property owners authorized agent) or by the city.

(c) Application form. A complete written application for an amendment to the comprehensive plan shall be submitted to the director. Until all informational items required on

the application form are provided, the application shall not be considered to be complete for review and consideration. All items required to be submitted by this section which are not answered on the application form but which may be appended or attached to the application form or which may be on separate sheets of paper shall be deemed to be a part of the application form as if specifically included therein. All applicants shall be required to execute the petition in the presence of a notary public and by oath or affirmation swear to the truth of the statements in the application or that to the best of said applicant's knowledge and belief the statements in the application are true and correct as set forth in section 38-13(c) of this code. Applications submitted by a corporation shall be executed by an authorized vice-president or superior corporate officer. Applications submitted by a partnership shall be executed by an authorized general partner. Applications submitted by a limited liability company shall be executed by an authorized member or manager and said member or manager may be required by the city to execute an affidavit attesting to the legal authority to execute the application. Applications submitted by a trust shall be executed by an authorized trustee(s), and said trustee(s) may be required by the city to execute an affidavit attesting to the legal authority of the trustee to execute the application. So that members of the town council or board members hearing applications submitted by a trust can determine whether they have a voting conflict of interest, all trusts shall identify the names and addresses of all trustees and trust beneficiaries, as well as their respective percentage interest in the trust. Applications submitted by the city shall be executed by the city manager.

(d) Applications shall be made upon a form to be designed by the director, which form shall include:

- (1) The name, address, e-mail address, and telephone number of the applicant;
- (2) The name, address, e-mail address, and telephone number of the current property owner, if the application relates to a specific parcel of property;
- (3) The name, address, e-mail address, and telephone number of any agent who will or might represent the applicant in any city review proceeding regarding the application;
- (4) A legal description, boundary survey, Collier County property appraiser's parcel number, and street address if available, if the application relates to specific parcel(s) of real property. The boundary survey and legal description shall be prepared by a professional land surveyor and mapper who is registered to engage in the practice of mapping and land surveying by the State of Florida. The boundary survey and legal description shall be prepared in accordance with at least the minimum technical standards for land surveying promulgated from time to time by the State of Florida, Board of Professional Land Surveyors and Mappers, or its successor. The survey shall be certified to and for reliance by the city, executed by the surveyor and mapper and under surveyor's seal;
- (5) A general description of the proposed amendment to the comprehensive plan, explaining why the amendment is necessary or appropriate;
- (6) An analysis of the fiscal impact of the proposed amendment on the city's finances, if any;
- (7) An analysis of the impact of the amendment on the environment and natural and historical resources, if any;
- (8) An analysis of the degree of internal consistency of the proposed amendment with the city's existing comprehensive plan with supporting data and analysis;

(9) An analysis of the impact upon the city's ability to provide adequate public facilities and maintain the existing level of service for public facilities as identified in the comprehensive plan, if the amendment is granted;

(10) An analysis of whether an amendment involving a change to the future land use map is compatible with underlying topographic, soil, flooding probability, and existing infrastructure to ensure the development envisioned in the proposed change can be accommodated without adverse impacts or severe limitations due to topographic, soil, or infrastructure services. See Future Land Use Element Policy 1.2.1;

(11) An analysis of whether a change to the future land use map or the future land use element goals, objectives, or policies will result in a net increase in density that does not conform to or could exceed the prescribed limitations within the comprehensive plan. See Future Land Use Element Policy 1.2.4;

(12) An analysis of whether a change to the future land use map or the future land use element goals, objectives, or policies will result in a negative impact upon hurricane evacuation plans, routes, or shelter facilities. See Future Land Use Element Policy 1.3.1;

(13) An examination of the transportation system to determine whether the comprehensive plan amendment which changes the future land use map or the future land use element goals, objectives, or policies to ensure population densities, housing and employment patterns, and land uses, are consistent with the capabilities and capacities of the transportation network. See Transportation Element Objective 1.2;

(14) An examination of any parcel of land subject to a future land use map change to ascertain whether any plant or wildlife species listed as endangered, threatened, or of special concern, may be impacted. See Conservation and Coastal Management Element Policy 1.7.1; and

(15) Payment of all appropriate processing fees and charges, as set from time to time by resolution of the city council. Processing fees shall be partial compensation for the cost of review by the city administration and administrative expenses. All applicants shall pay all costs necessary for the giving of any public notice or re-advertising of hearings as the director or city clerk determines to be necessary. All applicants may be required to pay the cost of city external review consultants, such as attorneys, engineers, surveyor and mappers, and other professionals.

SECTION 8. Amendment and Adoption. That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a section, to be numbered 38-7, which section reads as follows:

Sec. 38-7. - General review regulations.

(a) Amendments by applicant to proposed application. Amendments to a pending application may be presented by the applicant at any time up to 35 days prior to the first hearing before the planning board but the applicant is advised that such amendment may require re-examination by the director and re-advertising of legal notice by the city, all at the cost of the applicant.

(b) Pursuant to ss. 163.3184(2) and 163.3187(4), F.S., the internal consistency of the comprehensive plan must be maintained by all proposed comprehensive plan amendments.

SECTION 9. Amendment and Adoption. That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a section, to be numbered 38-8, which section reads as follows:

Sec. 38-8. - Administrative review.

(a) Pre-hearing review. Applicants, other than the city, shall meet with the city administrative staff prior to submitting a formal application to discuss the application. The review shall be considered to be for informational purposes only and not part of the formal amendment procedure.

(b) After submission of an application to the director, the director will examine the application for sufficiency and, if necessary, request that the applicant to supply additional information or clarify ambiguities in the application. Upon receipt of additional or clarifying information from the applicant, if any is requested, or upon completion of the sufficiency review of the application, if no additional or clarifying information is requested, the director shall declare the application as sufficient for consideration by the city staff and the local planning agency/planning board. Following a determination that the application is sufficient for consideration, the director shall review the application and shall make a recommendation to the local planning agency/planning board. The director is encouraged to consult with other city departments and independent consultants, and thereafter, the director may recommend that the application be denied, approved, or approved with modifications. The director shall formulate a recommendation based upon the following factors, if applicable:

(1) Whether the proposed amendment will have a favorable or unfavorable effect on the city's budget, or the economy of the city or the region;

(2) Whether the proposed amendment will diminish the level of service of public facilities;

(3) Whether there will have a favorable or unfavorable impact on the environment or the natural or historical resources of the city or the region as a result of the proposed amendment;

(4) Whether the city is able to provide adequate service from public facilities to the affected property, if the amendment is granted, and whether the amendment will promote the cost/effective use of or unduly burden public facilities;

(6) Whether the amendment is incompatible with surrounding neighborhoods and land uses;

(7) Whether approval of the amendment will cause the comprehensive plan to be internally inconsistent;

(8) Whether the amendment will have a favorable or adverse effect on the ability of people to find adequate housing reasonably accessible to their places of employment;

(9) Whether the proposed amendment will promote or adversely affect the public health, safety, welfare, economic order, or aesthetics of the region or the city;

(10) Whether an amendment involving a change to the future land use map is compatible with underlying topographic, soil, flooding probability, and existing infrastructure, to ensure the development envisioned in the proposed change can be accommodated without adverse impacts or severe limitations due to topographic, soil, flooding, or infrastructure services. See Future Land Use Element Policy 1.2.1;

(11) Whether a change to the future land use map or the future land use element goals, objectives, or policies will result in a net increase in density that does not conform to or could exceed the prescribed limitations within the comprehensive plan. See Future Land Use Element Policy 1.2.4;

(12) Whether a change to the future land use map or the future land use element goals, objectives, or policies will result in a negative impact upon hurricane evacuation plans, routes, or shelter facilities. See Future Land Use Element Policy 1.3.1;

(13) Whether a comprehensive plan amendment which changes the future land use map or the future land use element goals, objectives, or policies will ensure that population densities, housing and employment patterns, and land uses are consistent with the capabilities and capacities of the transportation network. See Transportation Element Objective 1.2;

(14) Whether a future land use map change will affect any plant or wildlife species listed as endangered, threatened, or of special concern. See Conservation and Coastal Management Element Policy 1.7.1; and

(15) Such other planning and development concerns that the director may identify.

SECTION 10. Amendment and Adoption. That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a section, to be numbered 38-9, which section reads as follows:

Sec. 38-9. – Neighborhood Information Meeting (“NIM”).

(a) Upon receipt of an application, if the director or the city manager determines that the application will attract a large amount of public attention or will significantly affect neighborhood(s) within the city, the city manager or the director may direct the applicant to hold a neighborhood information meeting (“NIM”). Alternatively, before submitting an application or before the local planning agency/planning board hearing on the application, the applicant may voluntarily hold a neighborhood information meeting. The results of the neighborhood information meeting, questions asked and answered, shall be presented in writing and video recorded, supplying a copy to the director within not more than ten (10) days after the date of the neighborhood information meeting. A neighborhood information meeting is not an official meeting of the city. It is an opportunity for a comprehensive plan amendment applicant and citizens to resolve concerns about a proposed amendment and to dispel rumors and misinformation.

(b) *Notice.* Notice of a neighborhood information meeting shall be given pursuant to section 30-62(c)(2) c. and d. and (f)(2) and (3)a. of the LDC. The caption for the newspaper and courtesy notice shall have a caption “NOTICE OF NEIGHBOR INFORMATION MEETING REGARDING PROPOSAL TO AMEND THE CITY’S COMPREHENSIVE PLAN”, which shall be at the top of the notice page, conspicuously placed, in bold type and shall have a description of the application in layman's English language terms of the subject of the meeting, including the type(s) of approval requested, as well as a legal description, or street address (if any), of any specific parcels of land subject to the application. The NIM shall be held as described in section 30-62(c)(2)c. and d. and (f)(2) and (3)a. of the LDC.

SECTION 11. Amendment and Adoption. That the Code of Ordinances, City of Marco

Island, Florida, is hereby amended by adding a section, to be numbered 38-10, which section reads as follows:

Sec. 38-10. - Local planning agency/planning board review.

(a) Public hearing. In accordance with ss. 163.3174 and 163.3184 or 163.3187, the local planning agency/planning shall hold at least one advertised public hearing on a proposed plan amendment to review said amendment and provide a recommendation to city council. The consideration by the local planning agency/planning board shall be considered to be a legislative function.

(b) Notice. For any site specific comprehensive plan amendments, notice shall be given by a courtesy notice, newspaper advertisement, and posted notice on the property subject to the proposed application, all pursuant to section 30-62(f)(1), (2), and (3) of the LDC for planning board hearings. For any non-site specific comprehensive plan amendments, notice shall be given by newspaper advertisement as provided by section 30-62(3)a. of the LDC.

(c) Conduct of local planning agency/planning board hearing. The local planning agency/planning board shall encourage and accept oral and written comments from the applicant or the applicant's agent or attorney, the director, the city administration, other governmental entities, and the general public. Letters or other written communications received by the city regarding a pending application, any data and analysis regarding the plan amendment, and the director's report, shall be considered by the local planning agency/planning board and are automatically made a part of the record. All local planning agency/planning board hearings and proceedings with regard to comprehensive plan amendments shall be conducted as provided in sections 30-62(c)(2)d., (e), and (f) and 38-12 of this code. Following the public hearing, the local planning agency/planning board shall make a recommendation to the city council with regard to the application, which may be to deny, approve, or approve with modification the plan amendment application, together with the basis of the recommendation.

SECTION 12. Amendment and Adoption. That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a section, to be numbered 38-11, which section reads as follows:

Sec. 38-11. - City council review.

(a) Public hearing.

(1) In accordance with ss. 163.3184 or 163.3187, the city council shall hold advertised public hearings as follows on a proposed plan amendment to review said amendment. The consideration by the city council shall be considered to be a legislative function. All city council hearings and proceedings with regard to comprehensive plan amendments shall be conducted as provided in sections 30-62(d), (e), and (f)(1), (2), and (3)b. and 38-12 of this code.

(2) Concurrent zoning. The city may consider simultaneously with the comprehensive plan amendment an application for zoning changes, a conditional use, a variance, and a site development plan or site improvement plan approval, that would be

appropriate to properly implement any proposed plan amendment transmitted pursuant to this section. Approval of the aforesaid zoning change, conditional use, variance, and site development plan or site improvement plan approvals are all contingent upon the comprehensive plan or plan amendment transmitted becoming effective.

(b) *Small scale amendment review.*

(1) The city council shall review small scale amendments in accordance with s. 163.3187, F.S. A publicly noticed public hearing, as described in sub-section (b)(3) shall be held at the time of second reading of the ordinance to adopt the plan amendment. It shall be held on a weekday after 5 p.m.

(2) *Notice of city council public hearings.*

a. Notice of the public hearing shall be placed in a newspaper of general circulation, at least ten (10) days prior to the date of the city council public hearing regarding an application for a plan amendment. Said notice may be placed in the area of the newspaper of general circulation where legal advertisements appear. If the small scale amendment is initiated by other than the city council, the planning board/local planning agency, or the city manager, the advertisement shall meet the requirements of the section 30-62(f)(3)b.1. of this code. If the small scale amendment is initiated by the city council, the planning board/local planning agency, or the city manager, the advertisement shall meet the requirements of the section 30-62(f)(3)b.2. of this code.

b. Notice shall also be posted on the property subject to the comprehensive plan amendment and shall be given by courtesy mail. Said notices shall be accomplished and contain each of the applicable items set forth in sub-section 30-62(f)(1) and (2) of this code. A copy of any courtesy mailed notice required by this sub-paragraph shall be kept available for public inspection during regular business hours in the office of the city clerk once said notice is filed with the city clerk.

(3) The question at the public hearing shall be whether to approve, deny, or otherwise modify and adopt the proposed small scale amendment. The affirmative vote of not less than four (4) of the members of the governing body present at the hearing shall be required to adopt a plan amendment. The adoption of a comprehensive plan or plan amendment shall be by ordinance. Upon final action by the city council, the applicant shall be advised in writing within 30 calendar days of the final decision. Any approval of a comprehensive plan amendment shall not become effective until a final determination is made by the State of Florida. Upon approval of the proposed small scale amendment, said small scale amendment shall be forwarded to the state land planning agency within ten (10) city working days.

(c) *Large scale amendments.*

(1) The city council shall review large scale amendments in accordance with s. 163.3184, F.S. Publicly noticed public hearing(s), as described in sub-section (c)(2) shall be held to adopt the ordinance and plan amendment. It shall be held on a weekday after 5 p.m. The process of consideration of the comprehensive plan amendment shall be considered to be a legislative function. Enactment of the proposed plan amendment shall occur after two public hearings, an initial or transmittal public hearing and a second public hearing, known as an adoption public hearing.

(2) Notice of city council public hearings.

a. Public hearing advertisement. Amendment public hearings shall be advertised and held pursuant to s. 166.041(3)(c)2, F.S. The first public hearing shall be held at the initial or transmittal stage. It shall be held on a weekday at least ten (10) days after the day that the first advertisement is published in a newspaper of general circulation. The second public hearing shall be held at the adoption stage. It shall be held on a weekday at least ten (10) days after the day that the second advertisement is published in a newspaper of general circulation. For amendments which change the actual land use designation of permitted, conditional, or prohibited uses for specific parcel(s) of land, the advertisement shall contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the general area. In addition to being published in the newspaper, the map must be part of the online notice required pursuant to s. 50.0211, F.S.

b. Notice relating to a change of land use affecting an individual parcel of land or group of parcels initiated by other than the city council, planning board/local planning agency, or the city manager, shall also be noticed by posting on the property subject to the comprehensive plan amendment of signage and shall be given by courtesy mail. Said notices shall be accomplished and contain each of the applicable items set forth in sub-section 30-62(f)(1) and (2) of this code. A copy of any courtesy mailed notice required by this sub-paragraph shall be kept available for public inspection during regular business hours in the office of the city clerk once said notice is filed with the city clerk.

(3) For amendments subject to this sub-section (c), the city council shall hold at least two public hearings in accordance with s. 163.3184, F.S.

a. At the initial or transmittal public hearing, the primary questions before the city council will be: (1) whether the enacting ordinance and the proposed plan amendment is in proper form and needs to be amended; and (2) whether to approve the proposed amendment for transmittal to the state land planning agency and other reviewing agencies. The city council shall consider any findings or recommendations by the director or the local planning agency/planning board and shall conduct a public hearing. The report of the director and the local planning agency/planning board, letters or other written communications received by the city, the director's report, any data and analysis with regard to the plan amendment, and any written comments entered into the record during the board public hearing, all regarding any pending application for amendment of the comprehensive plan, shall automatically be made a part of the record during the city council public hearing.

b. Transmittal of amendment to state. After completion of the initial public hearing, the city council may: approve transmittal of the application and the record to the state land planning agency and other reviewing agencies; approve transmittal of the application with modification and the record to the state land planning agency and the reviewing agencies, or deny the an application.

1. If an application is denied, the applicant shall be advised in writing within 30 calendar days of the decision to deny the application. In such case, no further action need be taken by the city.

2. If an application is approved or approved with modification the director shall within ten (10) city working days forward the amendment with supporting data and analysis to the state land planning agency and other reviewing agencies for review and comment.

c. Second public hearing by city council.

1. The second public hearing on a large scale amendment(s), shall occur within not more than 180 days after the receipt of reviewing agency comments. If the hearing is not held within said time period, the amendment(s) shall be deemed to have been withdrawn.

2. The primary question at the public hearing shall be whether to approve, deny, or otherwise modify and adopt the proposed plan amendment. In making its determination, the city council shall consider public comments, the comments of the reviewing agencies, the report and recommendation of the director, city manager, and the local planning agency/planning board. In no event shall the city council approve an amendment that permits a land use more intense or dense than the proposal forwarded to the reviewing agencies. For the purposes of the foregoing sentence, industrial or commercial uses shall be viewed as being more intense than any residential land use density.

3. Within ten (10) city working days after the second public hearing and adoption of the amendment, the director shall forward a copy of the adopted amendment, together with supporting data and analysis, to the state land planning agency and any other reviewing agency or local government that provided timely comments after the first (transmittal) public hearing on the amendment. The transmittal package must contain: (i) a full, executed copy of the adoption ordinance(s); in the case of a text amendment, a full copy of the amended language in legislative format with new words inserted in the text underlined, and words deleted stricken with hyphens; in the case of a future land use map amendment, a copy of the future land use map clearly depicting the parcel, its existing future land use designation, and its adopted designation; and a copy of any data and analyses the local government deems appropriate. An amendment adopted under this paragraph does not become effective until 31 days after the state land planning agency notifies the local government that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the state land planning agency or the Administration Commission enters a final order determining the adopted amendment is "in compliance" with the act, as set forth in s. 163.3184(1), F.S.

(d) Capital improvements update. The annual update to the capital improvements element does not have to be reviewed pursuant to this section. Capital improvements updates shall be reviewed by the planning board review and considered for adoption by the city council pursuant to s. 166.041(3)(a), F.S.

SECTION 13. Amendment and Adoption. That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a section, to be numbered 38-12, which section reads as follows:

Sec. 38-12. - Conduct of city council and planning board hearings relating to comprehensive plan amendments.

(a) Continuance and Deferrals.

(1) The city council, or the local planning agency/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; provided, however, that 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) 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 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.

(b) *Rescheduled meeting dates.* Prior to an advertised public hearing, if the city manager, or the director, determines that a quorum physically present at the meeting site will not be obtained, the city manager, the director, or the director's designee, may direct that the meeting 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 location, 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 and on the doorway to the originally planned meeting location. Notice of the rescheduled meeting must also be given in compliance with Florida's Government-in-the-Sunshine Law, s. 286.011, Florida Statutes, prior to the continued or rescheduled public hearing date.

(c) *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 a plan amendment approval issued pursuant to this Code. The applicant shall execute an application form for the comprehensive plan amendment must include 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 to the best of my knowledge," followed by the signature of the applicant making the declaration. The written declaration shall be in conspicuous, bold type and printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration. Also in conspicuous, bold type about the signature line, the applicant shall be advised that "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."

(d) *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 comprehensive plan amendment 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.

STAFF RECOMMENDATION:

Approve moving forward with changes. Ordinance change requires advertised public hearing which staff will bring back to Planning Board with recommendation going to City Council.

Daniel J. Smith, AICP

Director of Community Affairs