

CITY OF MARCO ISLAND
ORDINANCE NO. 14- _____

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, DELETING CHAPTER 14 SECTIONS 14-31 THRU 14-78(REPEALING CITY OF MARCO ISLAND ORDINANCES 98-4 AND 99-3 IN THIERITS ENTIRETY); ESTABLISHING THE CITY OF MARCO ISLAND “CODE COMPLIANCE ORDINANCE”; SETTING FORTH FINDINGS AND PURPOSE; SETTING FORTH APPLICABILITY; PROVIDING DEFINITIONS; ESTABLISHING THE SPECIAL MAGISTRATE; PROVIDING CODE COMPLIANCE NOTICE OF VIOLATION PROCEDURES; PROVIDING FOR CIVIL VIOLATION CITATION PROCEDURES; ~~PROVIDING FOR APPEALS OF SPECIAL MAGISTRATE ORDER;~~ ~~ESTABLISHING SUBPOENA PROCEDURES; PROVIDING FOR NOTICES; PROVIDING FOR LIENS AND DURATION OF LEANS;~~ PROVIDING THAT PROVISIONS OF THIS ORDINANCE ARE SUPPLEMENTAL; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 162.09, Florida Statutes, authorizes the creation of an alternate code enforcement system which gives Code Enforcement Boards or Special Magistrates the authority to hold hearings and assess fines for violations of codes and ordinances in force in the incorporated City of Marco Island Code of Ordinances; and

WHEREAS, pursuant to Chapter 162, Florida Statutes, “The Local Government Code Enforcement Boards Act,” the Marco Island City Council duly enacted Marco Island Ordinances Nos. 98-4 and 99-3, “The City of Marco Island Code Enforcement Board Ordinance” which created a Code Enforcement Board, authority and procedures; and

WHEREAS, Chapter 162, Florida Statutes, does not limit a municipality’s additional or supplemental enforcement system to the exact system set forth in Parts I and II of Chapter 162; and

WHEREAS, Chapter 162, Florida Statutes, does not preclude a municipality from combining any features of Part I and Part II of Chapter 162; and

WHEREAS, Section 162.13, Florida Statutes, provides that it is the legislative intent of Sections 162.01 – 162.12, Florida Statutes, to provide an additional or supplemental means of obtaining compliance with local codes and that nothing contained in those sections shall prohibit a local governing body from enforcing its code by any other means; and

47 **WHEREAS**, Chapter 162, Part II, Florida Statutes, provides for a “Supplemental Code
48 Enforcement Procedure” whereby duly designated Code Enforcement Officials are authorized to
49 issue citations or notices to appear to a person when, based upon personal investigation, the
50 Official has reasonable cause to believe that the person has committed a civil infraction in
51 violation of a duly enacted code or ordinance; and
52

53 **WHEREAS**, the Marco Island City Council wishes to repeal the City of Marco Island
54 Ordinance 98-4 and desires to establish, pursuant to the authority vested in it by Chapter 162,
55 Florida Statutes, a supplemental code enforcement procedure that allows duly designated Code
56 Enforcement Officials the authority to issue such citations and notices to appear; and
57

58 **WHEREAS**, The Marco Island City Council believes it is in the best interests of the
59 citizens of Marco Island to create and appoint Special Magistrate(s) as additional means of
60 enforcement; and
61

62 **WHEREAS**, the Marco Island City Council believes it is in the best interests of the
63 citizens of Marco Island that an alternate system of enforcement be established which does not
64 conform to the requirements of Chapter 162, Florida Statutes;
65

66 **NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE**
67 **CITY OF MARCO ISLAND, FLORIDA, THAT:**
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69 The City of Marco Island Code Compliance Ordinance is hereby created to read as
70 follows:
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72 **SECTION ONE: GENERAL**
73

74 **1-1. LEGISLATIVE INTENT**
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76 1. It is the intent of this Ordinance to promote, protect, and improve the health,
77 safety, and welfare of the citizens of the City of Marco Island by authorizing the
78 designation of Special Magistrates with authority to impose administrative fines and
79 other noncriminal penalties and to provide an equitable, expeditious, and effective
80 method of enforcing any codes and ordinances in force in the City of Marco Island,
81 where a pending or repeated violation continues to exist.
82

83 2. It is the intent of this Ordinance to establish a procedure by which duly designated
84 Code Enforcement Officials are authorized to issue citations, notices of violations, and
85 notices to appear, under the circumstances set forth in this Ordinance, for civil violations
86 which are reasonably believed to be violations of duly enacted codes or ordinances and
87 that the Special Magistrate will hear such charges.
88

89 **1-2. TITLE AND CITATION**
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91 This Ordinance shall be known and may be cited as the “City of Marco Island Code
92 Compliance Ordinance.”

93 **1-3. APPLICABILITY**

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95 This Ordinance shall apply to and be enforced in all incorporated areas of the City of
96 Marco Island and shall be deemed in addition to and supplemental to Chapter 162, Part I
97 and Part II, Florida Statutes, or as otherwise provided by general law.

98
99 **1-4. DEFINITIONS**

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101 The following words, terms and phrases, when used in this Ordinance, shall have the
102 meanings ascribed to them in this Section, except where the context clearly indicates a
103 different meaning. Said definitions are inclusive as well as supplemental to those
104 definitions set forth in Chapter 162, Florida Statutes.

105
106 1. “City Prosecutor” means the City Attorney and/or his/her designee.

107
108 ~~2. “Code” means collectively the City of Marco Island Code of Ordinances,~~
109 ~~including the Land Development Code, as may be amended from time to~~
110 ~~time.~~

111
112 ~~23.~~ “Code Compliance Official” means the City Manager or any designated employee
113 or agent of the City whose duty it is to ensure compliance with codes and
114 ordinances enacted by the City. Employees or agents hereby designated as Code
115 Compliance Officials include, but are not limited to, code inspectors, zoning
116 administrator, building officials, code compliance officers, code administrator,
117 police officers, community service officers, fire safety inspectors, city
118 environmentalists or other designated employees of the City designated by the
119 City Manager.

120
121 ~~34.~~ “Cost Recovery” means those necessary and reasonable costs incurred by the City
122 or its authorized agents procuring compliance of a violation as ordered by the
123 Special Magistrate.

124
125 ~~5. “Council” means the City of Marco Island City Council as the governing body of~~
126 ~~the City of Marco Island.~~

127
128 ~~46.~~ “Irreparable or Irreversible Violation” means a violation which is irreparable
129 or irreversible in nature, and which cannot be remedied after the violation has
130 been committed because the violation constitutes a single prohibited act rather
131 than an ongoing condition or circumstance.

132
133 ~~7. “Repeat violation” means a violation of a provision of a code or ordinance by a~~
134 ~~person who has been previously found through a Code Enforcement Board, code~~
135 ~~enforcement Special Magistrate, or any other quasi judicial or judicial process, to~~
136 ~~have violated or who has admitted violating the same provision within five (5)~~
137 ~~years prior to the violation, notwithstanding the violations occur at different~~
138 ~~locations.~~

58. "Special Magistrate" means a person designated by the Council pursuant to Section 4 of this Ordinance and Section 162.03, Florida Statutes, with the authority to hold hearings and assess fines for violations of City codes and ordinances.

6. "Transient Violation" means a violation that is of a temporary or fleeting in nature, or where the Violator is itinerant or otherwise has no legal residence within the City.

79. "Violator" means the person or entity legally responsible for the violation (the property owner, tenant, or business entity on the premises, or any combination thereof) and may includes the property owner on whose property the violation occurs regardless of who commits the violation.

1-5. NON-EXCLUSIVE REMEDY

None of the provisions contained in this Ordinance shall be considered exclusive. The Code Compliance Official shall have the option to use any method provided by this Ordinance or at law to enforce the provisions of the various codes. Nothing contained in this Ordinance shall prohibit the City from enforcing the code by any other means as provided by law.

SECTION TWO: SPECIAL MAGISTRATES

2-1. APPOINTMENTS; QUALIFICATIONS

1. The Council may appoint up to three (3) Special Magistrates. ~~At least three Special Magistrates shall be appointed by the Council.~~

2. Special Magistrates shall at a minimum:

(a) Be a graduate of a law school accredited by the American Bar Association; or ~~and~~

(b) Be a member in good standing of the Florida Bar; or ~~and~~

(c) ~~Be either a certified mediator under the rules of the Florida Supreme Court, an arbitrator qualified by a recognized Arbitration Association; or as an enforcement officer or director of operations in a~~
federal, state or local governmental jurisdiction.

~~(d) A former judge.~~

3. Special Magistrate appointments shall be for a two (2) year term. Any Special Magistrate may be reappointed by Council. There shall be no minimum number of reappointments that may be given to any Special Magistrate. The

Council shall have the authority to remove a Special Magistrate with or without cause upon ten (10) days written notice.

4. If any Special Magistrate resigns or is removed prior to expiration of his/her term, or if the Council determines that a Special Magistrate shall not be reappointed, the City Manager may make a recommendation for appointment from the candidates previously interviewed to fill the vacancy.

2-2. POWERS AND DUTIES OF THE SPECIAL MAGISTRATE

1. The Special Magistrate shall have the jurisdiction and authority to do the following:
 - (a) Adopt rules and regulations for the conduct of hearings to be approved by Council;
 - (b) Subpoena violators and witnesses to appear at its hearings, which subpoena may be served by the Collier County Sheriff or any person authorized by law to serve process;
 - (c) Subpoena evidence to its hearings, including, but not limited to, records, surveys, plats, and other documentary evidence; which subpoena may be served by the Collier County Sheriff or any person authorized by law to serve process;
 - (d) Take testimony under oath;
 - (e) Hold hearings on contested citations issued by any duly authorized person to issue citations for violations of local codes and ordinances;
 - (f) Issue orders having the force of the law to command whatever steps are necessary to bring a violation into compliance.

SECTION THREE: CODE COMPLIANCE NOTICE OF VIOLATION PROCEDURE

3-1. NOTICE OF VIOLATION

1. It shall be the duty of the Code Compliance Official to initiate enforcement proceedings of the various codes. The Special Magistrate shall not have the power to initiate such enforcement proceedings.
2. Except as provided in subsections 5 and 6 of this Section, if a violation of any code is found, the Code Compliance Official shall notify the violator and give him/her a reasonable time to correct the violation.

3. Should the violation continue beyond the time specified for the correction, the Code Enforcement Official shall execute a written Affidavit of Violation which shall include a statement of facts and circumstances of the alleged violation and shall identify the code or ordinance which has been violated. Upon notification ~~and request by the~~ Code Enforcement Official, ~~the Special Magistrate, through its~~ clerical staff, shall schedule a public hearing before the Special Magistrate. Written notice of the scheduled hearing, which shall contain the date, time, and place of the hearing, and a copy of the Affidavit of Violation, shall be provided to the violator ~~pursuant to the provisions of Section Seven of this Ordinance~~. Failure to provide proper notice may be grounds for continuing the hearing but shall not be grounds for dismissal of the charges.

4. If the violation is corrected and thereafter recurs, or if the violation is not corrected by the time specified for the correction, the case shall be presented to the Special Magistrate even if the violation has been corrected prior to the hearing, and, if practicable, the notice shall so state.

5. If a repeat violation is found, the Code Enforcement Official shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The Code Enforcement Official, upon notifying the violator of a repeat violation, shall ~~request a hearing before the Special Magistrate. The Special Magistrate, through the code enforcement clerical staff,~~ shall schedule a hearing before the Special Magistrate and shall provide notice pursuant to ~~Section Seven of this Ordinance and~~ Section 162.12, Florida Statutes, as amended. The case may be presented to the Special Magistrate even if the repeat violation has been corrected prior to the hearing, and the notice shall so state. If the repeat violation has been corrected, the Special Magistrate retains the right to schedule a hearing to impose the payment of reasonable enforcement fees upon the repeat violator.

6. If the Code Enforcement Official has reason to believe a violation presents a serious threat to public health, safety, or welfare, or if the nature of the violation constitutes a Irreparable or Irreversible Violation~~if the violation is irreparable or irreversible in nature~~, the Code Enforcement Official shall make a reasonable effort to notify the violator and may immediately notify the Special Magistrate and request a hearing. ~~Under such circumstances the Code Enforcement Official shall not be required to adhere to the notice requirements set forth in Section Seven of this Ordinance.~~

~~7. If the owner of property that is subject to an enforcement proceeding before a Special Magistrate or court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, the owner shall:~~

~~(a) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.~~

~~(b) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transformer.~~

~~(c) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.~~

~~(d) File a notice with the Code Enforcement Official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five (5) days after the date of the transfer.~~

~~A failure to make the disclosures described in paragraphs (a), (b), (c), and (d) of this subsection before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.~~

3-2. FINES; COSTS OF REPAIRS

1. A Special Magistrate, upon notification by the Code Enforcement Official that an order of the Special Magistrate or Code Enforcement Board has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the Special Magistrate for compliance or, in the case of a repeat violation, for each day the repeat violation continues beginning with the date the repeat violation is found to have occurred by the Code Enforcement Official. In addition, if the violation is a violation described in the ~~City's Code of Ordinances~~, the Special Magistrate may direct that all reasonable repairs which are required to bring the property into compliance are made and charge the violator with the reasonable cost of the repairs, along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the Special Magistrate or City to make further repairs or to maintain the property and does not create any liability against the Special Magistrate or City for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this chapter, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, the Special Magistrate finds a violation to be irreparable or irreversible in nature, he or she may order the violator to pay a fine as specified in this section.

2. A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection 1 of this Section. However, if the Special Magistrate finds the violation to be irreparable or irreversible in nature, he or she may impose a fine not to exceed \$5,000 per violation.

3. In determining the amount of the fine, if any, the Special Magistrate shall consider the following factors:

- (a) The gravity of the violation;
- (b) Any actions taken by the violator to correct the violation; and
- (c) Any previous violations committed by the violator.

SECTION FOUR: CIVIL VIOLATION CITATION PROCEDURE

4-1. CIVIL VIOLATION

A violation of any codes or ordinances for which a citation is issued, under the authority provided in this Ordinance, is a civil violation subject to the enforcement procedures set forth in this Ordinance and any other applicable enforcement procedure set forth in any other city Ordinance or Florida Statutes. Said civil violation shall carry a minimum civil penalty not to exceed \$500.00. Each day the violation shall continue beyond the time period for correction stated in the written warning notice or citation shall be deemed to constitute a separate civil violation. A civil penalty of less than the maximum civil penalty may apply if the person who has committed the civil violation does not contest the citation. By separate resolution, the Council shall approve a schedule of violations and penalties of less than the maximum penalty if the violator does not contest the violation.

4-2. IRREPARABLE OR IRREVERSIBLE CIVIL VIOLATIONS; VIOLATIONS THAT PRESENT THREAT TO THE PUBLIC

A Code Compliance Official may issue a civil violation citation to a person or entity with no prior notice of violation when the Code Compliance Official, upon personal investigation, has reasonable cause to believe that ~~a person or entity has committed an irreparable or irreversible violation or the violation of the code presents a serious threat to the public health, safety or welfare, is a repeat violation, or if the Violator is involved in a Transient Violation, or if the violation constitutes a Irreparable or Irreversible Violation. The penalties to be imposed for irreparable or irreversible civil violations or violations that present a serious threat to the public health, safety and welfare shall be determined by resolution of Council.~~

4-3 CITATIONS IN GENERAL

1. A Code Compliance Official is authorized to issue a citation to an alleged violator when, based upon personal investigation, the Code Compliance Official has the reasonable cause to believe that the person has committed a violation of the Code ~~a duly enacted code.~~

2. The issuance of the civil violation citation shall comply with the following requirements:

(a) The maximum civil penalty for each violation is five hundred dollars (\$500);

(b) A Code Compliance Official shall only issue a citation upon reasonable cause to believe that a person has committed an act in violation of a code or an ordinance;

(c) A citation issued shall be subject to contest before county court or Special Magistrate, as may be provided Code and general law~~by a Special Magistrate;~~

~~3. The provisions of this section do not apply to the enforcement of the Florida Building Code pursuant to Chapter 553, Part IV, Florida Statutes, as they apply to construction, provided that a building permit is either not required or has been issued by the City. For the purposes of this subsection "building codes" mean only those codes adopted pursuant to Section 553.73, Florida Statutes.~~

4-4 PROCEDURE FOR ISSUING CITATIONS

1. Except as provided in this Ordinance, pPrior to issuing a citation, a Code Compliance Official shall provide notice of violation to the alleged violator and shall establish a reasonable amount of time within which the person must correct the violation. Such time period shall be no more than thirty (30) days. If upon personal investigation, the Code Compliance Official finds that the person has not corrected the violation within the time period specified, the Code Compliance Official may issue a citation to the violator responsible for the violation.

4-5. FORM OF CITATION

1. The form of the civil violation citation issued pursuant to this Section shall shall contain the following information:

(a) The date and time of issuance;

(b) The name and address of the violator to whom the citation is issued;

(c) Civil violation citation number;

(d) Brief description of the violation, including the location, date and time of the violation;

(e) The number or section of the Code or Ordinance violated;

(f) The procedure for the violator to follow in order to pay the civil penalty or to contest the citation or notice to appear;

(g) The applicable potential civil penalty if the violator elects to contest the citation or notice to appear;

(h) The applicable civil penalty if the violator elects NOT to contest the citation or notice to appear.

(i) A conspicuous statement that if the violator fails to correct the violation or fails to pay the civil penalty within the time allowed and fails to contest the civil violation citation by requesting a hearing before the Special Magistrate within ten (10) days after service of the civil violation citation or notice to appear, the violator shall be deemed to have waived the right to contest the citation and that such waiver shall constitute an admission of the violation.

(j) Notice that unpaid civil violation citations may cause liens to be filed against violator's real or personal property.

(k) The name, title or position of the Code Compliance Official.

~~4.6. RIGHTS OF VIOLATORS; PAYMENT OF FINES; RIGHT TO APPEAL~~
~~CIVIL VIOLATION CITATIONS~~

~~1. A violator who has been served with a civil violation citation shall elect either to:~~

~~(a) Correct the violation within the time specified and pay the penalty in the manner indicated on the civil violation citation; or~~

~~(b) Request an administrative hearing before the Special Magistrate to appeal the determination of the Code Compliance Official that resulted in the issuance of the civil violation citation.~~

~~2. The request for an administrative hearing shall be done by filing a request in writing with the City Clerk or designee to set a hearing to contest the civil violation citation. The request must be mailed or delivered to the address indicated on the civil violation citation not later than ten (10) days after the service of the citation.~~

~~3. If the named violator, after notice, fails to pay the civil violation citation and fails to correct the violation within the time specified or fails to timely request an administrative hearing before the Special Magistrate, such failure shall constitute a waiver of the violator's right to an administrative hearing before the Special Magistrate. A waiver of the right to administrative hearing shall be treated as an admission of the violation, and penalties shall be assessed in the amount stated in the civil violation citation.~~

~~4.7. CIVIL VIOLATION CITATION APPEALS~~

1. ~~Upon receipt of the named violator's request pursuant to subsection 4-6 (2) of this Section for an administrative hearing, the City Clerk or designee shall set the matter for a hearing on the next available regularly scheduled hearing date or as soon thereafter as possible.~~

2. ~~The code compliance clerk or designee shall send a notice of hearing by certified and first class mail to the violator's last known address. The notice of hearing shall include but not be limited to the following:~~

~~(a) The name of the Code Compliance Official who issued the citation;~~

~~(b) A description of the alleged violation;~~

~~(c) The date of the alleged violation;~~

~~(d) The section of the code allegedly violated;~~

~~(e) The place, date and time of the hearing;~~

~~(f) The right of the violator to be represented by an attorney;~~

~~(g) The right of the violator to present witnesses and evidence;~~

~~(h) Notice that failure of the violator to attend the hearing may result in a civil penalty being assessed against the violator; and~~

~~(i) Notice that requests for continuances will not be considered if not received in writing by the code compliance clerk or designee at least five (5) calendar days prior to the date set for hearing.~~

3. ~~All citation appeals before the Special Magistrate shall be open to the public and all testimony shall be under oath. If proper notice has been given, a hearing may proceed in the absence of the named violator.~~

4. ~~The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting transcripts.~~

5. ~~Each case before a Special Magistrate shall be presented by the City Prosecutor.~~

6. ~~The hearing is not bound by the formal rules of evidence, but fundamental due process shall be observed and govern the proceedings. Any relevant evidence shall be admitted if the Special Magistrate finds it competent and reliable, regardless of any common law or statutory rule to the contrary.~~

7. ~~Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross examine opposing witnesses on any matter relevant to the issues, to impeach any witness and to rebut the evidence against the witness.~~

8. ~~The Special Magistrate shall make findings of fact based on the evidence presented. In order to uphold the decision of the Code Compliance Official, the Special Magistrate must find that the greater weight of the evidence shows the existence of a code violation and that the named violator committed or was responsible for the violation. The Special Magistrate shall either affirm or reverse the determination of the Code Compliance Official as to the issuance of the civil violation citation. If the Special Magistrate reverses the determination of the Code Compliance Official and finds the named violator not responsible for the alleged violation on the citation, the named violator shall not be liable for the payment of any civil penalty unless the City successfully appeals the ruling of the Special Magistrate to the circuit court. If the decision of the Special Magistrate is to affirm the Code Compliance Official's determination of violation and finds the violator guilty, the following elements may be included in the Special Magistrate's decision:~~

~~(a) The amount of the civil penalty;~~

~~(b) The date by which the violation must be corrected to prevent a continuing violation.~~

9. ~~Any person or entity requesting a hearing who fails to appear before the Special Magistrate to contest the civil violation citation shall be deemed to have waived his or her right to contest the citation, and a penalty may be assessed against the violator or entity for an amount not to exceed five hundred dollars (\$500.00). A violation of the judgment issued by the Special Magistrate shall be deemed to be a continuing violation and carry the penalties set forth in subsection 4-9 of this Section;~~

4-68. SCHEDULE OF CIVIL PENALTIES AND FINES

1. By resolution the Council shall establish civil penalties with fines that lists the sections of the code or ordinances, as they may be amended from time to time; which may be enforced pursuant to the provisions of this Ordinance and prescribe the dollar amount of civil penalty for the violation of these sections.

2. The "description of violations" described in such table is for informational purposes only and the civil penalties attached are meant only as proposed figures not intended to limit the nature, number of, or amount of fines to be imposed for the violations that may be cited in this section. To determine the exact nature of the activity prescribed or required by this Code, the relevant code section, ordinance cited in the specific violation must be examined.

3. Any violation of the code that is not specified by resolution of the Council shall assess a civil penalty of fifty dollars (\$50.00).

4. A person or entity who receives a civil violation citation from a Code Compliance Official for a code or ordinance violation has committed a civil violation and shall be subject to a fine in accordance with the following schedule:

(a) For the first civil violation citation, penalties for violations of the code or ordinances to be enforced shall be in the amount prescribed in the resolution approved by Council under this section;

(b) For a civil violation citation which includes a repeat violation, no less than fifty dollars (\$50.00) additional to the civil penalty amount stated in resolution.

5. Continuing violations shall carry a civil penalty, not less than fifty dollars (\$50.00) per day, for each day the violation continues. Repeat violations shall carry a civil penalty, not less than one-hundred dollars (\$100.00) per day, for each day the violation continues, beginning with the date the repeat violation is found by the Code Compliance Official to have occurred.

**SECTION FIVE: CONDUCT OF HEARINGS BEFORE THE SPECIAL
MAGISTRATE**

1. The Special Magistrate shall conduct hearings on an as needed basis on the second Tuesday of the month or more frequently upon request of the City Manager or the City Manager's designee. Written notice of such hearing shall be pursuant to Section Seven of this Ordinance.

2. Audio and video recordings shall be kept of all hearings and all hearings and proceedings shall be open to the public. The City Manager shall provide clerical and administrative personnel as may be reasonably required for the proper performance of the Special Magistrate's duties.

3. Each case before the Special Magistrate shall be presented by the City Prosecutor.

4. The Special Magistrate shall proceed to hear the cases on the agenda for that day. The Special Magistrate shall take testimony from the Code Compliance Official or staff member and alleged violator. All testimony shall be under oath and shall be recorded and may be transcribed at the expense of the person requesting the transcript. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross examine opposing witnesses on any matter relevant to the issues, to impeach any witness and to rebut the evidence. Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings.

5. At the conclusion of the hearing, the Special Magistrate shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted in this division. The order may include a notice that it must be complied with by a specified date and that a fine may

be imposed and, under the conditions specified under subsection 3-5 of this Section, the cost of repairs may be included along with the fine, if the order is not complied with by such date.

SECTION SIX: APPEAL OF SPECIAL MAGISTRATE ORDER

1. ~~An aggrieved party, including the Council, may appeal a final administrative order of a Special Magistrate to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.~~

2. ~~In the event that a party to the proceedings before the Special Magistrate should elect to appeal, a verbatim record of the proceedings may be required or may be desirable. It shall be the sole responsibility of each party to the proceedings to ensure that a record is made which includes the testimony upon which an appeal may be taken. Neither the City nor the Special Magistrate shall have the responsibility to provide a verbatim transcript of the proceedings.~~

SECTION SEVEN: SUBPOENA PROCEDURES

1. ~~Every subpoena for testimony before the Special Magistrate shall be issued by the Clerk of Circuit Court, or by any person permitted to issue a subpoena under Florida law, as Ex Officio Clerk to the Special Magistrate, under the seal of the City of Marco Island. Each subpoena shall state the name of the Special Magistrate, the title of the action, the case number of the action, the name and address of the person to whom the subpoena is issued, and the time, place and location of the hearing at which the person is directed to appear, and shall be prepared by the party requesting the issuance.~~

2. ~~A subpoena for production of documentary evidence may also be issued to command a person to whom it is directed to produce books, papers, documents or tangible items designated therein. The Special Magistrate, upon motion to quash made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive, or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible items.~~

3. ~~A subpoena may be served by any person authorized by law to serve process. Proof of service shall be filed with the Clerk to the Special Magistrate. Payment of any service fee shall be made by the party at whose request the service is made.~~

4. ~~Persons subpoenaed, with the exception of the alleged violator, shall be entitled to a witness fee and mileage compensation as provided for in Section 92.142, Florida Statutes. The cost of the witness fee and mileage compensation shall be borne by the~~

~~party at whose request the subpoena is issued and shall be paid to the witness at or before the time of service.~~

SECTION EIGHT: NOTICES

~~1. All notices required by this Ordinance shall be provided by certified mail, return receipt requested, or by hand delivery by the director, sheriff or other law enforcement officer, Code Enforcement Official, or other person designated by the Council, or by leaving the notice at the violator's usual place of residence with some person of his/her family over fifteen (15) years of age and informing such person of the contents of the notice.~~

~~2. In addition to providing such notice as set forth in subsection 1 of this Section, at the option of the Special Magistrate or Council, notice may also be served by publication, as follows:~~

~~(a) Such notice shall be published once during each week for four (4) consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the City of Marco Island. The newspaper shall meet such requirements as are prescribed under Chapter 50, Florida Statutes, for legal and official advertisements.~~

~~(b) Proof of publication shall be made as provided in Section 50.041 and 50.051, Florida Statutes.~~

~~(c) In lieu of publication as described in subsection (2)(a) of this Section, such notice may be posted for at least ten (10) days prior to the hearing in two (2) locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the front door of the City Hall. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.~~

~~Notice by publication may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under Subsection 1 of this Section.~~

~~3. Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection 1 of this Section, together with proof of publication as provided in subsection 2 of this Section, shall be sufficient to show that the notice requirements of this Ordinance have been met, without regard to whether or not the alleged violator actually received such notice.~~

SECTION NINE: LIENS

8-1. LIENS

1. ~~A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator; and, upon petition to the Circuit Court may be enforced in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property, but such order shall not be deemed otherwise to be a judgment of a court except for enforcement purposes. A fine imposed pursuant to this division shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the City and the City Manager or its designee, may execute a satisfaction or release of lien entered pursuant to this section. The City may also recover reasonable attorney's fees and court costs in connection with such enforcement actions. After three (3) months from the filing of any such lien which remains unpaid, the Council may authorize the City Attorney to foreclose on the liens or to sue to recover a money judgment for the amount of the lien plus accrued interest and costs.~~

2. ~~No lien provided for by this section shall continue for a longer period than twenty (20) years after the certified copy of an order imposing a fine has been recorded, unless within that time an action is commenced pursuant to Section 162.09(3), Florida Statutes, in a court of competent jurisdiction. In an action to foreclose on a lien or for money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee that it incurs in the action. The Council shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien, effected by the commencement of the action, shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.~~

3. ~~No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under Section 4, Article X of the Florida Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under Section 4(a), Article X of the Florida Constitution.~~

4. ~~The City Manager shall have the authority to mitigate fines/liens imposed by the Special Magistrate.~~

SECTION SIXTEEN: SUPPLEMENTAL PROVISION

1. ~~It is the intent of this Ordinance and Chapter 162, Parts I and II, Florida Statutes, to provide an additional or supplemental means of obtaining compliance with local codes and ordinances. Nothing contained in this Ordinance shall prohibit the City from enforcing its codes by any appropriate civil action, or by referral to the State Attorney's Office for prosecution in the case of criminal violation, and/or by presentation to any other City board or agency with jurisdiction to hear and act upon the alleged code or ordinance violation.~~

734
735 **SECTION SEVENTEEN: CONFLICT AND SEVERABILITY**
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737 1. All ordinances or parts of ordinances in conflict with the provisions of this
738 ordinance are hereby repealed to the extent of such conflict.
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740 2. If any provision of this ordinance or the application thereof to any person or
741 circumstance is held invalid, the invalidity shall not affect other provisions or
742 applications of the ordinance which can be given effect without the invalid provision or
743 application, and to this end the provisions of this ordinance are declared severable.
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745
746 **SECTION EIGHTTWELVE: CODIFICATION**
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748 Upon codification of the Code of Ordinances of the City of Marco Island, this Ordinance
749 shall be incorporated within such code in such section as may be determined appropriate.
750

751 **SECTION NINETEEN: EFFECTIVE DATE**
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753 This ordinance shall become effective immediately upon adoption.
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756

757 **ADOPTED BY THE CITY COUNCIL** of the City of Marco Island this ____day of
758 _____, 2014.
759

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761
762
763 Attest:

CITY OF MARCO ISLAND FLORIDA

764
765 By: _____
766 Laura M. Litzan, City Clerk
767

By: _____
Kenneth Honecker, Chairman

768
769 (SEAL)
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775 Reviewed for legal sufficiency:
776
777

778 By: _____
779 Burt. L. Saunders, City Attorney