

1 **Chapter 32 LAW ENFORCEMENT**

2 **ARTICLE I. IN GENERAL**

3 **Secs. 32-1—32-30. Reserved.**

4 **ARTICLE II. POLICE OFFICERS' PENSION PLAN**

5 **Sec. 32-31. Establishment.**

6 The City of Marco Island Police Officers' Pension Plan is hereby established as a local law plan pursuant to
7 F.S. ch. 185. An excise tax on property insurance premiums has been assessed and imposed pursuant to F.S. §
8 185.08, in the manner and amounts specified therein, for the purpose of this pension plan. In establishing this
9 pension plan, it is the city's intent to maximize the use of premium tax revenues received pursuant to F.S. ch. 185,
10 to fund the benefits provided herein.

11 **Sec. 32-32. Definitions.**

12 As used herein, unless otherwise defined or required by the context, the following words and phrases shall
13 have the meaning indicated:

14 *Accumulated contributions* means a member's own contributions without interest.

15 *Actuarial equivalent* means a benefit or amount of equal value, based upon the UP 1984 (unisex) Mortality
16 Table and an interest rate of eight percent per annum.

17 *Average final compensation* means one-twelfth of the average compensation of the five best years of the last
18 ten years of credited service prior to retirement, termination, or death, or the career average as a full-time police
19 officer, whichever is greater. A year shall be 12 consecutive months.

20 *Beneficiary* means the person or persons entitled to receive benefits hereunder at the death of a member,
21 who has been designated in writing by the member and filed with the board. If no such designation is in effect, or
22 if no person so designated is living, at the time of death of the member, the beneficiary shall be the estate of the
23 member.

24 *Board* means the board of trustees, which shall administer the plan and serve as trustees of the fund.

25 *City* means City of Marco Island, Florida.

26 ~~*Code* means the Internal Revenue Code of 1986, as amended from time to time.~~

27 *Compensation* means the total remuneration for services rendered to the city as a police officer, including up
28 to 300 hours of overtime pay annually and lump sum payments for unused leave to the extent permitted under
29 F.S. § 185.02(4), but excluding pay for special-duty or extra-detail work performed for an employer other than the
30 city.

31 *Credited service* means the total number of years and fractional parts of years of service as a police officer
32 with member contributions, when required, omitting intervening years or fractional parts of years when such
33 member was not employed by the city as a police officer. "Fractional parts of years" shall mean a fraction whose
34 numerator is the number of completed days and whose denominator is 365. Members may voluntarily leave their
35 accumulated contributions in the fund for a period of five years after leaving the employ of the police department,
36 pending the possibility of being reemployed as a police officer, without losing credit for the time as a member of
37 the plan. If a vested member leaves the employ of the police department the member's accumulated contributions

1 will be returned only upon written request of the member. If a member who is not vested is not reemployed as a
2 police officer with the police department within five years, the member's accumulated contributions shall be
3 returned at the member's request. Upon return of a member's accumulated contributions, all rights and benefits
4 under the plan are forfeited and terminated. Upon any reemployment, a member shall not receive credit for the
5 years and fractional parts of years of service for which the member has withdrawn the accumulated contributions
6 from the fund, unless the member repays into the fund the contributions withdrawn, with interest as determined
7 by the board, within 90 days after reemployment.

8 The years or fractional parts of a year that a member serves in the military service of the Armed Forces of the
9 United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily,
10 after separation from employment as a police officer with the city to perform training or service, shall be added to
11 the member's years of credited service for all purposes, including vesting, provided that:

12 (a) The member must return to employment as a police officer within one year from the earlier of the date
13 of military discharge or release from active service.

14 (b) The member is entitled to reemployment under the provisions of the Uniformed Services Employment
15 and Reemployment Rights Act (USERRA), (P.L.103-353).

16 (c) The maximum credit for military service pursuant to this subsection shall be five years.

17 *Effective date* means the effective date of the plan, which is December 1, 2005.

18 *Fund* means the trust fund established herein as part of the plan.

19 *Internal Revenue Code* means the Internal Revenue Code of 1986, as amended from time to time.

20 *Member* means an actively employed police officer who fulfills the prescribed membership requirements.
21 Unpaid volunteer and part-time police officers are not included as members.

22 *Plan* means the City of Marco Island Police Officers' Pension Plan as contained herein and all amendments
23 thereto.

24 *Plan year* means the 12-month period beginning October 1 and ending September 30 of the following year.
25 *Retiree* means a member who has entered retirement status.

26 *Police officer* means an actively employed full-time person employed by the city, including the initial
27 probationary employment period, who is certified as a police officer as a condition of employment in accordance
28 with the provisions of F.S. § 943.1395, who is vested with authority to bear arms and make arrests, and whose
29 primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway
30 laws of the State of Florida.

31 *Prior service credit* means member may purchase prior service credit for service in the Armed Forces of the
32 United States, the United States Merchant Marine or service as a police officer for any employer prior to
33 employment by the City of Marco Island, by depositing into the trust fund the full actuarial costs of such prior
34 service credit that would have occurred had the member been employed by the City of Marco Island as a police
35 officer, for the period of prior service credit purchased. Such payment for said prior service credit may be made as
36 a lump sum or by payroll deductions, not to extend beyond five years, according to a schedule approved by the
37 board of trustees. Payroll deduction payments shall require interest at the actuarial rate of return for the years
38 purchased. Such purchase of prior service credit shall take effect upon attaining six years of credited service in this
39 pension plan. If a member terminates service prior to attaining six years of credited service and receives a refund
40 of member contributions, the amount paid for such prior service credit shall also be refunded.

41 (1) No member shall receive prior service credit for years or fractional parts of years of service if they have
42 withdrawn their contributions to the plan for those years or fractional parts of years of service, unless
43 the member repays into the plan the contributions they had withdrawn plus interest as determined by
44 the board of trustees, within 90 days after re-employment with the City of Marco Island. Further, prior
45 service credit shall not be granted for service where the member is receiving or is entitled to receive a
46 benefit from another governmental pension system.

1 (2) Prior service credit under this section shall only be provided for service as a police officer, as defined in
2 chapter 185 of the Florida Statutes, with any other law enforcement agency and/or for service in the
3 Armed Forces of the United States, or the United States Merchant Marine, voluntary or involuntary, in
4 accordance with the Uniform Services Employment and Reemployment Rights Act (USERRA) and
5 Chapter 185 of the Florida Statutes.

6 (3) In determining prior service credit of any member for police officer service or United States Armed
7 Forces and Merchant Marine service, prior service credit of up to five years shall be added to the years
8 of actual service with the City of Marco Island.

9 (4) Election to purchase prior service credit, shall be made in writing to the board of trustees. The cost of
10 prior service credit shall be the full actuarial cost of all prior service credit purchased hereunder
11 computed as a lump sum payment into the plan that would have occurred had the member been
12 employed by the City of Marco Island as a police officer, for the period of prior service credit
13 purchased. Actual payment may, at the member's option, be extended over a period of time not to
14 exceed five years and shall be subject to interest at the actuarial rate of return for the years purchased.
15 Full payment of such purchased prior service credit must be completed prior to the member's actual
16 retirement.

17 *Retiree* means a former member who is receiving benefits under the plan.

18 *Retirement* means a member's separation from city employment with eligibility for immediate receipt of
19 benefits under the plan.

20 *Spouse* means the lawful wife or husband of a member or retiree at the time benefits become payable.

21 **Sec. 32-33. Benefit amounts and eligibility.**

22 (1) *Normal retirement date.* Effective October 1, 2021, the normal retirement date of a member hired by the city
23 prior to October 1, 2021 shall be the first day of the month coincident with or next following the earlier of
24 the attainment of age 55 and the completion of six years of credited service, or upon completion of 25 years
25 of credited service, regardless of age. The normal retirement date for a member hired by the city on or after
26 October 1, 2021, shall be the first day of the month coincident with or next following the earlier of the
27 attainment of age 57 and the completion of six years of credited service. or age 52 and the completion of 25
28 years of credited service. A member may retire on the member's normal retirement date or on the first day
29 of any month thereafter, and each member shall become 100 percent vested in the benefit accrued as of the
30 member's normal retirement date. Normal retirement under the plan is retirement from employment with
31 the city on or after the normal retirement date.

32 (2) *Normal retirement benefit.* A member retiring hereunder on or after the member's normal retirement date
33 shall receive a monthly benefit which shall commence on the first day of the month coincident with or next
34 following retirement and be continued thereafter during the member's lifetime, ceasing upon death, but
35 with 120 monthly payments guaranteed in any event. The monthly retirement benefit shall equal three
36 percent of average final compensation multiplied by the member's total years and fractional parts of years of
37 credited service.

38 (3) *Early retirement date.* A member's early retirement date shall be the first day of the next month following
39 the attainment of age 50 and the completion of six years of credited service, regardless of age. Early
40 retirement under the plan is retirement from employment with the city on or after the early retirement date
41 and prior to the normal retirement date.

42 (4) *Early retirement benefit.* A member retiring hereunder on or after the early retirement date but before the
43 normal retirement date may elect to receive either a deferred or an immediate monthly retirement benefit,
44 payable as follows:

45 (a) A deferred monthly retirement benefit which shall commence on what would have been the normal
46 retirement date had the member continued employment as a police officer, with monthly payments

1 continuing on the first day of each month thereafter. The amount of each such deferred monthly
2 retirement benefit shall be determined in the same manner as for retirement on the normal retirement
3 date, except that credited service and average final compensation shall be determined as of the
4 member's separation from city employment; or

5 (b) An immediate monthly retirement benefit which shall commence on the early retirement date, and
6 shall be continued on the first day of each month thereafter. The benefit payable shall be as
7 determined in subsection (a) above, reduced by three percent for each year by which the
8 commencement of benefits precedes the date which would have been the normal retirement date
9 employment as a police officer continued until such date.

10 (5) *Cost-of-living adjustment.* For credited service earned before October 1, 2021, each July 1 following the later
11 of the member's termination date or otherwise normal retirement date, retirees (including disability
12 retirees), beneficiaries and joint pensioners of deceased members or retirees who are receiving monthly
13 benefit payments shall receive a three percent increase in their monthly benefit amount. For credited service
14 earned by a member on and after October 1, 2021, each July 1 following the later of the member's
15 termination date or otherwise normal retirement date, retirees (including disability retirees), beneficiaries
16 and joint pensioners of deceased members or retirees who are receiving monthly benefit payments shall
17 receive an increase in an amount equal to the COLA under title II of the Social Security Act, with a minimum
18 percentage not to go below one percent and a maximum percentage not to exceed one and one-half
19 percent.

20 (6) *Supplemental benefit.* Each retiree or beneficiary who is the retiree's surviving spouse or financial dependent
21 shall receive a monthly supplemental benefit equal to the number of years of credited service completed at
22 the time of the member's retirement multiplied by \$3.00; however, no retiree or beneficiary may receive a
23 supplemental benefit of more than \$90.00 or less than \$30.00. This supplemental benefit shall not be subject
24 to the cost-of-living adjustment.

25 (7) *Benefit improvements.* Benefit improvements shall apply prospectively and shall not apply to members who
26 terminate employment or who retire prior to the effective date of any ordinance adopting such benefit
27 improvements, unless such ordinance specifically provides to the contrary.

28 **Sec. 32-34. Membership.**

29 (1) *Conditions of eligibility.* All full-time police officers who are employed by the city on or after the effective
30 date of this chapter shall become members of this plan as a condition of employment.

31 Notwithstanding the previous subsection (1), the police chief may, within 60 days following the effective
32 date, or if hired thereafter within 60 days following employment as police chief, notify the board and the city, in
33 writing, of his/her election to not be a member of the plan. In the event of such election, any accumulated
34 contributions shall be returned to the police chief, and he/she shall thereafter be barred from participation in the
35 plan.

36 (2) *Designation of beneficiary.* Each member shall complete a form prescribed by the board providing for the
37 designation of a beneficiary or beneficiaries.

38 **Sec. 32-35. Contributions**

39 (1) *Member contributions.*

40 a. *Amount.* Effective October 1, 2014, each member of the plan shall be required to make regular
41 contributions to the fund in the amount of one-half of one percent of compensation. Effective October
42 1, 2023, each member of the plan shall be required to make regular contributions to the fund in the
43 amount of three percent of compensation. Effective October 1, 2015, should the amount in excess of
44 \$137,352.30 (i.e. the "frozen amount") of insurance premium tax revenues received by the plan in a
45 given fiscal year be insufficient to fund a "contribution shortfall," as defined in section 32-35(2), and as

1 determined by the plan's actuary in its most recent actuarial valuation report for that fiscal year, then
2 member contributions may be temporarily increased for that fiscal year to such an amount to satisfy
3 such balance. Notwithstanding, any such contribution shortfall shall first be addressed by allocation of
4 185 premium tax funds according to this section and then a temporary increase in member
5 contributions, should it be necessary. In no event, however, shall member contributions be increased
6 to exceed five percent of compensation. Any increase to member contributions shall be temporary and
7 shall immediately return in the following plan fiscal year. Member contributions withheld by the city on
8 behalf of the member shall be deposited with the board immediately after each pay period. The
9 contributions made by each member to the fund shall be designated as employer contributions
10 pursuant to Section 414(h) of the Internal Revenue Code. Such designation is contingent upon the
11 contributions being excluded from the members' gross income for federal income tax purposes. For all
12 other purposes of the plan, such contributions shall be considered to be member contributions.

13 b. *Method.* Member contributions shall be made by payroll deduction.

14 (2) *State contributions.* The allocation of insurance premium tax revenues under F.S. ch. 185 shall be determined
15 by mutual consent between the city and the collective bargaining representative of the members. Pursuant
16 to such mutual consent, and until such mutual consent changes, insurance premium tax revenues shall be
17 allocated as follows. All accumulated insurance premium tax revenues held in reserve as of December 7,
18 2015, shall be applied to reduce the city's annual required pension contribution. Effective October 1, 2015,
19 for every annual distribution of insurance premium tax revenues, \$137,352.30 (representing the "frozen
20 amount") shall be applied toward reducing the city's annual required pension contribution as specified in the
21 most recent actuarial valuation report adopted by the board of trustees. Effective October 1, 2021, 35
22 percent of the annual distribution of insurance premium tax revenues received in excess of the frozen
23 amount shall be applied toward reducing the city's annual requirement pension contribution and 65 percent
24 of insurance premium tax revenues received in excess of the frozen amount shall be allocated to fund the
25 share accounts set forth in section 32-54. Notwithstanding, should the plan experience a contribution
26 shortfall, any amount of insurance premium tax revenues received in excess of the frozen amount shall first
27 be used to fund such contribution shortfall. A contribution shortfall shall be defined as a negative balance
28 between the sum of all:

29 a. City contributions as outlined in this section;

30 b. Member contributions; and

31 c. The frozen amount of insurance premium tax monies received that fiscal year, and the annual required
32 contribution ("ARC") as defined in the plan actuary's most recent actuarial valuation report for that
33 fiscal year.

34 Should the excess above the frozen amount be insufficient to fully fund a contribution shortfall, member
35 contributions for that plan fiscal year shall temporarily increase to such an amount as may be necessary to satisfy
36 the contribution shortfall; provided, member contributions may not exceed five percent of compensation for any
37 given plan fiscal year. Any distribution of insurance premium tax revenues shall be deposited in the fund
38 comprising part of this plan immediately and under no circumstances more than five days after receipt by the city.

39 (3) *City contributions.* So long as this plan is in effect, the city shall make quarterly contributions to the fund in
40 an amount, at a minimum, equal to the difference each year, between the total aggregate member
41 contributions for the year, plus state contributions for such year, and the total cost for the year, as shown by
42 the most recent actuarial valuation of the plan. The total cost for any year shall be defined as the total
43 normal cost plus the additional amount sufficient to amortize the unfunded past service liability as provided
44 in F.S. ch. 112, pt. VII. By no later than September 30, 2018, the city shall pay off the plan's unfunded
45 actuarial accrued liability determined as of the actuarial valuation report for the plan year ending September
46 30, 2014. The city shall also pay off the unfunded actuarial accrued liability increase resulting from the new
47 mortality table assumptions required under Chapter 2015-157, Laws of Florida. Effective October 1, 2015,
48 the city shall annually contribute such sum as necessary to ensure that the plan's unfunded actuarial accrued
49 liability remains at \$0.00 (i.e. "fully funded" or "100 percent funded"). Notwithstanding, the city shall make

1 annual contributions to the plan in the amount of 43.72 percent of pensionable payroll. The funded status of
2 the plan, as determined by the plan's actuary in the most recent actuarial valuation report for that fiscal
3 year, expressing the actuarial value of assets as a percentage of the actuarial accrued liability, shall remain at
4 100 percent each year utilizing member contributions, state contributions, and city contributions as
5 described in section 32-35.

- 6 (4) *Other.* Private donations, gifts and contributions may be deposited to the fund, and used to defray the cost
7 of benefits produced to members and beneficiaries.

8 **Sec. 32-36. Preretirement death.**

- 9 (1) *Prior to vesting or eligibility for retirement.* The beneficiary of a deceased member who had completed less
10 than six years of credited service, was not receiving monthly benefits or was not eligible for early or normal
11 retirement, shall receive a refund of 100 percent of the member's accumulated contributions.
- 12 (2) *Deceased members vested or eligible for retirement.* The beneficiary of any member who dies and who, at
13 the date of death had completed six or more years of credited service or who was eligible for early or normal
14 retirement, shall be entitled to the member's accrued monthly benefit payable for 120 months beginning at
15 the member's normal retirement date. In lieu of this benefit, the beneficiary may elect to receive on
16 immediate distribution of the member's accumulated contributions.
- 17 (3) *Death while performing USERRA-qualified active military service.* In the case of a member who dies on or
18 after January 1, 2007 while performing "Qualified Military Service" under Title 38, United States Code,
19 Chapter 43, Uniformed Services Employment and Reemployment Rights Act ("USERRA") within the meaning
20 of Section 414(u) of the Internal Revenue Code, any "additional benefits" (as defined by Section 401(a)(37) of
21 the Internal Revenue Code) provided under the plan that are contingent upon a member's termination of
22 employment due to death shall be determined as though the member had resumed employment
23 immediately prior to his death. With respect to any such "additional benefits," for vesting purposes only,
24 credit shall be given for the period of the member's absence from covered employment during "Qualified
25 Military Service".

26 **Sec. 32-37. Disability.**

- 27 (1) *Disability benefits in-line of duty.* Any member who shall become totally and permanently disabled to the
28 extent of being unable, by reason of a medically determinable physical or mental impairment, to render
29 useful and efficient service as a police officer, which disability was directly caused by the performance of
30 duties as a police officer, shall, upon establishing the same to the satisfaction of the board, be entitled to a
31 monthly pension equal to three percent of average final compensation multiplied by the total years of
32 credited service, but in any event the minimum amount paid to the member shall be 42 percent of average
33 final compensation, which shall commence on the first day of the month coincident with or next following
34 disability retirement and be continued thereafter during the member's lifetime, ceasing upon death, but with
35 120 monthly payments guaranteed in any event. Terminated members, either vested or nonvested, are not
36 eligible for disability benefits, except that those terminated by the city for medical reasons may apply for a
37 disability within 30 days after termination.
- 38 (2) *Disability benefits not-in-line of duty.* Any member with eight or more years of credited service who shall
39 become totally and permanently disabled to the extent of being unable, by reason of a medically
40 determinable physical or mental impairment, to render useful and efficient service as a police officer, which
41 disability is not directly caused by the performance of duties as a police officer shall, upon establishing the
42 same to the satisfaction of the board, be entitled to a monthly pension equal to three percent of average
43 final compensation multiplied by the total years of credited service, but in any event the minimum amount
44 paid to the member shall be 25 percent of average final compensation, which shall commence on the first
45 day of the month coincident with or next following disability retirement and be continued thereafter during
46 member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event.
47 Terminated members, either vested or nonvested, are not eligible for disability benefits.

- 1 (3) *Conditions disqualifying disability benefits.* Each member who is claiming disability benefits must establish to
2 the satisfaction of the board that such disability was not occasioned primarily by:
- 3 (a) Excessive or habitual use of any drugs, intoxicants or narcotics.
- 4 (b) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections
5 or while committing a crime.
- 6 (c) Injury or disease sustained while serving in any branch of the Armed Forces.
- 7 (d) Injury or disease sustained after employment as a police officer with the city shall have terminated.
- 8 (e) Injury or disease sustained while working for anyone other than the city and arising out of such
9 employment.
- 10 (4) *Physical examination requirement.*
- 11 (a) A member shall not become eligible for disability benefits until and unless the member undergoes a
12 physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be
13 selected by the board for that purpose. The board shall not select the member's treating physician or
14 surgeon for this purpose except in an unusual case where the board determines that it would be
15 reasonable and prudent to do so.
- 16 (b) Any retiree receiving disability benefits under provisions of this article may be required by the board to
17 submit sworn statements of condition accompanied by a physician's statement (provided at the
18 retiree's expense) to the board annually and may be required by the board to undergo additional
19 periodic re-examinations by a qualified physician or physicians and/or surgeon or surgeons who shall
20 be selected by the board, to determine if such disability has ceased to exist. If the board finds that the
21 retiree is no longer permanently and totally disabled to the extent that the retiree is unable to render
22 useful and efficient service as a police officer, the board shall recommend to the city that the retiree be
23 returned to performance of duty as a police officer, and the retiree so returned shall enjoy the same
24 rights enjoyed at the time the member was placed upon pension. In the event the retiree so ordered to
25 return shall refuse to comply with the order within 30 days from the issuance thereof, such member
26 shall forfeit the right to a pension.
- 27 (c) The cost of the physical examination and/or re-examination of the member claiming or the retiree
28 receiving disability benefits shall be borne by the fund. All other reasonable costs as determined by the
29 board incident to the physical examination, such as, but not limited to, transportation, meals and hotel
30 accommodations, shall be borne by the fund.
- 31 (d) If the retiree recovers from disability and reenters the service of the city as a police officer, the
32 member's service will be deemed to have been continuous, but the period beginning with the first
33 month for which the retiree received a disability retirement income payment and ending with the date
34 of reemployment with the city will not be considered as credited service for the purposes of the plan.
- 35 (e) The board shall have the power and authority to make the final decision regarding all disability claims.
- 36 (5) *Disability payments.*
- 37 (a) The monthly benefit to which a member is entitled in the event of the member's disability retirement
38 shall be payable on the first day of the first month after the board determines such entitlement.
39 However, the monthly retirement income shall be payable as of the date the board determined such
40 entitlement, and any portion due for a partial month shall be paid together with the first payment. The
41 last payment will be:
- 42 1. If the retiree recovers from the disability prior to the normal retirement date, the payment due
43 next preceding the date of such recovery; or

1 2. If the retiree dies without recovering from disability or attains the normal retirement date while
2 still disabled, the payment due next preceding death or the 120th monthly payment, whichever is
3 later.

4 (b) Provided, however, the disability retiree may elect, at any time prior to the date on which benefit
5 payments begin, an optional form of benefit payment as described in section 32-39, which shall be the
6 actuarial equivalent of the disability benefit otherwise payable.

7 (6) *Disability benefit offsets.* When a member retiree is receiving a disability pension, Social Security benefits
8 and/or workers' compensation benefits pursuant to F.S. ch. 440, for the same disability, and the total
9 monthly benefits received from these sources combined both exceed 100 percent of the member's average
10 monthly wage, as defined in F.S. ch. 440, the disability pension benefit shall be reduced so that the total
11 monthly amount received by the retiree does not exceed 100 percent of such average monthly wage. The
12 amount of any lump sum workers' compensation payment shall be converted to an equivalent monthly
13 benefit payable for ten years certain by dividing the lump sum amount by 83.9692. Social Security disability
14 cost of living increases and cost of living increases provided for under the plan shall not be used to further
15 offset disability benefits. Notwithstanding the foregoing, in no event shall the disability pension benefit be
16 reduced below the greater of 42 percent of average final compensation or two percent of average final
17 compensation multiplied by years of credited service.

18 **Sec. 32-38. Vesting.**

19 (1) A member shall become fully vested upon attaining six years of credited service.

20 (2) If a member terminates employment with the city, either voluntarily or by discharge, and is not eligible for
21 any other benefits under this plan, the member shall be entitled to the following:

22 (a) A member with less than six years of credited service upon termination shall be entitled to a refund of
23 accumulated contributions or the member may leave such accumulated contributions deposit with the
24 fund.

25 (b) A member with six or more years of credited service upon termination shall be entitled to a monthly
26 retirement benefit, payable for life, determined in the same manner as for normal or early retirement
27 and based upon the member's credited service, average final compensation and the benefit accrual
28 rate as of the date of termination, payable to the member commencing at the member's otherwise
29 normal or early retirement date, determined as if the member had remained employed, provided the
30 member does not elect to withdraw the member's accumulated contributions and provided the
31 member survives until benefits actually begin. If the member does not withdraw the accumulated
32 contributions and does not survive until benefits actually begin, the designated beneficiary shall be
33 entitled to the member's accrued monthly benefit payable for 120 months beginning at the member's
34 normal retirement date or a return of the member's accumulated contributions.

35 **Sec. 32-39. Optional forms of benefits.**

36 (1) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as
37 specified herein, a member, upon written request to the board, may elect to receive a retirement income or
38 benefit of equivalent actuarial value payable in accordance with one of the following options:

39 (a) A retirement income of a monthly amount payable to the retiree for the lifetime of the retiree only.

40 (b) A retirement income of a modified monthly amount, payable to the member retiree during the lifetime
41 of the member retiree and following the death of the member retiree, 100 percent, 75 percent, 66⅔
42 percent or 50 percent of such monthly amount payable to a joint pensioner for the joint pensioner's
43 lifetime. Except where the retiree's joint pensioner is the retiree's spouse, the present value of
44 payments to the retiree shall not be less than 50 percent of the total present value of payments to the
45 retiree and the joint pensioner.

- 1 (c) A member who retires prior to the time at which social security benefits are payable may elect to
2 receive an increased retirement benefit until such time as social security benefits shall be assumed to
3 commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a
4 more level retirement allowance during the entire period of retirement. The amounts payable shall be
5 as recommended by the actuaries for the plan, based upon the Social Security law in effect at the time
6 of the member's retirement.
- 7 (2) The member, upon electing the option described in subsection (1)(b) above, shall designate the joint
8 pensioner to receive the benefit, if any, payable in the event of the member's death, and will have the power
9 to change such designation from time to time. If a member has elected an option with a joint pensioner and
10 the member's retirement income benefits have commenced, the member may thereafter change the joint
11 pensioner up to two times as provided in F.S. § 185.341 without the approval of the board of trustees or the
12 current joint annuitant or beneficiary. The member need not provide proof of the good health of the joint
13 annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be
14 living. Upon any such new election, the member's final pension benefit shall be recalculated accordingly by
15 the actuary with all costs resulting directly from the new election borne solely by the member.
- 16 (3) The consent of a member's or retiree's joint pensioner to any such change shall not be required. The rights of
17 all previously-designated joint pensioners to receive benefits under the plan shall thereupon cease.
- 18 (4) Upon change of a retiree's joint pensioner in accordance with this section, the amount of the retirement
19 income payable to the retiree shall be actuarially redetermined to take into account the age of the former
20 joint pensioner, the new joint pensioner and the retiree, to ensure that the benefit paid is the actuarial
21 equivalent of the retiree's then-current benefit at the time of the change. Any such retiree shall pay the
22 actuarial recalculation expenses and shall make repayment of any overage of previously-paid pension
23 benefits as a result of said recalculations. Each request for a change will be made in writing on a form
24 prepared by the board, and on completion will be filed with the board. In the event that no joint pensioner
25 survives the retiree, such benefits as are payable in the event of the death of the retiree shall be paid to the
26 retiree's estate.
- 27 (5) Retirement income payments shall be made under the option elected in accordance with the provisions of
28 this section and shall be subject to the following limitations:
- 29 (a) If a member dies prior to the member's normal retirement date or early retirement date, whichever
30 first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if
31 any, will be determined under section 32-36.
- 32 (b) If the joint pensioner dies before the member's retirement, the option elected will be canceled
33 automatically and a retirement income of the normal form and amount will be payable to the member
34 upon retirement as if the election had not been made, unless a new election is made in accordance
35 with the provisions of this section or a new joint pensioner is designated by the member prior to
36 retirement.
- 37 (c) If both the retiree and the joint pensioner designated by member or retiree die before the full payment
38 has been effected under subsection (2)(b), above, the board may, in its discretion, direct that the
39 commuted value of the remaining payments be paid in a lump sum to the retiree's estate.
- 40 (d) If a member continues employment beyond the normal retirement date, and dies prior to actual
41 retirement and while an option made pursuant to the provisions of this section is in effect, monthly
42 retirement income payments will be made, or a retirement benefit will be paid, under the option to the
43 joint pensioner or beneficiary (or beneficiaries) designated by the member, in the amount or amounts
44 computed as if the member had retired under the option on the date of the member's death.
- 45 (6) A retiree may not change retirement options after the date of cashing or depositing his/her first retirement
46 check.
- 47 (7) Notwithstanding anything herein to the contrary, a member or beneficiary may elect to receive a lump sum
48 payment in the event that the monthly benefit amount is less than \$100.00 or the total commuted value of

1 the remaining monthly income payments to be paid do not exceed \$5,000.00. Any such payment made to
2 any person pursuant to the preceding sentence shall operate as a complete discharge of all obligations under
3 the plan with regard to such member or beneficiary.

4 **Sec. 32-40. Beneficiaries.**

- 5 (1) Each member or retiree may, on a form provided for that purpose, signed and filed with the board, designate
6 a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of the
7 member's death. Each designation may be revoked or changed by such member or retiree by signing and
8 filing with the board a new designation-of-beneficiary form. Upon such change, the rights of all previously
9 designated beneficiaries to receive any benefits under the plan shall cease.
- 10 (2) If a deceased member or retiree failed to name a beneficiary in the manner prescribed in subsection (1), or if
11 the beneficiary (or beneficiaries) named by a deceased member or retiree predeceased the member or
12 retiree, the death benefit, if any, which may be payable under the plan with respect to such deceased
13 member or retiree, shall be paid to the estate of the member or retiree and the board, in its discretion, may
14 direct that the commuted value of the remaining monthly income benefits be paid in a lump sum.
- 15 (3) If both the retiree and the beneficiary (or beneficiaries) designated by member or retiree die before the full
16 value of a benefit providing for payments for a period certain, the board may, in its discretion, direct that the
17 commuted value of the remaining payments be paid in a lump sum to the retiree's estate.
- 18 (4) Any payment made to any person pursuant to this section shall operate as a complete discharge of all
19 obligations under the plan with regard to the deceased member and any other persons with rights under the
20 plan.

21 **Sec. 32-41. Claims procedures.**

22 The board shall establish administrative claims procedures to be utilized in processing written requests
23 ("claims"), on matters which affect the substantial rights of any person ("claimant"), including members, retirees,
24 beneficiaries, or any person affected by a decision of the board.

25 **Sec. 32-42. Reports to division of retirement.**

26 Each year and no later than March 15, the board shall file an annual report with the division of retirement
27 containing the documents and information required by F.S. § 185.221.

28 **Sec. 32-43. Roster of members and retirees.**

29 The board shall ensure that records are maintained of all persons receiving a pension under this plan. Such
30 records shall reflect the time when the pension is allowed and when the same shall cease to be paid. Additionally,
31 the board shall ensure that records are maintained of all members in such a manner as to show the name, address,
32 date of employment and date of termination of employment.

33 **Sec. 32-44. Reserved.**

34 **Sec. 32-45. Reserved.**

35 **Sec. 32-46. Board of trustees.**

- 36 (1) The sole and exclusive administration of and responsibility for the proper operation of the plan and for
37 making effective the provisions of this chapter is hereby vested in a board of trustees. The board shall consist

1 of five trustees. Two trustees, unless otherwise prohibited by law, shall be legal residents of the city who
2 shall be appointed by the city council, one of whom shall be the city clerk, or if the city clerk is not a legal
3 resident of the city, a designee who is a legal resident of the city. Two trustees shall be members of the plan,
4 who shall be elected by a majority of the police officers who are members of the plan. The fifth trustee shall
5 be chosen by a majority of the four trustees approved and elected as provided for herein, and such person's
6 name shall be submitted to the city council. Upon receipt of the fifth person's name, the city council shall, as
7 a ministerial duty, appoint such person to the board of trustees as its fifth trustee. The fifth trustee shall have
8 the same rights as each of the other four trustees appointed or elected as herein provided, and shall serve a
9 four-year term unless the trustee sooner vacates the office. Each resident trustee shall serve as trustee for a
10 period of four years, unless the trustee sooner vacates the office or is sooner replaced by the city council at
11 whose pleasure said trustee shall serve. Each member trustee shall serve as trustee for a period of four
12 years, unless the trustee sooner leaves the employment of the city as a police officer or otherwise vacates
13 the office of trustee, whereupon a successor shall be chosen in the same manner as the departing trustee.
14 Each trustee may succeed himself or herself in office. In order to establish staggered terms for the appointed
15 and elected trustees, the term for one elected and one appointed trustee shall be shortened to one year for
16 one term only. All future terms of those and all other trustees shall be four years thereafter, as provided
17 above. The board shall establish and administer the nominating and election procedures for each election.
18 The board shall meet at least quarterly each year. The board shall be a legal entity with, in addition to other
19 powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature,
20 and description.

- 21 (2) The trustees shall, by a majority vote at the first board meeting and annually thereafter, elect a chairman,
22 vice-chairman and a secretary. The secretary of the board shall keep a complete minute book of the actions,
23 proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may
24 receive expenses and per diem as provided by law.
- 25 (3) Each trustee shall be entitled to one vote on the board. Three affirmative votes shall be necessary for any
26 decision by the trustees at any meeting of the board. A trustee shall have the right to abstain from voting as
27 the result of a conflict of interest and shall comply with the provisions of F.S. § 112.3143.
- 28 (4) The board shall engage such actuarial, accounting, legal, and other services as shall be required to transact
29 the business of the plan. The compensation of all persons engaged by the board and all other expenses of
30 the board necessary for the operation of the plan shall be paid from the fund at such rates and in such
31 amounts as the board shall agree. In the event the board chooses to use the city's legal counsel, actuary or
32 other professional, technical or other advisors, it shall do so only under terms and conditions acceptable to
33 the board.
- 34 (5) The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:
- 35 (a) To construe the provisions of the plan and determine all questions arising thereunder.
- 36 (b) To determine all questions relating to eligibility and membership.
- 37 (c) To determine and certify the amount of all retirement allowances or other benefits hereunder.
- 38 (d) To establish uniform rules and procedures to be followed for administrative purposes, benefit
39 applications and all matters required to administer the plan.
- 40 (e) To distribute to members, at regular intervals, information concerning the plan.
- 41 (f) To receive and process all applications for benefits.
- 42 (g) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of
43 approved benefit payments and other expenditures arising through operation of the plan and fund.
- 44 (h) To have performed actuarial studies and valuations, at least as often as required by law, and make
45 recommendations regarding any and all changes in the provisions of the plan.

- 1 (i) To perform such other duties as may be required to administer the plan in accordance with this
2 chapter.
- 3 (6) Notwithstanding any provision herein to the contrary, "legal resident" members appointed by the Marco
4 Island City Council to the Board of Trustees of the City of Marco Island Police Officers' Pension Plan pursuant
5 to paragraph (1) of this section, shall serve in the same capacity as members of the board of trustees of the
6 City of Marco Island Firefighters' Pension Plan as follows. Upon the effective date of this section, the "legal
7 resident" members of the firefighters' pension plan board of trustees shall be appointed as the "legal
8 resident" members of board of trustees of this plan. Said trustees shall serve until the expiration of their
9 terms on the firefighters' pension plan board of trustees. Upon expiration of the members' terms and
10 thereafter, the city council shall appoint or reappoint two legal residents pursuant to paragraph (1) of this
11 section, whose duty it shall be to serve on both the board of trustees of this plan and the board of trustees of
12 the firefighters' pension plan.

13 **Sec. 32-47. Finances and fund management.**

- 14 (a) *Establishment and operation of fund.*
- 15 (1) As part of the plan, there exists the fund, into which shall be deposited all of the contributions and
16 assets whatsoever attributable to the plan.
- 17 (2) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board.
18 Payment of benefits and disbursements from the fund shall be made by the disbursing agent but only
19 upon written authorization from the board.
- 20 (3) All funds of the police officers' pension plan may be deposited by the board with the finance director of
21 the city, acting in a ministerial capacity only, who shall be liable in the same manner and to the same
22 extent as for the safekeeping of funds for the city. However, any funds so deposited with the finance
23 director of the city shall be kept in a separate fund by the finance director or clearly identified as such
24 funds of the police officers' pension plan. In lieu thereof, the board shall deposit the funds of the police
25 officers' pension plan in a qualified public depository as defined in F.S. § 280.02, which depository with
26 regard to such funds shall conform to and be bound by all of the provisions of F.S. ch. 280. In order to
27 fulfill its investment responsibilities as set forth herein, the board may retain the services of a
28 custodian bank, an investment advisor registered under the Investment Advisors Act of 1940 or
29 otherwise exempt from such required registration, an insurance company, or a combination of these,
30 for the purposes of investment decisions and management. Such investment manager shall have
31 discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.
- 32 (4) All funds and securities of the plan may be commingled in the fund, provided that accurate records are
33 maintained at all times reflecting the financial composition of the fund, including accurate current
34 accounts and entries as regards the following:
- 35 a. Current amounts of accumulated contributions of members on both an individual and aggregate
36 account basis;
- 37 b. Receipts and disbursements;
- 38 c. Benefit payments;
- 39 d. Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to
40 contributions and deposits from the city;
- 41 e. All interest, dividends and gains (or losses) whatsoever; and
- 42 f. Such other entries as may be properly required so as to reflect a clear and complete financial
43 report of the fund.
- 44 (5) An audit shall be performed annually by a certified public accountant for the most recent fiscal year of
45 the plan showing a detailed listing of assets and a statement of all income and disbursements during

1 the year. Such income and disbursements must be reconciled with the assets at the beginning and end
2 of the year. Such report shall reflect a complete evaluation of assets on both a cost and market basis,
3 as well as other items normally included in a certified audit.

4 (6) The board shall have the following investment powers and authority:

- 5 a. The board shall be vested with full legal title to said fund, subject, however, and in any event to
6 the authority and power of the Marco Island City Council to amend or terminate this plan,
7 provided that no amendment or fund termination shall ever result in the use of any assets of this
8 fund except for the payment of regular expenses and benefits under this plan, except as
9 otherwise provided herein. All contributions from time to time paid into the fund, and the
10 income thereof, without distinction between principal and income, shall be held and
11 administered by the board or its agent in the fund and the board shall not be required to
12 segregate or invest separately any portion of the fund. The board shall identify and publicly
13 report any direct or indirect holdings it may have in any scrutinized company, as defined in F.S. §
14 215.473, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may
15 have in such company beginning January 1, 2010, and shall thereafter be prohibited from
16 purchasing or holding such securities. The divestiture of any such security must be completed by
17 September 30, 2010. In accordance with Ch. 2009-97, Laws of Florida, no person may bring any
18 civil, criminal, or administrative action against the board or any employee, officer, director, or
19 advisor of such board based upon the divestiture of any security pursuant to this paragraph.
- 20 b. All monies paid into or held in the fund shall be invested and reinvested by the board and the
21 investment of all or any part of such funds shall be limited to:
- 22 1. Annuity and life insurance contracts with life insurance companies in amounts sufficient to
23 provide, in whole or in part, the benefits to which all of the members in the fund shall be
24 entitled under the provisions of this plan and pay the initial and subsequent premium
25 thereon.
 - 26 2. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance
27 Fund or a savings/building and loan association insured by the Savings Association
28 Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a
29 state or federal chartered credit union whose share accounts are insured by the National
30 Credit Union Share Insurance Fund.
 - 31 3. Obligations of the United States or obligations guaranteed as to principal and interest by
32 the government of the United States or by an agency of the government of the United
33 States.
 - 34 4. Bonds issued by the State of Israel.
 - 35 5. Stocks, commingled funds administered by national or state banks, mutual funds and
36 bonds or other evidences of indebtedness, provided that:
 - 37 i. Except as provided in subparagraph ii, all individually-held securities and all
38 securities in a commingled or mutual fund must be issued or guaranteed by a
39 corporation organized under the laws of the United States, any state or
40 organized territory of the United States, or the District of Columbia.
 - 41 ii. Up to 25 percent on a market-value basis of the assets of the fund may be
42 invested in foreign securities.
 - 43 iii. The board shall not invest more than five percent of its assets in the common
44 stock, capital stock, or convertible securities of any one issuing company, nor
45 shall the aggregate investment in any one issuing company exceed five percent
46 of the outstanding capital stock of that company; nor shall the aggregate of its

1 investments in common stock, capital stock and convertible securities at
2 market exceed 65 percent of the assets of the fund.

3 6. Real estate, provided the board shall not invest more than ten percent at cost in real
4 property or real estate, utilizing investment vehicles approved by the board.

- 5 (c) At least once every three years, and more often as determined by the board, the board shall retain a
6 professionally qualified independent consultant, as defined in F.S. § 185.06, to evaluate the
7 performance of all current investment managers and make recommendations regarding the retention
8 of all such investment managers. These recommendations shall be considered by the board at its next
9 regularly scheduled meeting.
- 10 (d) The board may retain in cash and keep unproductive of income such amount of the fund as it may
11 deem advisable, having regard for the cash requirements of the plan.
- 12 (e) Neither the board nor any trustee shall be liable for the making, retention or sale of any investment or
13 reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due
14 to the negligence of the board or trustee, willful misconduct or lack of good faith.
- 15 (f) The board may cause any investment in securities held by it to be registered in or transferred into its
16 name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered
17 and in form permitting transferability, but the books and records shall at all times show that all
18 investments are part of the fund.
- 19 (g) The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any
20 corporation, association, or trust and to give general or specific proxies or powers of attorney with or
21 without power of substitution; to participate in mergers, reorganizations, recapitalizations,
22 consolidations, and similar transactions with respect to such securities; to deposit such stock or other
23 securities in any voting trust or any protective or like committee with the trustees or with depositories
24 designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting
25 from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner
26 with respect to stocks, bonds, or other investments comprising the fund which it may deem to be to
27 the best interest of the fund to exercise.
- 28 (h) The board shall not be required to make any inventory or appraisal or report to any court, nor to
29 secure any order of court for the exercise of any power contained herein.
- 30 (i) Where any action which the board is required to take or any duty or function which it is required to
31 perform either under the terms herein or under the general law applicable to it as trustee under this
32 chapter, can reasonably be taken or performed only after receipt by it from a member, the city, or any
33 other entity, of specific information, certification, direction or instructions, the board shall be free of
34 liability in failing to take such action or perform such duty or function until such information,
35 certification, direction or instruction has been received by it.
- 36 (j) Any overpayments or underpayments from the fund to a member, retiree or beneficiary caused by
37 errors of computation shall be adjusted with interest at a rate per annum approved by the board in
38 such a manner that the actuarial equivalent of the benefit to which the member, retiree or beneficiary
39 was correctly entitled, shall be paid. Overpayments shall be charged against payments next succeeding
40 the correction or collected in another manner if prudent. Underpayments shall be made up from the
41 fund in a prudent manner.
- 42 (k) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments
43 and benefits provided for herein.
- 44 (l) In any application to or proceeding or action in the courts, only the board shall be a necessary party,
45 and no member or other person having an interest in the fund shall be entitled to any notice or service
46 of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.

- 1 (m) Any of the foregoing powers and functions reposed in the board may be performed or carried out by
2 the board through duly authorized agents, provided that the board at all times maintains continuous
3 supervision over the acts of any such agent; provided further, that legal title to said fund shall always
4 remain in the board.

5 **Sec. 32-48. Compliance with the Internal Revenue Code.**

6 It is intended that the plan remain at all times a qualified plan, as that term is defined under the Internal
7 Revenue Code.

8 (1) *Maximum amount of retirement income.*

- 9 a. The limitations of this subsection (1) shall apply in limitation years beginning on or after July 1,
10 2007, except as otherwise provided herein, and are intended to comply with the requirements of
11 the Pension Protection Act of 2006 and shall be construed in accordance with said Act and
12 guidance issued thereunder. The provisions of this subsection (1) shall supersede any provision of
13 the plan to the extent such provision is inconsistent with this subsection.

14 The annual pension as defined in paragraph b. below otherwise payable to a member at any time
15 shall not exceed the dollar limitation for the member multiplied by a fraction whose value cannot
16 exceed one, the numerator of which is the member's number of years (or part thereof, but not
17 less than one year) of service with the city and the denominator of which is ten. For this purpose,
18 no more than one year of service may be credited for any plan year. If the benefit the member
19 would otherwise accrue in a limitation year would produce an annual pension in excess of the
20 dollar limitation, the benefit shall be limited (or the rate of accrual reduced) to a benefit that
21 does not exceed the dollar limitation.

- 22 b. "Annual pension" means the sum of all annual benefits, payable in the form of a straight life
23 annuity. Benefits payable in any other form shall be adjusted to the larger of:

24 1. For limitation years beginning on or after July 1, 2007.

- 25 (i) The straight life annuity (if any) payable to the member under the plan
26 commencing at the same annuity starting date as the member's form of
27 benefit, or
28 (ii) The actuarially equivalent straight life annuity commencing at the same annuity
29 starting date, computed using a 5.00 percent interest rate and the mortality
30 basis prescribed in {Internal Revenue} Code Section 415(b)(2)(E)(v).

31 2. For limitation years beginning before July 1, 2007.

- 32 (i) The actuarially equivalent straight life annuity commencing at the same annuity
33 starting date, computed using the interest rate and mortality basis specified by
34 the board of trustees for determining actuarial equivalence under the plan for
35 the particular form of payment, or
36 (ii) The actuarially equivalent straight life annuity commencing at the same annuity
37 starting date, computed using a 5.00 percent interest rate and the mortality
38 basis prescribed in {Internal Revenue} Code Section 415(b)(2)(E)(v).

39 No actuarial adjustment to the benefit shall be made for benefits that are not directly related to
40 retirement benefits (such as a qualified disability benefit, preretirement incidental death
41 benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an
42 automatic benefit increase feature, provided the form of benefit is not subject to Section
43 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this
44 subsection (1), and the amount payable under the form of benefit in any limitation year shall not
45 exceed the limits of this subsection (1) applicable at the annuity starting date, as increased in

1 subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose, an
2 automatic benefit increase feature is included in a form of benefit if the form of benefit provides
3 for automatic, periodic increases to the benefits paid in that form.

4 c. "Dollar limitation" means, effective for the first limitation year beginning after January 1, 2001,
5 \$160,000.00, automatically adjusted under Internal Revenue Code Section 415(d), effective
6 January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a
7 straight life annuity. The new limitation shall apply to limitation years ending with or within the
8 calendar year of the date of the adjustment, but a member's benefits shall not reflect the
9 adjusted limit prior to January 1 of that calendar year. The dollar limitation shall be further
10 adjusted based on the age of the member when the benefit begins as follows:

11 1. For annuity starting dates in limitation years beginning on or after July 1, 2007.

12 (i) If the annuity starting date for the member's benefit is after age 65.

13 (A) If the plan does not have an immediately commencing straight life
14 annuity payable at both age 65 and the age of benefit commencement.

15 The dollar limitation at the member's annuity starting date is the annual
16 amount of a benefit payable in the form of a straight life annuity commencing
17 at the member's annuity starting date that is the actuarial equivalent of the
18 dollar limitation with actuarial equivalence computed using a 5.00 percent
19 interest rate assumption and the mortality basis prescribed in Internal
20 Revenue Code Section 415(b)(2)(E)(v) for that annuity starting date (and
21 expressing the member's age based on completed calendar months as of the
22 annuity starting date).

23 (B) If the plan does have an immediately commencing straight life annuity
24 payable at both age 65 and the age of benefit commencement.

25 The dollar limitation at the member's annuity starting date is the lesser of (aa)
26 the dollar limitation multiplied by the ratio of the annual amount of the
27 adjusted immediately commencing straight life annuity under the plan at the
28 member's annuity starting date to the annual amount of the adjusted
29 immediately commencing straight life annuity under the plan at age 65, both
30 determined without applying the limitations of this subsection (1), and (bb) the
31 limitation determined under subparagraph c.1.(i)(A) of this subsection (1). For
32 this purpose, the adjusted immediately commencing straight life annuity under
33 the plan at the member's annuity starting date is the annual amount of such
34 annuity payable to the member, computed disregarding the member's accruals
35 after age 65 but including actuarial adjustments even if those actuarial
36 adjustments are used to offset accruals; and the adjusted immediately
37 commencing straight life annuity under the plan at age 65 is the annual amount
38 of such annuity that would be payable under the plan to a hypothetical
39 member who is age 65 and has the same accrued benefit as the member.

40 (ii) Except with respect to a member who is a "Qualified Member" as defined in
41 Section 415(b)(2)(H) of the Internal Revenue Code, for benefits (except
42 survivor and disability benefits as defined in Section 415(b)(2)(I) of the Internal
43 Revenue Code), if the annuity starting date for the member's benefit is before
44 age 62.

45 (A) If the plan does not have an immediately commencing straight life
46 annuity payable at both age 62 and the age of benefit commencement.

47 The dollar limitation at the member's annuity starting date is the annual
48 amount of a benefit payable in the form of a straight life annuity commencing

at the member's annuity starting date that is the actuarial equivalent of the dollar limitation with actuarial equivalence computed using a 5.00 percent interest rate assumption and the mortality basis prescribed in [Internal Revenue] Code Section 415(b)(2)(E)(v) for that annuity starting date (and expressing the member's age based on completed calendar months as of the annuity starting date).

(B) If the plan does have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement.

The dollar limitation at the member's annuity starting date is the lesser of (aa) the dollar limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of this subsection (1), and (bb) the limitation determined under subparagraph c.1.(ii)(A) of this subsection (1).

2. For annuity starting dates in limitation years beginning before July 1, 2007:

| Age as of Annuity Starting Date: | Adjustment of Dollar Limitation: | |
|----------------------------------|--|---|
| Over 65 | The smaller of: | (a) The actuarial equivalent of the limitation for age 65, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan, or |
| | | (b) The actuarial equivalent of the limitation for age 65, computed using a 5.00 percent interest rate and the mortality basis prescribed in [Internal Revenue] Code Section 415(b)(2)(E)(v). |
| | Any increase in the dollar limitation determined in accordance with this paragraph shall not reflect a mortality decrement between age 65 and the age at which benefits commence if benefits are not forfeited upon the death of the member. If any benefits are forfeited upon death, the full mortality decrement is taken into account. | |
| 62 to 65 | No adjustment. | |
| Less than 62 | The smaller of: | (a) The actuarial equivalent of the limitation for age 62, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan, or |
| | | (b) The actuarial equivalent of the limitation for age 62, computed using a 5.00 percent interest rate and the mortality basis prescribed in [Internal Revenue] Code Section 415(b)(2)(E)(v). |
| | This adjustment shall not apply to any "Qualified Member" as defined in Section 415(b)(2)(H), nor to survivor and disability benefits as defined in Section 415(b)(2)(I) of the [Internal Revenue] Code. | |

d. With respect to clause c.1(i)(A), clause c.1(ii)(A) and paragraph c.2 above, no adjustment shall be made to the dollar limitation to reflect the probability of a member's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the member prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's

1 death if the plan does not charge members for providing a qualified preretirement survivor
2 annuity, as defined in {Internal Revenue} Code Section 417(c), upon the member's death.

3 e. The term "limitation year" is the 12-month period which is used for application of the limitations
4 under {Internal Revenue} Code Section 415 and shall be the calendar year.

5 f. The limitations set forth in this subsection (1) shall not apply if the annual pension does not
6 exceed \$10,000.00 provided the member has never participated in a defined contribution plan
7 maintained by the city.

8 g. Cost-of-living adjustments in the dollar limitation for benefits shall be limited to scheduled
9 annual increases determined by the Secretary of the Treasury under Section 415(d) of the
10 {Internal Revenue} Code.

11 h. In the case of a member who has fewer than ten years of participation in the plan, the dollar
12 limitation set forth in paragraph c. of this subsection (1) shall be multiplied by a fraction - (i) the
13 numerator of which is the number of years (or part thereof) of participation in the plan, and (ii)
14 the denominator of which is ten.

15 i. Any portion of a member's benefit that is attributable to mandatory member contributions
16 (unless picked-up by the city) or rollover contributions, shall be taken into account in the manner
17 prescribed in the regulations under Section 415 of the {Internal Revenue} Code.

18 j. Should any member participate in more than one defined benefit plan maintained by the city, in
19 any case in which the member's benefits under all such defined benefit plans (determined as of
20 the same age) would exceed the dollar limitation applicable at that age, the accrual of the
21 member's benefit under this plan shall be reduced so that the member's combined benefits will
22 equal the dollar limitation.

23 k. For a member who has or will have distributions commencing at more than one annuity starting
24 date, the annual benefit shall be determined as of each such annuity starting date (and shall
25 satisfy the limitations of this section as of each such date), actuarially adjusting for past and
26 future distributions of benefits commencing at the other annuity starting dates. For this purpose,
27 the determination of whether a new starting date has occurred shall be made without regard to
28 Section 1.401(a)-20, Q&A 10(d), and with regard to Section 1.415(b)1(b)(1)(iii)(B) and (C) of the
29 Income Tax Regulations.

30 l. The determination of the annual pension under b. of this subsection (1) shall take into account
31 (in the manner prescribed by the regulations under Section 415 of the {Internal Revenue} Code)
32 Social Security supplements described in Section 411(a)(9) of the Internal Revenue Code and
33 benefits transferred from another defined benefit plan, other than transfers of distributable
34 benefits pursuant [to] Section 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.

35 m. The above limitations are intended to comply with the provisions of Section 415 of the {Internal
36 Revenue} Code, as amended, so that the maximum benefits provided by plans of the city shall be
37 exactly equal to the maximum amounts allowed under Section 415 of the {Internal Revenue}
38 Code and regulations thereunder. If there is any discrepancy between the provisions of this
39 subsection (1) and the provisions of Section 415 of the {Internal Revenue} Code and regulations
40 thereunder, such discrepancy shall be resolved in such a way as to give full effect to the
41 provisions of Section 415 of the {Internal Revenue} Code. The value of any benefits forfeited as a
42 result of the application of this subsection (1) shall be used to decrease future employer
43 contributions.

44 n. For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal
45 Revenue Code, compensation shall include any elective deferral (as defined in Code-Section
46 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the
47 employer at the election of the member and which is not includible in the gross income of the
48 member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years

1 beginning on and after January 1, 2001, for the purposes of applying the limitations described in
2 this subsection (1), compensation paid or made available during such limitation years shall
3 include elective amounts that are not includible in the gross income of the member by reason of
4 Section 132(f)(4) of the Internal Revenue Code. For limitation years on or after July 1, 2007,
5 compensation shall include payments that otherwise qualify as compensation and that are made
6 by the later of: (a) two and one-half months after severance from employment with the
7 employer, and (b) the end of the limitation year that includes the date of severance. With respect
8 to plan years beginning on or after December 31, 2008, compensation shall also include
9 differential wage payments within the meaning of Section 3401(h)(2) of the Internal Revenue
10 Code.

11 (2) *Required beginning date.* Notwithstanding any other provision of the plan, payment of a participant's
12 retirement benefits under the plan shall commence not later than the participant's required beginning
13 date, which is defined as the later of:

14 -April 1 of the calendar year that next follows the calendar year in which the participant attains or will
15 attain the age of 70½ years; or

16 -April 1 of the calendar year that next follows the calendar year in which the participant retires.

17 (3) *Required minimum distributions.*

18 a. *Required beginning date.* The participant's entire interest will be distributed, or begin to be
19 distributed, to the participant no later than the participant's required beginning date as defined
20 in subsection (2) of this section 32-48.

21 b. *Death of participant before distributions begin.*

22 1. If the participant dies before distributions begin, the participant's entire interest will be
23 distributed, or begin to be distributed, no later than as follows:

24 (i) If the participant's surviving spouse is the participant's sole designated
25 beneficiary, then distributions to the surviving spouse will begin by December
26 31 of the calendar year immediately following the calendar year in which the
27 participant died, or by December 31 of the calendar year in which the
28 participant would have attained age 70½, if later.

29 (ii) If the participant's surviving spouse is not the participant's sole designated
30 beneficiary, then distributions to the designated beneficiary will begin by
31 December 31 of the calendar year immediately following the calendar year in
32 which the participant died.

33 (iii) If there is no designated beneficiary as of September 30 of the year following
34 the year of the participant's death, the participant's entire interest will be
35 distributed by December 31 of the calendar year containing the fifth
36 anniversary of the participant's death.

37 2. The participant's entire interest shall be distributed as follows:

38 (i) Participant survived by designated beneficiary. If the participant dies before the
39 date distribution of his or her interest begins and there is a designated
40 beneficiary, the participant's entire interest will be distributed, beginning no
41 later than the time described in subparagraph b.1. above, over the life of the
42 designated beneficiary or over a period certain not exceeding:

43 (A) Unless the annuity starting date is before the first distribution calendar
44 year, the life expectancy of the designated beneficiary determined using
45 the beneficiary's age as of the beneficiary's birthday in the calendar year
46 immediately following the calendar year of the participant's death; or

- 1 (B) If the annuity starting date is before the first distribution calendar year,
2 the life expectancy of the designated beneficiary determined using the
3 beneficiary's age as of the beneficiary's birthday in the calendar year that
4 contains the annuity starting date.
- 5 (ii) No designated beneficiary. If the participant dies before the date distributions
6 begin and there is no designated beneficiary as of September 30 of the year
7 following the year of the participant's death, distribution of the participant's
8 entire interest will be completed by December 31 of the calendar year
9 containing the fifth anniversary of the participant's death.
- 10 3. Death of surviving spouse before distributions to surviving spouse begin. In any case in
11 which (i) the participant dies before the date distribution of his or her interest begins, (ii)
12 the participant's surviving spouse is the participant's sole designated beneficiary, and (iii)
13 the surviving spouse dies before distributions to the surviving spouse begin, subparagraphs
14 b.1. and b.2. above shall apply as though the surviving spouse were the participant.
- 15 c. *Requirements for annuity distributions that commence during participant's lifetime.*
- 16 1. *Joint life annuities where the beneficiary is not the participant's spouse.* If the participant's
17 interest is being distributed in the form of a joint and survivor annuity for the joint lives of
18 the participant and a nonspousal beneficiary, annuity payments to be made on or after the
19 participant's required beginning date to the designated beneficiary after the participant's
20 death must not at any time exceed the applicable percentage of the annuity payment for
21 such period that would have been payable to the participant using the table set forth in
22 Q&A-2 of section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution
23 combines a joint and survivor annuity for the joint lives of the participant and a nonspousal
24 beneficiary and a period certain annuity, the requirement in the preceding sentence will
25 apply to annuity payments to be made to the designated beneficiary after the expiration of
26 the period certain.
- 27 2. *Period-certain annuities.* Unless the participant's spouse is the sole designated beneficiary
28 and the form of distribution is a period certain and no life annuity, the period certain for an
29 annuity distribution commencing during the participant's lifetime may not exceed the
30 applicable distribution period for the participant under the uniform lifetime table set forth
31 in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the
32 annuity starting date. If the annuity starting date precedes the year in which the participant
33 reaches age 70, the applicable distribution period for the participant is the distribution
34 period for age 70 under the uniform lifetime table set forth in Section 1.401(a)(9)-9 of the
35 Treasury regulations plus the excess of 70 over the age of the participant as of the
36 participant's birthday in the year that contains the annuity starting date. If the participant's
37 spouse is the participant's sole designated beneficiary and the form of distribution is a
38 period certain and no life annuity, the period certain may not exceed the longer of the
39 participant's applicable distribution period, as determined under this subparagraph c.2., or
40 the joint life and last survivor expectancy of the participant and the participant's spouse as
41 determined under the joint and last survivor table set forth in Section 1.401(a)(9)-9 of the
42 Treasury regulations, using the participant's and spouse's attained ages as of the
43 participant's and spouse's birthdays in the calendar year that contains the annuity starting
44 date.
- 45 d. *Form of distribution.* Unless the participant's interest is distributed in the form of an annuity
46 purchased from an insurance company or in a single sum on or before the required beginning
47 date, as of the first distribution calendar year distributions will be made in accordance with
48 subparagraphs d.1., d.2. and d.3. below. If the participant's interest is distributed in the form of
49 an annuity purchased from an insurance company, distributions thereunder will be made in
50 accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the

1 Treasury regulations. Any part of the participant's interest which is in the form of an individual
2 account described in Section 414(k) of the Internal Revenue Code will be distributed in a
3 manner satisfying the requirements of Section 401(a)(9) of the Internal Revenue Code and the
4 Treasury regulations that apply to individual accounts.

5 1. *General annuity requirements.* If the participant's interest is paid in the form of annuity
6 distributions under the plan, payments under the annuity will satisfy the following
7 requirements:

- 8 (i) The annuity distributions will be paid in periodic payments made at intervals
9 not longer than one year;
- 10 (ii) The distribution period will be over a life (or lives) or over a period certain, not
11 longer than the distribution period described in paragraphs b. or c. above,
12 whichever is applicable, of this subsection (3);
- 13 (iii) Once payments have begun over a period certain, the period certain will not be
14 changed even if the period certain is shorter than the maximum permitted;
- 15 (iv) Payments will either be non-increasing or increase only as follows:
 - 16 (A) By an annual percentage increase that does not exceed the annual
17 percentage increase in a cost-of-living index that is based on prices of all
18 items and issued by the Bureau of Labor Statistics;
 - 19 (B) To the extent of the reduction in the amount of the participant's
20 payments to provide for a survivor benefit upon death, but only if the
21 beneficiary whose life was being used to determine the distribution
22 period dies or is no longer the participant's beneficiary pursuant to a
23 qualified domestic relations order within the meaning of Section 414(p)
24 of the Internal Revenue Code;
 - 25 (C) To provide cash refunds of employee contributions upon the participant's
26 death; or
 - 27 (D) To pay increased benefits that result from a plan amendment.

28 2. *Amount required to be distributed by required beginning date.* The amount that must be
29 distributed on or before the participant's required beginning date (or, if the participant dies
30 before distributions begin, the date distributions are required to begin under subparagraph
31 b.1.(i) or b.1.(ii), whichever is applicable) is the payment that is required for one payment
32 interval. The second payment need not be made until the end of the next payment interval
33 even if that payment interval ends in the next calendar year. Payment intervals are the
34 periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or
35 annually. All of the participant's benefit accruals as of the last day of the first distribution
36 calendar year will be included in the calculation of the amount of the annuity payments for
37 payment intervals ending on or after the participant's required beginning date.

38 3. *Additional accruals after first distribution calendar year.* Any additional benefits accruing to
39 the participant in a calendar year after the first distribution calendar year will be
40 distributed beginning with the first payment interval ending in the calendar year
41 immediately following the calendar year in which such amount accrues.

42 e. For purposes of this subsection (3), distributions are considered to begin on the participant's
43 required beginning date. If annuity payments irrevocably commence to the participant (or to the
44 participant's surviving spouse) before the participant's required beginning date (or, if to the
45 participant's surviving spouse, before the date distributions are required to begin in accordance
46 with subparagraph b.1. above), the date distributions are considered to begin is the date
47 distributions actually commence.

1 f. *Definitions.*

- 2 1. *Designated beneficiary.* The individual who is designated as the beneficiary under the plan
3 and is the designated beneficiary under Section 401(a)(9) of the [Internal Revenue](#) Code
4 and Section 1.401(a)(9)-4 of the Treasury regulations.
- 5 2. *Distribution calendar year.* A calendar year for which a minimum distribution is required.
6 For distributions beginning before the participant's death, the first distribution calendar
7 year is the calendar year immediately preceding the calendar year which contains the
8 participant's required beginning date. For distributions beginning after the participant's
9 death, the first distribution calendar year is the calendar year in which distributions are
10 required to begin pursuant to paragraph b. of this subsection (3).
- 11 3. *Life expectancy.* Life expectancy as computed by use of the single life table in Section
12 1.401(a)(9)-9 of the Treasury regulations.

13 (4) a. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's
14 election under this section, a distributee may elect, at the time and in the manner prescribed by the
15 administrator, to have any portion of an eligible rollover distribution paid directly to an eligible
16 retirement plan specified by the distributee in a direct rollover.

17 b. *Definitions.* The following definitions apply to this section:

- 18 1. *Eligible rollover distribution.* An eligible rollover distribution is any distribution of all or any
19 portion of the balance to the credit of the distributee, except that an eligible rollover
20 distribution does not include:
- 21 (i) Any distribution that is one of a series of substantially equal periodic payments
22 (not less frequently than annually) made for the life (or life expectancy) of the
23 distributee or the joint lives (or joint life expectancies) of the distributee and
24 the distributee's designated beneficiary, or for a specified period of ten years or
25 more;
- 26 (ii) Any distribution to the extent such distribution is required under Section
27 401(a)(9) of the [Internal Revenue](#) Code;
- 28 (iii) The portion of any distribution which is made upon hardship of the member;
29 and
- 30 (iv) The portion of any distribution that is not includible in gross income
31 (determined without regard to the exclusion for net unrealized appreciation
32 with respect to employer securities), provided that a portion of a distribution
33 shall not fail to be an eligible rollover distribution merely because the portion
34 consists of after-tax employee contributions which are not includible in gross
35 income. However, such portion may be transferred only to an individual
36 retirement account or annuity described in Section 408(a) or (b) of the [Internal](#)
37 [Revenue](#) Code, or to a qualified defined contribution plan described in Section
38 401(a) or 403(a) of the [Internal Revenue](#) Code that agrees to separately
39 account for amounts so transferred, including separately accounting for the
40 portion of such distribution which is includible in gross income and the portion
41 of such distribution which is not so includible.

42 c. *Eligible retirement plan.* An eligible retirement plan is an individual retirement account described
43 in Section 408(a) of the [Internal Revenue](#) Code, an individual retirement annuity described in
44 Section 408(b) of the [Internal Revenue](#) Code, an annuity plan described in Section 403(a) of the
45 [Internal Revenue](#) Code, an annuity contract described in Section 403(b) of the [Internal Revenue](#)
46 Code, a qualified trust described in Section 401 (a) of the [Internal Revenue](#) Code, an eligible
47 plan under Section 457(b) of the [Internal Revenue](#) Code which is maintained by a state, political

1 subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state
2 and which agrees to separately account for amounts transferred into such plan from this plan, or,
3 with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of
4 ~~Internal Revenue~~ Code Section 408A(c)(3)) that accepts the distributee's eligible rollover
5 distribution.

6 d. *Distributee.* A distributee includes an employee or former employee. In addition, the employee's
7 or former employee's surviving spouse and the employee's or former employee's spouse or
8 former spouse who is the alternate payee under a qualified domestic relations order, as defined
9 in Section 414(p) of the ~~Internal Revenue~~ Code, are distributees with regard to the interest of
10 the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated
11 beneficiary as defined in Section 401(a)(9)(E) of the ~~Internal Revenue~~ Code who is not the
12 surviving spouse and who elects a direct rollover to an individual retirement account described in
13 Section 408(a) of the ~~Internal Revenue~~ Code or an individual retirement annuity described in
14 Section 408(b) of the ~~Internal Revenue~~ Code shall be considered a distributee.

15 e. *Direct rollover.* A direct rollover is a payment by the plan to the eligible retirement plan specified
16 by the distributee.

17 (5) *[Maximum amount of mandatory distribution.]* Notwithstanding any other provision of this plan, the
18 maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the ~~Internal~~
19 ~~Revenue~~ Code, payable under the plan shall be \$1000.00.

20 (6) *Compensation limitations under 401(a)(17).* In addition to other applicable limitations set forth in the
21 plan, and notwithstanding any other provision of the plan to the contrary, the annual compensation of
22 each participant taken into account under the plan shall not exceed the EGTRRA annual compensation
23 limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is
24 \$200,000.00, as adjusted by the commissioner for increases in the cost of living in accordance with
25 Section 401(a)(17)(B) of the ~~Internal Revenue~~ Code. The cost-of-living adjustment in effect for a
26 calendar year applies to any period, not exceeding 12 months, over which compensation is determined
27 (determination period) beginning in such calendar year. If a determination period consists of fewer
28 than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator
29 of which is the number of months in the determination period, and the denominator of which is 12.

30 Any reference in the plan to the limitation under Section 401(a)(17) of the ~~Internal Revenue~~ Code
31 shall mean the EGTRRA annual compensation limit set forth in this provision.

32 (7) *[Interest of members in plan.]* At no time prior to the satisfaction of all liabilities under the plan with
33 respect to members and their spouses or beneficiaries, shall any part of the corpus or income of the
34 fund be used for or diverted to any purpose other than for their exclusive benefit.

35 (8) *No reduction of accrued benefits.* No amendment or ordinance shall be adopted by the city council
36 which shall have the effect of reducing the then vested accrued benefits of a member or a member's
37 beneficiaries.

38 (9) *Use of forfeitures.* Forfeitures arising from terminations of service of members shall serve only to
39 reduce future city contributions.

40 (10) *Compliance with F.S. ch. 185.* This plan is intended to comply with all applicable provisions of F.S. ch.
41 185.

42 (11) This plan is intended to be a governmental plan within the meaning of Section 414(d) of the ~~Internal~~
43 ~~Revenue~~ Code, and shall be administered at all times in accordance with Section 401(a) of the
44 ~~Internal Revenue~~ Code, as it relates to governmental plans.

1 **Sec. 32-49. Repeal or termination of plan.**

- 2 (1) This article establishing the plan and fund, and subsequent ordinances pertaining to said plan and fund, may
3 be modified, terminated, or amended, in whole or in part; provided that if this or any subsequent ordinance
4 shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits
5 which at the time of any such alteration, amendment, or repeal shall have accrued to the member or
6 beneficiary shall not be affected thereby.
- 7 (2) If this article shall be repealed, or if contributions to the plan are discontinued or if there is a transfer, merger
8 or consolidation of government units, services or functions as provided in F.S. ch. 121, the board shall
9 continue to administer the plan in accordance with the provisions of this article, for the sole benefit of the
10 then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to
11 receive benefits under one of the options provided for in this article who are designated by any of said
12 members. In the event of repeal, discontinuance of contributions, or transfer, merger or consolidation of
13 government units, services or functions, there shall be full vesting (100 percent) of benefits accrued to date
14 of repeal. The board shall determine the date of distribution and the asset value required to fund all
15 nonforfeitable benefits after taking into account the expenses of such distribution. The board shall inform
16 the city, or then current plan sponsor, if additional assets are required, in which event the city, or then
17 current plan sponsor, shall continue to financially support the pension plan until all nonforfeitable benefits
18 have been funded.
- 19 (3) The board of trustees shall determine the method of distribution of the asset value, that is, whether
20 distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the
21 purchase of insured annuities, or otherwise, for each police officer entitled to benefits under the plan as
22 specified in F.S. § 185.37(3).

23 The allocation of the fund provided for in this subsection may, as decided by the board, be carried out
24 through the purchase of insurance company contracts to provide the benefits determined in accordance with this
25 subsection. The fund may be distributed in one sum to the persons entitled to said benefits or the distribution may
26 be carried out in such other equitable manner as the board may direct. The fund may be continued in existence for
27 purposes of subsequent distributions.

- 28 (4) After all the vested and accrued benefits provided hereunder have been paid and after all other liabilities
29 have been satisfied, then and only then shall any remaining funds revert to the general fund of the city.

30 **Sec. 32-50. Exemption from execution, nonassignability.**

31 Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to
32 any person under the provisions of this article and the accumulated contributions and the cash securities in the
33 fund created under this article are hereby exempted from any state, county or municipal tax and shall not be
34 subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable, except
35 the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit
36 those funds necessary to pay for the benefits being received through the city to pay the certified bargaining agent
37 of the city and to make any payments for child support or alimony. The board of trustees may, upon the written
38 request of the retiree of the pension plan, authorize the plan administrator to withhold from the retirement
39 payment those funds that are necessary to pay for premiums for accident, health, and long-term care insurance for
40 the retiree and the retiree's spouse and dependents. The pension plan, and its board of trustees, shall not incur
41 any liability for participation in this permissive program should its actions be taken in good faith.

42 **Sec. 32-51. Pension validity.**

43 The board shall have the power to examine into the facts upon which any pension shall heretofore have
44 been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently
45 or illegally for any reason. The board is empowered to purge the pension rolls or correct the pension amount of

1 any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension
2 under this article if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any
3 person who has heretofore under any prior or existing law been or who shall hereafter under this chapter be
4 erroneously, improperly or illegally classified. Any overpayments or underpayments shall be corrected and paid or
5 repaid in a reasonable manner determined by the board.

6 **Sec. 32-52. Forfeiture of pension.**

7 (1) Any member who is convicted of the following offenses committed prior to retirement, or whose
8 employment is terminated by reason of an admitted commission, aid or abetment of the following specified
9 offenses, shall forfeit all rights and benefits under this plan, except for the return of accumulated
10 contributions as of the date of termination. Specified offenses are as follows:

- 11 (a) The committing, aiding or abetting of an embezzlement of public funds;
- 12 (b) The committing, aiding or abetting of any theft by a public officer or employee from employer;
- 13 (c) Bribery in connection with the employment of a public officer or employee;
- 14 (d) Any felony specified in F.S. ch. 838;
- 15 (e) The committing of an impeachable offense;
- 16 (f) The committing of any felony by a public officer or employee who willfully and with intent to defraud
17 the public or the public agency, for which such officer or employee acts or is employed, of the right to
18 receive the faithful performance of duties as a public officer or employee, realizes or obtains or
19 attempts to obtain a profit, gain, or advantage for himself or herself or for some other person through
20 the use or attempted use of the power, rights, privileges, duties or position of such public office or
21 employment position.

22 (2) Conviction shall be defined as an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or
23 a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on
24 probation; or a conviction by the Senate of an impeachable offense.

25 (3) Court shall be defined as any state or federal court of competent jurisdiction which is exercising its
26 jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to
27 forfeiture, the board shall hold a hearing on which notice shall be given to the member whose benefits are
28 being considered for forfeiture. Said member shall be afforded the right to have an attorney present. No
29 formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present a case
30 against forfeiture.

31 (4) Any member or retiree who has received benefits from the plan in excess of accumulated contributions after
32 such member or retiree's rights were forfeited shall be required to pay back to the fund the amount of the
33 benefits received in excess of accumulated contributions. The board may implement all legal action
34 necessary to recover such funds.

35 **Sec. 32-53. Direct transfers of eligible rollover distributions.**

36 (1) *Rollover distributions.* Notwithstanding any provision of the plan to the contrary that would otherwise limit a
37 distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by
38 the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan
39 specified by the distributee in a direct rollover.

40 (2) *Definitions.*

41 (a) *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of
42 the balance to the credit of the distributee, except that an eligible rollover distribution does not
43 include: any distribution that is one of a series of substantially equal periodic payments (not less

frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income. Any portion of any distribution which would be includible in gross income will be an eligible rollover distribution if the distribution is made to an individual retirement account described in Section 408(a) of the Internal Revenue Code, to an individual retirement annuity described in Section 408(b) or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (b) *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Internal Revenue Code and which agrees to separately account for amounts transferred into such plan from this plan, an annuity contract described in Section 403(b) of the Internal Revenue Code, or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving spouse.
- (c) *Distributee:* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse.
- (d) *Direct rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

Sec. 32-54. Share account.

- (1) In addition to any other benefit provided under this plan, a share account shall be established for the benefit of active members of this plan, as specified in this section. Such share plan shall be an element of this plan and shall exist in conjunction with the defined benefit component that meets minimum benefits and minimum standards under F.S. ch. 185. Each member who is employed by the city during a plan year commencing after the share account is established shall be entitled to participate in the share account in accordance with a formula to be determined through collective bargaining between the city and the fraternal order of police.
- (2) An individual account will be established for each member, and the amount to which each member is entitled shall be credited to such account at the end of each quarter. No credits shall be made to an account after the member has separated from city service as a police officer or otherwise terminated membership in the plan.
- (3) The share account shall be funded entirely and solely by insurance premium tax revenues received in excess of the "frozen amount" as described in section 32-35(2). The share account shall annually be credited with the same rate of investment earnings as the overall rate of return on all plan investments, net of all investment management and administrative expenses. Such account funds shall be commingled with the fund for investment purposes, however, shall be accounted for separately on a bookkeeping basis only.
- (4) Each share account shall be credited or debited with interest on a quarterly basis at the fund's actual net rate of investment return for the preceding quarter. The board of trustees may assess a quarterly fee to each share account to recoup the costs of administering the share plan.
- (5) Each member shall vest in his or her share account upon attaining six or more years of credited service. A member shall be entitled to a distribution from his or her defined contribution account at the same time

1 after separation from service as he or she is entitled to receive retirement benefits under section 32-33.
2 Distributions shall take the form of a lump sum or a direct trustee-to-trustee rollover into another qualified
3 retirement account or plan as permitted by the Internal Revenue Code. The board of trustees may adopt
4 rules and policies for the proper administration of this defined contribution component consistent with this
5 section.

6 Chapter 34 PARKS, ~~AND~~ RECREATION AND PUBLIC FACILITIES

7 ARTICLE I. IN GENERAL

8 Sec. 34-1. Title and purpose.

9 (a) *Short title.* This article shall be known as and may be cited as the "Parks and Recreation Rules and Public
10 Facilities Ordinance.

11 (b) *Purpose and applicability.* This article is enacted under the home rule power of the city for the purpose of
12 providing necessary regulations, conditions and requirements which shall be uniformly applied to the general
13 public's use of city owned parks, traditional public forums and public facilities.

14 Sec. 34-2. Definitions.

15 As used in this article, the following terms shall have the meanings indicated. These definitions are
16 supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of
17 conflict:

18 ~~City. The City of Marco Island.~~

19 ~~City council. The city council for the City of Marco Island.~~

20 ~~City manager. The city manager for the City for Marco Island or designee.~~

21 ~~County. Collier County.~~

22 *Director.* The parks and recreation director for the City of Marco Island. Wherever the term is used, the term,
23 "city manager" may be substituted. ~~or designee.~~

24 *Department.* The City of Marco Island Parks and Recreation Department.

25 *Dog owner.* Dog owner as used in this article shall include the legal owner of the dog or an individual
26 authorized by the legal owner of the dog to have possession and control of the dog.

27 *Dog park.* A designated area within a park or any land or water site, owned, operated or controlled by the
28 city that is used primarily for the enjoyment of the general public for off-leash play and exercise of dogs, in a
29 controlled and regulated environment, under the closely monitored supervision of their owners.

30 *Facility use policy.* Policy adopted by the city council, by resolution, for the reservation and use of city owned
31 parks.

32 *Park.* Any land or water site owned, operated, or controlled by the city that is used by the general public for
33 recreational purposes, including dog parks.

34 *Public facility.* The works, buildings and grounds owned, leased or rented by the City of Marco Island, and
35 shall include any such works, buildings or grounds governed, managed or administered by the City of Marco Island.

36 ~~*Person.* An individual, corporation, governmental agency, business, estate, trust, partnership, firm, joint~~
37 ~~venture, syndicate, fiduciary, society, organization, association, two or more persons having a joint or common~~
38 ~~interest, or any other entity, and its designated agents, successors or assigns.~~

2 **Sec. 34-3. Establishment of rules and regulations.**

3 The following rules and regulations are established for the public's use of parks, other public facilities and
4 where indicated, other traditional public forums:

5 (a) *Preservation of property and natural resources.* It shall be unlawful for any person to:

6 (1) Willfully injure, deface, destroy, disturb, remove or misuse any part of the park or other public facility
7 or any building, sign, equipment, plant, plant material, animals, or other property.

8 (2) Operate any motorized or electrical tools or equipment unless authorized by the director, with the
9 exception of motorized wheelchairs and other motorized equipment used by individuals with physical
10 disabilities as defined by state and federal law.

11 (b) *Disposal of rubbish, garbage, sewage, and noxious materials.* It shall be unlawful for any person to:

12 (1) Leave behind or dump any material of any kind in a park except the refuse generated during use of the
13 park or other public facility, and any such refuse shall be deposited in receptacles provided for such
14 purposes.

15 (2) Place or permit to be placed waste of any kind in any water body river, brook, stream, lake, pond,
16 canal, ditch, or drain.

17 (3) Dispose of household or commercial trash in any park receptacle.

18 (c) *Weapons and explosives.* It shall be unlawful for any person to:

19 (1) Discharge, carry, or possess a firearm, except law enforcement officers during the lawful performance
20 of their duties.

21 (2) Use, carry, or possess any fireworks or other explosive substance, except duly authorized employees or
22 agents of the department.

23 (3) Possess any other dangerous weapons or instruments.

24 (d) *Harassment of others.* It shall be unlawful for any person to:

25 (1) Commit any assault, battery, or engage in fighting.

26 (2) Follow a person ~~about the park~~ with the intent to harass, annoy, or alarm such other person.

27 (3) Engage in a course of conduct or repeatedly commit acts which alarm or annoy another person and
28 which serve no legitimate purpose.

29 (4) Threaten or menace any other person with any instrument or by using any animal to do the same with
30 the intent to harass, annoy, or alarm such other person.

31 (e) *Disorderly conduct.* It shall be unlawful for any person to:

32 (1) With intent, cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof,
33 engage in fighting or in violent, tumultuous, or threatening behavior.

34 (2) With intent, cause public inconvenience, annoyance, or harm, or recklessly creating a risk thereof,
35 make unreasonable noise.

36 (3) With intent, cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, use
37 abusive or obscene language or make obscene gestures ~~in a public place~~.

38 (4) Commit, perform, or engage in any lewd, lascivious, obscene or indecent act or behavior.

39 (f) *Advertising, signs, and commercial enterprises.* It shall be unlawful for any person to:

- 1 (1) Knowingly approach within eight feet of any individual in a park, ~~or~~ other traditional public forum, or
2 other public facility for the purpose of displaying a sign, engaging in an oral protest, educating the
3 public, counseling or distributing leaflets or handbills, unless that individual consents to the approach
4 or it is otherwise authorized by Florida law.
- 5 (2) Attach posters, signs or other objects to the ground or to trees, or other structures ~~located in or upon~~
6 ~~any park or any Public facility~~ unless authorized by city permit or facility use policy.
- 7 (3) Beg, hawk, peddle, or solicit within the park or public facility, unless authorized by city permit or the
8 facility use policy.
- 9 (4) Sell or offer for sale or offer to give any article, thing, privilege, or service unless authorized by city
10 permit or facility use policy. If so authorized, such sale or offer of any article, thing, privilege, or service
11 must be in accordance with all applicable city, county, and state laws, codes, ordinances, rules, or
12 regulations.
- 13 (g) *Compliance with orders of city manager and director; setting of regulations.*
- 14 (1) No person shall fail or refuse to comply with any reasonable order relating to the regulation, direction,
15 or control of traffic or to any other order lawfully given by the city manager and/or director, or to
16 willfully resist, obstruct, or abuse any police officer or other city, county, state, or federal official in the
17 execution of their duties.
- 18 (2) The city manager may set such other regulations from time to time, which will help in promoting the
19 health, safety, and general welfare of persons and the orderly administration of a park pursuant to
20 policies established by the city council.
- 21 (h) *Tents and camping.* No person shall establish or maintain any tent or other temporary lodging or sleeping
22 place within a park, unless authorized through the facility use policy.
- 23 (i) *Fires.* It shall be unlawful for any person to:
- 24 (1) Start a fire ~~in the park~~ except small fires for culinary purposes in permanent park grills located in the
25 places or areas approved by the director. The director may, at ~~his/her~~their discretion, prohibit or
26 permit fires at any location or for any purpose when necessary for the protection of park property or
27 the health, safety, or welfare of the public or through the facility use policy.
- 28 (2) Leave the immediate vicinity of the culinary fires in permanent park grills before they are extinguished.
- 29 (j) *Hunting and fishing.* It shall be unlawful for any person to:
- 30 (1) Hunt, pursue with dogs, trap, or in any way molest any wild bird or animal found within the confines of
31 a park.
- 32 (2) Fish in park waters in violation of the rules and regulations of the city, county, or state.
- 33 (k) *Animals.*
- 34 (1) The city council may, by resolution, establish policies and rules regarding the use of city parks, including
35 dog parks, by persons in the possession of animals.
- 36 (2) Dog owners shall be allowed to walk their dogs on leash in city parks identified by city council by
37 resolution, or in dog parks identified by city council by resolution, where dog owners may walk and
38 play with their dogs off-leash.
- 39 (l) *Swimming.* Swimming and wading is prohibited in all lakes, ponds, streams, and canals.
- 40 (m) *Certain toys prohibited.*
- 41 (1) Motorized models that are fuel or electric powered including: planes, cars, rockets, or boats are not
42 permitted within a park with the following exceptions:
- 43 a. Electric powered, radio-controlled toy vehicles;

- 1 b. Electric powered planes at Winterberry Park except during athletic events;
- 2 c. Electronically controlled, wind powered sail boats at the Mackle Park Lake;
- 3 (2) Motorized scooters, motorized skateboards, and motorized bicycles are not permitted on park roads,
4 walks, trails, or athletic courts.
- 5 (3) Skateboards and rollerblades are not permitted on park athletic courts.
- 6 (n) *Metal detectors.* No person shall use any metal detector within a park.
- 7 (o) *Alcoholic beverages and illegal substances.* It shall be unlawful for any person to:
- 8 (1) Offer for sale any beer, wine, liquor, or other intoxicating beverage, unless authorized through the
9 facility use policy.
- 10 (2) Be under the disturbing influence of any beer, wine, liquor, or other intoxicating beverage or any illegal
11 substance, drug, stimulant, depressant, or hallucinating agent.
- 12 (3) Possess, consume, or use any beer, wine, liquor, or other intoxicating beverage unless authorized
13 through the facility use policy.
- 14 (4) Possess, consume, or use any illegal substance, drug, stimulant, depressant, or hallucinating agent.
- 15 (p) *Hours of closing.*
- 16 (1) Hours of closing are regulated according to the signs posted at the entrances of each park as
17 established by the city ~~manager~~.
- 18 (2) No person shall be permitted to enter, remain, stop, or park within the confines of any park outside the
19 posted hours, except in emergencies or unless permitted ~~by the director~~ through the facility use policy.
20 In case of an emergency or when, in the judgment of the director, the public interest demands it, any
21 portion of the park may be closed to the public or designated persons.
- 22 (q) *Traffic regulations.*
- 23 (1) Motor vehicles.
- 24 a. Only licensed motor vehicles, including automobiles, motorcycles, trail bikes, mini-bikes, motor
25 scooters, or mopeds may be operated and only on those roadways provided for the use of motor
26 vehicles.
- 27 b. Operators of said motor vehicles shall obey all applicable city, county, and state laws, codes,
28 ordinances, rules, or regulations governing the use of such vehicles.
- 29 c. No person shall operate a motor vehicle on walks or paths established as footpaths, exercise
30 trails, nature trails, or bicycle paths, unless permitted by the director through the facility use
31 policy.
- 32 d. All-terrain vehicles (ATV), unlicensed trail bikes, and recreation vehicles shall be prohibited in
33 parks.
- 34 e. No person shall drive upon or along any park road or drive which has been closed and posted
35 with appropriate signs or barricades. The ~~city manager and~~ director shall have authority to order
36 roads or drives closed.
- 37 f. No person shall drive at a speed in excess of that posted for the area as established by the city
38 ~~manager~~.
- 39 g. No person shall operate a vehicle along or over any road or drive within a park in a reckless
40 manner or without due regard for the safety and the rights of pedestrians, drivers, or occupants
41 of another vehicle.
- 42 (2) Parking.

- 1 a. No person shall park any motor vehicle upon any roadway in the park or at any location where
2 posted signs or symbols painted on the pavement prohibit parking.
- 3 b. No person shall park any motor vehicle upon any lawn or grassy area unless specifically
4 authorized by the director through the facility use policy.
- 5 ~~(+)~~ *Facility use policy fee structure.*
- 6 (1) The city council may adopt policies for the private use of park facilities and fees associated with such
7 use by resolution.
- 8 (2) Any person or group wishing to reserve a city park or sponsor or engage in any special activity at a city
9 park, must apply to the department for use of a park prior to use in accordance with the policy adopted
10 by the city council.
- 11 (3) When a refund is requested, the department will strictly follow the policy adopted by the city council.
- 12 (s) *Plants and trees.*
- 13 (1) No person shall cut, break, disturb, or remove any plant or tree from a park.
- 14 (2) No person shall attach a rope, wire, cable, or other material to any plant or tree in a park.
- 15 (3) Memorial plaques may be installed provided permission is granted by the director and the plaque size
16 is consistent with administrative standards.
- 17 (4) Memorial plants or trees shall not be decorated with any ornamentation of any kind unless authorized
18 through the facility use policy for a special event.
- 19 (t) *Tobacco products.* No person shall be permitted to smoke cigarettes, cigars and/or pipes or consume any
20 other tobacco products in city parks except in those locations specifically designated for the above purposes
21 and hereinafter referred to as "smoking areas".
- 22 (1) The city council shall designate specific smoking areas within each park by resolution. At no time shall
23 the following areas be designated as smoking areas:
- 24 a. Children's playgrounds or any area within 50 feet of children's playgrounds;
- 25 b. Entrances to park buildings;
- 26 c. Athletic fields, player benches, dugouts or scorekeeper's booths.
- 27 (2) Signs shall be posted stating that tobacco products are only permitted in designated smoking areas.
- 28 (3) Smoking areas shall be furnished with benches or picnic tables, a trash receptacle and a cigarette
29 disposal receptacle.

30 **Sec. 34-4. Penalties for offenses/enforcement.**

- 31 (a) ~~Violation of this article shall be punishable according to the penalties and procedures in chapter 14 of this~~
32 ~~code. It shall be unlawful for any person to violate or fail to comply with any section of this article. The~~
33 ~~violation or failure to comply with any provision of this Code shall constitute an offense against the city, said~~
34 ~~offense being a misdemeanor of the second degree and punishable in accordance with Florida Statutes. Any~~
35 ~~person who violates any provision of this article may be punished by a fine not exceeding \$500.00 or~~
36 ~~imprisonment not exceeding 60 days, or by both such a fine and imprisonment. Each day any violation of this~~
37 ~~article continues shall constitute a separate offense.~~
- 38 ~~(b) Additionally or alternatively to any other method of enforcement specified here, the city may enforce the~~
39 ~~provisions of this article by the following:~~
- 40 ~~(1) The procedures relating to the code enforcement board of the city;~~

~~(2) The supplemental municipal code or ordinance enforcement procedures permitted by Florida law, including the issuance of citations.~~

(be) Additionally or alternatively to any other method of enforcement specified here, any person violating any provision of this article shall be subject to expulsion from the park or public facility.

~~(d) Nothing in this article shall prevent or restrict the city from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance.~~

~~(e) All remedies and penalties provided for in this article shall be cumulative and independently available to the city. The city is authorized to pursue any and all remedies set forth in this article or as may be permitted under applicable law.~~

Secs. 34-5—34-30. Reserved.

ARTICLE II. COMMUNITY PARK AND RECREATION IMPACT FEE

Sec. 34-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory building or structure means a detached, subordinate structure, the use of which is clearly indicated and related to the use of the principal building or use of the land and which is located on the same lot as the principal building.

Alternative community park impact fee means any alternative fee calculated by the applicant and approved by the city council pursuant to section 34-39.

Alternative parks and recreational impact fee study means a study prepared by the applicant and submitted to the city manager pursuant to section 34-39.

~~*Apartment* means a rental dwelling unit located within the same building as other dwelling units.~~

Applicant means the person who applies for a building permit.

~~*Building* means any structure, either temporary or permanent, built for the support, shelter, or enclosure of persons, chattels, or property of any kind. This term shall include tents, trailers, mobile homes or any vehicles serving in any way the function of a building. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a building permit.~~

~~*Building permit, for the purpose of this article,* means an official document or certificate issued by the authority city having jurisdiction, authorizing the construction that increases the number of dwelling units on a property and or siting of any building. For purposes of this article, the term "building permit" shall also include tiedown permits for those structures or buildings, such as a mobile home, that do not require a building permit in order to be legally sited on a property occupied.~~

~~*City manager* means the chief administrative officer of the city, appointed by the city council, or the designee of such person.~~

Community park means a park and recreational activity designed to serve the needs of the citizens of the city, its visitors, and the various neighborhoods constituting a community, including recreational centers with programs and facilities for all age groups.

~~*Community park impact fee* means the fee imposed by the city pursuant to section 34-36, or, if applicable, the alternative community park impact fee.~~

1 ~~Condominium means a single family or timesharing ownership unit that has at least one other similar unit~~
2 ~~within the same building structure. The term "condominium" includes all fee simple or titled multiunit structures,~~
3 ~~including townhouses and duplexes.~~

4 ~~Dwelling unit shall have the meaning provided in section 30-10 of the land development code.~~ means a
5 ~~building or portion of a building designed for or whose primary purpose is for residential occupancy, and which~~
6 ~~consists of one or more rooms which are arranged, designed or used as living quarters for one or more persons.~~

7 ~~Multiple-family dwelling unit shall have the meaning provided in section 30-10 of the land development~~
8 ~~code.~~

9 ~~Owner means the person holding legal title to the real property upon which parks and recreational facilities~~
10 ~~impact construction is to occur.~~

11 ~~Parks and recreational facilities impact construction means land development construction designed or~~
12 ~~intended to permit more dwelling units than the existing use of land.~~

13 ~~Person means an individual, a corporation, a partnership, an incorporated association, or any other similar~~
14 ~~entity.~~

15 ~~Residential means apartments, condominiums, mobile homes, single family detached houses or assisted~~
16 ~~living facilities, as that term is defined by F.S. § 400.402.~~

17 ~~Single-family detached house dwelling unit shall have the meaning provided in section 30-10 of the land~~
18 ~~development code.~~ means a home on an individual lot.

19 ~~Two-family dwelling unit shall have the meaning provided in section 30-10 of the land development code.~~

20 **Sec. 34-32. Penalties; additional remedies Reserved.**

21 ~~(a) If any person fails or refuses to obey or comply with or violates any of the provisions of this article, such~~
22 ~~person, upon conviction of such offense, shall be guilty of a misdemeanor and shall be punished by a fine not~~
23 ~~to exceed \$500.00 or by imprisonment not to exceed 60 days in the county jail, or both, in the discretion of~~
24 ~~the court. Each violation or noncompliance shall be considered a separate and distinctive offense. Further,~~
25 ~~each day of continued violation or noncompliance shall be considered as a separate offense.~~

26 ~~(b) Nothing contained in this section shall prevent or restrict the city from taking such other lawful action in any~~
27 ~~court of competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance. Such~~
28 ~~other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an~~
29 ~~action at law for damages.~~

30 ~~(c) Further, nothing in this section shall be construed to prohibit the city from prosecuting any violation of this~~
31 ~~article by means of a code enforcement board established pursuant to the authority of F.S. ch. 162 and~~
32 ~~chapter 14, article II.~~

33 ~~(d) All remedies and penalties provided for in this section shall be cumulative and independently available to the~~
34 ~~city, and the city shall be authorized to pursue any and all remedies set forth in this section to the full extent~~
35 ~~allowed by law.~~

36 **Sec. 34-33. Findings; purpose of article.**

37 The city council does hereby find the following facts:

- 38 (1) Construction and future growth that impact park and recreational facilities should contribute their fair
39 share to the cost of improvements and additions to the city park system that are required to
40 accommodate the use of such parks and recreational facilities by such growth.

- (2) Implementation of the impact fee to require construction to contribute its fair share to the cost of improvements and additions to the city park system is an integral and vital element of the regulatory plan of growth management incorporated in the city's master plan.
- (3) The standard of service for the city park system, determined by the county through "Impact Fees for Parks and Recreation Facilities for Collier County, Florida, 1991 Update," prepared by Henderson Young & Co. (March 13, 1991, with revisions: March 22, 1991, and any subsequent updates adopted by December 7, 1998) is hereby accepted, approved, and adopted by the city and found to be in conformity with the city's master plan.
- (4) Capital planning is an evolving process and the standard for service for the city park system constitutes a projection of anticipated need for parks and recreational facilities, based upon present knowledge and judgment. Therefore, in recognition of changing growth patterns and the dynamic nature of population growth, it is the intent of the city council that the standard of service for the city park system and the impact fee imposed be reviewed and adjusted periodically to ensure that parks and recreational facilities impact fees are imposed equitably and lawfully, based upon actual and anticipated growth at the time of their imposition.
- (5) The imposition of a community park impact fee is to provide a source of revenue to fund the construction or improvement of the city park system necessitated by growth as delineated in the capital improvement budget and the city's master plan.
- (6) The city council specifically finds that community parks within the city provide a real and substantial benefit to all residents of the city.
- (7) This section shall not be construed to permit the collection of impact fees in excess of the amount reasonably anticipated to offset the demand on the city park system generated by ~~impact construction of additional dwelling units occurring subsequent to the effective date of the ordinance from which this article is derived.~~
- (8) The revenue derived from the impact fee shall be utilized only for the acquisition of improvements and additions to the city park system which are necessitated by the impact of ~~additional dwelling units~~^{new construction}.

Sec. 34-34. Adoption of impact fee studies; applicability of comprehensive plan.

The city council hereby adopts and incorporates, by reference, the studies entitled "Impact Fees for Parks and Recreational Facilities for Collier County, Florida" and "Impact Fees for Parks and Recreation Facilities for Collier County, Florida, 1991 Update," prepared by Henderson Young & Co. (March 13, 1991, with revisions: March 22, 1991, and any subsequent updates adopted by December 7, 1998), particularly the assumptions, conclusions, and findings in such studies and as to the determination of anticipated costs of additions to the park system required to accommodate growth. The city council further incorporates, by reference, the city's master plan and any amendments thereto as it relates to the improvements and additions to the city park system.

Sec. 34-35. ~~Exemptions~~Applicability.

~~The impact fee established in this article shall apply to any construction that increases the number of dwelling units on a property. The impact fee shall be paid for each additional dwelling unit created. Construction of new dwelling units on property with previously demolished dwelling units shall be credited the impact fee amount that would be required for the demolished units. The following shall be exempted from the impact fees imposed by this article:~~

- ~~(1) Alterations or expansion of an existing dwelling unit where no additional dwelling units are created.~~
- ~~(2) The construction of accessory buildings or structures which will not create additional dwelling units.~~
- ~~(3) The replacement of a dwelling unit where no additional dwelling units are created.~~

1

2 **Sec. 34-36. Payment.**

3 (a) Except as otherwise provided in this article, prior to the issuance of a building permit ~~for a parks and~~
4 ~~recreational facilities impact construction~~, an applicant shall pay the community park impact fee as set forth
5 in section 34-40.

6 (b) The obligation for payment of the community park impact fee shall run with the land.

7 (c) If a building permit ~~issued for a parks and recreational facilities impact construction~~ expires prior to
8 completion of construction for which it was issued, the applicant may, within 90 days of the expiration of the
9 building permit, apply for a refund of the community park impact fee. Failure to timely apply for a refund of
10 the community park impact fee shall waive any right to refund.

11 (1) The application for refund shall be filed with the ~~chief of~~ building ~~official services~~ and shall contain the
12 name and address of the applicant, the location of the property which was the subject of the building
13 permit, the date the community park impact fee was paid, a copy of the receipt of payment for the
14 impact fee, and the date the building permit was issued and the date of expiration.

15 (2) After verifying that the building permit has expired and that the construction has not been completed,
16 the city ~~manager~~ shall refund the community park impact fee paid for such construction.

17 (3) ~~The Any application for new~~ building permit ~~which is subsequently issued~~ on the same property which
18 was the subject of a refund shall require payment of the community park impact fee ~~as required by~~
19 ~~section 34-36.~~

20 **Sec. 34-37. Applicability to changes of size and useReserved.**

21 ~~Impact fees under this article shall be imposed and calculated for the alteration, expansion or replacement of~~
22 ~~a building or dwelling unit or the construction of an accessory building if the alteration, expansion or replacement~~
23 ~~of the building or dwelling unit or the construction of an accessory building results in a land use determined to~~
24 ~~increase the number of dwelling units. The impact fee imposed shall be upon each additional dwelling unit created~~
25 ~~by the alteration, expansion or replacement of the building or dwelling unit or the construction of an accessory~~
26 ~~building.~~

27 **Sec. 34-38. Use of proceeds; refunds.**

28 (a) A separate account for the community park impact fees shall be maintained.

29 (b) The monies deposited in the community park impact fee account shall be used solely for the purpose of
30 providing growth-necessitated capital improvements and additions to the community parks, including but
31 not limited to:

32 (1) Design and construction plan preparation;

33 (2) Permitting and fees;

34 (3) Land and materials acquisition, including any costs of acquisition or condemnation;

35 (4) Construction and design of improvements and additions to community parks;

36 (5) Design and construction of new drainage facilities required by the construction of improvements and
37 additions to community parks;

38 (6) Relocating utilities required by the construction of improvements and additions to community parks;

39 (7) Landscaping;

- 1 (8) Construction management and inspection;
- 2 (9) Surveying, soils and material testing;
- 3 (10) Acquisition of capital equipment for community parks;
- 4 (11) Repayment of monies transferred or borrowed from any budgetary fund of the city subsequent to the
- 5 adoption of the ordinance from which this article is derived, which were used to fund growth-impacted
- 6 improvements or additions as provided in this article;
- 7 (12) Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other
- 8 indebtedness issued by the city to fund growth-impacted improvements and additions to community
- 9 parks subsequent to the adoption of the ordinance from which this article is derived;
- 10 (13) Reimbursement of excess community park impact fees due an applicant pursuant to section 34-36;
- 11 (14) Design and construction of roadway improvements required by community park facilities; and
- 12 (15) To the extent provided by law, payment for the costs incurred in the preparation of any update to the
- 13 impact fee study and any amendments or supplements.
- 14 (c) Funds deposited in the community park impact fee account shall not be used for any expenditure that would
- 15 be classified as maintenance or repair expense.
- 16 (d) Funds on deposit which are not immediately necessary for expenditure shall be invested by the city. All
- 17 income derived from such investments shall be deposited in the community park impact fee account and
- 18 used as provided in this section.
- 19 (e) The community park impact fee collected pursuant to this article shall be returned to the then-current owner
- 20 of the property for which such fee was paid if such fees have not been expended or encumbered prior to the
- 21 end of the fiscal year immediately following the sixth anniversary of the date upon which such fees were
- 22 paid. Refunds shall be made only in accordance with the following procedure:
- 23 (1) The then-current owner must petition the city ~~manager~~ for the refund prior to the end of the fiscal
- 24 year immediately following the sixth anniversary of the date of the payment of the community park
- 25 impact fee.
- 26 (2) The petition for refund shall be submitted to the city ~~manager~~ and shall contain:
- 27 a. A notarized sworn statement that the petitioner is the then-current owner of the property for
- 28 which the impact fee was paid;
- 29 b. A copy of the dated receipt issued for payment of such fee, or such other record as would
- 30 indicate payment of such fee;
- 31 c. A certified copy of the latest recorded deed; and
- 32 d. A copy of the most recent ad valorem tax bill.
- 33 (3) Within three months from the date of receipt of a petition for refund, the city ~~manager~~ will advise the
- 34 petitioner of the status of the impact fee requested for refund, and if such impact fee has not been
- 35 expended or encumbered within its applicable time period, then it shall be returned to the petitioner.
- 36 For the purposes of this section, fees collected shall be deemed to be spent or encumbered on the
- 37 following basis: The first fee in shall be the first fee out.

38 **Sec. 34-39. Alternative fee calculation.**

- 39 (a) If an applicant believes that the impact to community parks resulting from his parks and recreational facilities
- 40 impact construction is less than the fee established in section 34-40, such applicant may, prior to issuance of
- 41 a building permit for such parks and recreational facilities impact construction, submit a calculation of an
- 42 alternative community park impact fee to the office of the city manager pursuant to the provisions of this

1 section. Upon receipt of the alternative community park impact fee, the city manager shall schedule a
 2 hearing before the city council at a regularly scheduled meeting or a special meeting called for the purpose
 3 of reviewing the alternative community park impact fee and shall provide the applicant written notice of the
 4 time and place of the hearing.

- 5 (b) The alternative community park impact fee calculations shall be based on data, information, or assumptions
 6 contained in this article and the impact fee study or an independent source, provided that the independent
 7 source is a local study supported by a database adequate for the conclusions contained in such study
 8 performed pursuant to a generally accepted methodology and based upon generally accepted standard
 9 sources of information relating to facilities planning, cost analysis and demographics.
- 10 (c) If a previously approved parks and recreational facilities impact construction project submitted, during its
 11 approval process, an alternative parks and recreational facilities impact study which complied with the
 12 criteria required by this section, and if such study is determined by the city council to be current, the parks
 13 and recreational impact of such previously approved parks and recreational facilities impact construction
 14 shall be presumed to be as described in the prior study. In such circumstances, an alternative community
 15 park impact fee shall be established reflecting the impact described in the prior study. There shall be a
 16 rebuttable presumption that an alternative parks and recreational facility impact study conducted more than
 17 two years earlier is invalid.
- 18 (d) If the city council determines that the data, information and assumptions utilized by the applicant to
 19 calculate the alternative community park impact fee comply with the requirements of this section and that
 20 the alternative community park impact fee was calculated by the use of a generally accepted methodology,
 21 the alternative community park impact fee shall be paid in lieu of the fee set forth in section 34-40.
- 22 (e) If the city council determines that the data, information and assumptions utilized by the applicant to
 23 calculate the alternative community park impact fee do not comply with the requirements of this section or
 24 that the alternative community park impact fee was not calculated by the use of a generally accepted
 25 methodology, then the city shall provide to the applicant by certified mail, return receipt requested, written
 26 notification of the rejection of the alternative community park impact fee and the reason therefor.
- 27 (f) The decision of the city council shall be in writing.
- 28 (g) Any applicant or owner who submits a proposed alternative community park impact fee pursuant to this
 29 section and desires the immediate issuance of a building permit shall pay, prior to or at the time the request
 30 for hearing is filed, the applicable community park impact fee pursuant to section 34-40. Such payment shall
 31 be deemed paid under protest and shall not be construed as a waiver of any rights of review. Any difference
 32 between the amount paid and the amount due, as determined by the council, shall be refunded to the
 33 applicant or owner.

34 **Sec. 34-40. Amount of fee.**

| Land Use | Community Parks Impact fee per Dwelling Unit |
|--|--|
| Single-family detached | |
| Less than 1,800 square feet | \$598.00 |
| 1,800—3,000 square feet | 777.00 |
| More than 3,000 square feet | 919.00 |
| Two-family and multifamily | |
| Less than 1,000 square feet | 471.00 |
| 1,000—1,700 square feet | 531.00 |
| More than 1,700 square feet | 688.00 |
| Mobile home/RV park (pad) | 650.00 |
| Hotel/motel (room) | 381.00 |

35

1 **Chapter 38 PLANNING**

2 **ARTICLE I. IN GENERAL**

3
4
5 **Note: the stricken language in this chapter show what**
6 **can be eliminated once items are moved to**
7 **administrative application forms and provisions are**
8 **integrated into chapter 30. Many of the revisions shown**
9 **will not be adopted with the rest of the code of**
10 **ordinances update, and will be deferred to coincide**
11 **with the rewrite of Chapter 30.**

12 **Sec. 38-1. Comprehensive plan adopted.**

13 The Marco Island Comprehensive Plan, attached to Ordinance No. [01-022021-13](#), was adopted on [October 4,](#)
14 [2021-January 22, 2001](#). The adopted Marco Island Comprehensive Plan consists of Part I (Goals, Objectives, and
15 Policies) which includes various maps and the future land use map ("FLUM"). Part II (Data and Analysis) was
16 approved as a companion and support document of the city's comprehensive plan, but Part II was not adopted as a
17 part of the comprehensive plan. [Amendments to Part I shall be incorporated and made a part hereof.](#)

18 **Sec. 38-2. Short title.**

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

20 **Sec. 38-3. Definitions.**

21 As used in this part, and unless the context clearly indicates to the contrary, the following terms shall be
22 defined as set forth below. [These definitions are supplemental to the definitions in section 1-2 of this code. The](#)
23 [definitions in this section shall prevail in case of conflict:](#)

24 ~~*Administration commission* means Governor and the Cabinet.~~

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

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

32 ~~*Comprehensive plan* means and refers to the city comprehensive plan designated in section 38-1, Code of~~
33 ~~Ordinances of the city of Marco Island, Florida.~~

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

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

5 ~~Development has the same meaning as in F.S. §§ 163.3164 or 380.04.~~

6 ~~Director is defined as set forth in section 30-10 of the Code of Ordinances.~~

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

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

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

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

20 ~~Land development regulations is defined as set forth in section 30-10 of the Code of Ordinances.~~

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

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

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

30 ~~LDC is defined as set forth in section 30-10 of the Code of Ordinances.~~

31 ~~Local government means Collier County or any municipality.~~

32 ~~Local planning agency (LPA) means and refers to the planning board designated in [section article II of this](#)~~
33 ~~[chapter 38-40\(1\)](#), Code of Ordinances of the city of Marco Island, Florida.~~

34 ~~Newspaper of general circulation is defined as set forth in section 30-10 of the Code of Ordinances.~~

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

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

40 ~~Person is defined as set forth in section 30-10 of the Code of Ordinances.~~

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

42 ~~Public facilities is defined as set forth in section 30-10 of the Code of Ordinances.~~

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

8
9 ~~State land planning agency means and refers to the State of Florida department, division, or bureau~~
10 ~~designated in the act as the state agency that reviews comprehensive plans and amendments thereto.~~

11 **Sec. 38-4. Purpose and intent.**

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

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

- 24 (a) *Generally.* To the extent consistent with the [Community Planning Act act](#), the comprehensive plan shall be
25 interpreted as setting forth general guidelines and principles for the growth and development of the city.
26 Findings, goals, policies, and objectives within the comprehensive plan shall be internally consistent, and any
27 reading of the comprehensive plan shall suggest an internal inconsistency
- 28 (b) *Conflicts with ~~other~~ regulations.* The comprehensive plan is cumulative and supplemental to existing city
29 regulations for the development of land. Where the comprehensive plan conflicts with existing land
30 development regulations, the comprehensive plan shall supersede existing land development regulations to
31 the effect of the conflict until such existing land development regulations are amended to be consistent with
32 the comprehensive plan. The city council shall be the final determiner as to consistency.

33 **Sec. 38-6. Comprehensive plan amendments~~s~~ application.**

- 34 (a) ~~The comprehensive plan amendment process is regulated by F.S. §163.3187 (small-scale amendments) and~~
35 ~~F.S. § 163.3184 (all other amendments). F.S. §163.3177 provides general requirements for plan amendments.~~
36 ~~Further guidance and procedures may be established in the city's administrative code. Application by city. A~~
37 ~~proposal to amend the comprehensive plan may be initiated by the city council, or the city manager, by filing~~
38 ~~a written proposal with the director as set forth herein. The written proposal shall be classified as an~~
39 ~~"application" as that term is used in this chapter. Applications filed pursuant to this subsection (a) shall be~~
40 ~~classified as administrative applications of the city and shall be required to submit an application as set forth~~
41 ~~in subsections (c) and (d), but shall be exempt from the requirements of subsection (d)(15) hereof relating to~~
42 ~~application fees.~~
- 43 ~~(b) Application by a real property owner, or governmental agency. Every applicant, including, but not limited to,~~
44 ~~a fee simple owner of real property of the specific parcel of land directly and specifically affected by the~~

1 proposed application, shall be required to file an application pursuant to the requirements of subsections (c)
2 and (d) hereof. Every application that relates to the land use or specific development of a parcel(s) of land
3 must be submitted and executed by the aforesaid real property owner (or said property owners authorized
4 agent) or by the city.

5 ~~(c) — Application form. A complete written application for an amendment to the comprehensive plan shall be~~
6 ~~submitted to the director. Until all informational items required on the application form are provided, the~~
7 ~~application shall not be considered to be complete for review and consideration. All items required to be~~
8 ~~submitted by this section which are not answered on the application form but which may be appended or~~
9 ~~attached to the application form or which may be on separate sheets of paper shall be deemed to be a part~~
10 ~~of the application form as if specifically included therein. All applicants shall be required to execute the~~
11 ~~petition in the presence of a notary public and by oath or affirmation swear to the truth of the statements in~~
12 ~~the application or that to the best of said applicant's knowledge and belief the statements in the application~~
13 ~~are true and correct as set forth in section 38-13(c) of this Code. Applications submitted by a corporation~~
14 ~~shall be executed by an authorized vice-president or superior corporate officer. Applications submitted by a~~
15 ~~partnership shall be executed by an authorized general partner. Applications submitted by a limited liability~~
16 ~~company shall be executed by an authorized member or manager, and said member or manager may be~~
17 ~~required by the city to execute an affidavit attesting to the legal authority to execute the application.~~
18 ~~Applications submitted by a trust shall be executed by an authorized trustee(s), and said trustee(s) shall be~~
19 ~~required by the city to execute an affidavit attesting to the legal authority of the trustee to execute the~~
20 ~~application. So that members of the council or board members hearing applications submitted by a trust can~~
21 ~~determine whether they have a voting conflict of interest, all trusts shall identify the names and addresses of~~
22 ~~all trustees and trust beneficiaries, as well as their respective percentage interest in the trust. Applications~~
23 ~~submitted by the city shall be executed by the city manager.~~

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

25 ~~(1) — The name, address, e-mail address, and telephone number of the applicant;~~

26 ~~(2) — The name, address, e-mail address, and telephone number of the current property owner, if the application~~
27 ~~relates to a specific parcel of property;~~

28 ~~(3) — The name, address, e-mail address, and telephone number of any agent who will or might represent the~~
29 ~~applicant in any city review proceeding regarding the application;~~

30 ~~(4) — A legal description, boundary survey, Collier County property appraiser's parcel number, and street address if~~
31 ~~available, if the application relates to specific parcel(s) of real property. The boundary survey and legal~~
32 ~~description shall be prepared by a professional land surveyor and mapper who is registered to engage in the~~
33 ~~practice of mapping and land surveying by the State of Florida. The boundary survey and legal description~~
34 ~~shall be prepared in accordance with at least the minimum technical standards for land surveying~~
35 ~~promulgated from time to time by the State of Florida, Board of Professional Land Surveyors and Mappers,~~
36 ~~or its successor. The survey shall be certified to and for reliance by the city, executed by the surveyor and~~
37 ~~mapper and under surveyor's seal;~~

38 ~~(5) — A general description of the proposed amendment to the comprehensive plan, explaining why the~~
39 ~~amendment is necessary or appropriate;~~

40 ~~(6) — An analysis of the fiscal impact of the proposed amendment on the city's finances, if any;~~

41 ~~(7) — An analysis of the impact of the amendment on the environment and natural and historical resources, if any;~~

42 ~~(8) — An analysis of the degree of internal consistency of the proposed amendment with the city's existing~~
43 ~~comprehensive plan with supporting data and analysis;~~

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

46 ~~(10) — An analysis of whether an amendment involving a change to the future land use map is compatible with~~
47 ~~underlying topographic, soil, flooding probability, and existing infrastructure to ensure the development~~

1 envisioned in the proposed change can be accommodated without adverse impacts or severe limitations due
2 to topographic, soil, or infrastructure services. See Future Land Use Element Policy 1.2.1;

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

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

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

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

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

22 **Sec. 38-7. ~~General review regulations~~Criteria for evaluating amendments.**

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

27 (b) ~~In addition to other considerations for amending the comprehensive plan, Pursuant to F.S. §§ 163.3184(52),~~
28 ~~163.3177(2) and 163.3187(4) require that,~~ the internal consistency of the comprehensive plan ~~must~~ be
29 maintained by all proposed comprehensive plan amendments.

30 **Sec. 38-8. ~~Administrative review~~Reserved.**

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

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

- 1 ~~(1) Whether the proposed amendment will have a favorable or unfavorable effect on the city's budget, or~~
2 ~~the economy of the city or the region;~~
- 3 ~~(2) Whether the proposed amendment will diminish the level of service of public facilities;~~
- 4 ~~(3) Whether there will be a favorable or unfavorable impact on the environment or the natural or~~
5 ~~historical resources of the city or the region as a result of the proposed amendment;~~
- 6 ~~(4) Whether the city is able to provide adequate service from public facilities to the affected property, if~~
7 ~~the amendment is granted, and whether the amendment will promote the cost/effective use of or~~
8 ~~unduly burden on public facilities;~~
- 9 ~~(6) Whether the amendment is incompatible with surrounding neighborhoods and land uses and whether~~
10 ~~property rights have a favorable or adverse effect on subject property or neighboring properties;~~
- 11 ~~(7) Whether approval of the amendment will cause the comprehensive plan to be internally inconsistent;~~
- 12 ~~(8) Whether the amendment will have a favorable or adverse effect on the ability of people to find~~
13 ~~adequate housing reasonably accessible to their places of employment;~~
- 14 ~~(9) Whether the proposed amendment will promote or adversely affect the public health, safety, welfare,~~
15 ~~economic order, or aesthetics of the region or the city;~~
- 16 ~~(10) Whether an amendment involving a change to the future land use map is compatible with underlying~~
17 ~~topographic, soil, flooding probability, and existing infrastructure, to ensure the development~~
18 ~~envisioned in the proposed change can be accommodated without adverse impacts or severe~~
19 ~~limitations due to topographic, soil, flooding, or infrastructure services. See Future Land Use Element~~
20 ~~Policy 1.2.1;~~
- 21 ~~(11) Whether a change to the future land use map or the future land use element goals, objectives, or~~
22 ~~policies will result in a net increase in density that does not conform to or could exceed the prescribed~~
23 ~~limitations within the comprehensive plan. See Future Land Use Element Policy 1.2.4;~~
- 24 ~~(12) Whether a change to the future land use map or the future land use element goals, objectives, or~~
25 ~~policies will result in a negative impact upon hurricane evacuation plans, routes, or shelter facilities.~~
26 ~~See Future Land Use Element Policy 1.3.1;~~
- 27 ~~(13) Whether a comprehensive plan amendment which changes the future land use map or the future land~~
28 ~~use element goals, objectives, or policies will ensure that population densities, housing and~~
29 ~~employment patterns, and land uses are consistent with the capabilities and capacities of the~~
30 ~~transportation network. See Transportation Element Objective 1.2;~~
- 31 ~~(14) Whether a future land use map change will affect any plant or wildlife species listed as endangered,~~
32 ~~threatened, or of special concern. See Conservation and Coastal Management Element Policy 1.7.1;~~
33 ~~and~~
- 34 ~~(15) Such other planning and development concerns that the director may identify.~~

35 **Sec. 38-9. ~~Neighborhood information meeting ("NIM")~~Reserved.**

- 36 (a) Upon receipt of an application, if the director or the city manager determines that the application will attract
37 a large amount of public attention or will significantly affect neighborhood(s) within the city, the city
38 manager or the director may direct the applicant to hold a neighborhood information meeting ("NIM").
39 Alternatively, before submitting an application or before the local planning agency/planning board hearing
40 on the application, the applicant may voluntarily hold a neighborhood information meeting. The results of
41 the neighborhood information meeting, questions asked and answered, shall be presented in writing and
42 video recorded, suppling a copy to the director within not more than ten days after the date of the
43 neighborhood information meeting. A neighborhood information meeting is not an official meeting of the

1 city. It is an opportunity for a comprehensive plan amendment applicant and citizens to resolve concerns
2 about a proposed amendment and to dispel rumors and misinformation.

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

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

12 The planning board, sitting as the local planning agency, shall hold at least one advertised public hearing to
13 consider each application for plan amendment, and to make a recommendation to the city council.

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

18 ~~(b) — Notice. For any site-specific comprehensive plan amendments, notice shall be given by a courtesy notice,
19 newspaper advertisement, and posted notice on the property subject to the proposed application, all
20 pursuant to section 30-62(f)(1), (2), and (3) of the LDC for planning board hearings. For any nonsite-specific
21 comprehensive plan amendments, notice shall be given by newspaper advertisement as provided by section
22 30-62(3)a. of the LDC.~~

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

34 **Sec. 38-11. City council review.**

35 ~~(a) — Public hearing. The city council shall hold one or more public hearings to consider each application for plan
36 amendment, as required by-~~

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

42 ~~(2) — Concurrent zoning. The city shall consider, if applicable, simultaneously with the comprehensive plan
43 amendment an application for zoning changes, a conditional use, a variance, and a site development
44 plan or site improvement plan approval, that would be appropriate to properly implement any
45 proposed plan amendment transmitted pursuant to this section. Approval of the aforesaid zoning~~

1 change, conditional use, variance, and site development plan or site improvement plan approvals are
2 all contingent upon the comprehensive plan or plan amendment transmitted becoming effective.

3 ~~(b) — Small scale amendment review.~~

4 ~~(1) — The city council shall review small scale amendments in accordance with F.S. § 163.3187. A publicly
5 noticed public hearing, as described in subsection (b)(3) shall be held at the time of second reading of
6 the ordinance to adopt the plan amendment. It shall be held on a weekday after 5:00 p.m.~~

7 ~~(2) — Notice of city council public hearings.~~

8 a. — Notice of the public hearing shall be placed in a newspaper of general circulation, at least 15 days
9 prior to the date of the city council public hearing regarding an application for a plan
10 amendment. Said notice may be placed in the area of the newspaper of general circulation where
11 legal advertisements appear. If the small scale amendment is initiated by other than the city
12 council, the planning board/local planning agency, or the city manager, the advertisement shall
13 meet the requirements of the section 30-62(f)(3)b.1. of this Code. If the small scale amendment
14 is initiated by the city council, the planning board/local planning agency, or the city manager, the
15 advertisement shall meet the requirements of the section 30-62(f)(3)b.2. of this Code.

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

21 (3) ~~The question at the public hearing shall be whether to approve, deny, or otherwise modify and adopt~~
22 ~~the proposed small scale amendment. **The affirmative vote of not less than four of the members of**~~
23 ~~**the governing body present at the hearing shall be required to adopt a plan amendment.**~~

24 Amendments pertaining to land-use and/or density changes will require five affirmative votes in
25 adoption. The adoption of a comprehensive plan or plan amendment shall be by ordinance. ~~Upon final~~
26 ~~action by the city council, the applicant shall be advised in writing within 30 calendar days of the final~~
27 ~~decision. Any approval of a comprehensive plan amendment shall not become effective until a final~~
28 ~~determination is made by the State of Florida. Upon approval of the proposed small scale amendment,~~
29 ~~said small scale amendment shall be forwarded to the state land planning agency within ten city~~
30 ~~working days.~~

31 ~~(c) — Large scale amendments.~~

32 ~~(1) — The city council shall review large scale amendments in accordance with F.S. § 163.3184. Publicly~~
33 ~~noticed public hearing(s), as described in subsection (c)(2) shall be held to adopt the ordinance and~~
34 ~~plan amendment. It shall be held on a weekday after 5:00 p.m. The process of consideration of the~~
35 ~~comprehensive plan amendment shall be considered to be a legislative function. Enactment of the~~
36 ~~proposed plan amendment shall occur after two public hearings, an initial or transmittal public hearing~~
37 ~~and a second public hearing, known as an adoption public hearing.~~

38 ~~(2) — Notice of city council public hearings.~~

39 a. — ~~Public hearing advertisement.~~ Amendment public hearings shall be advertised and held pursuant
40 to F.S. § 166.041(3)(c)2. The first public hearing shall be held at the initial or transmittal stage. It
41 shall be held on a weekday at least ten days after the day that the first advertisement is
42 published in a newspaper of general circulation. The second public hearing shall be held at the
43 adoption stage. It shall be held on a weekday at least ten days after the day that the second
44 advertisement is published in a newspaper of general circulation. For amendments which change
45 the actual land use designation of permitted, conditional, or prohibited uses for specific parcel(s)
46 of land, the advertisement shall contain a geographic location map which clearly indicates the
47 area covered by the proposed ordinance. The map shall include major street names as a means

1 of identification of the general area. In addition to being published in the newspaper, the map
2 must be part of the online notice required pursuant to F.S. § 50.0211.

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

11 (3) — For amendments subject to this subsection (c), the city council shall hold at least two public hearings in
12 accordance with F.S. § 163.3184. The affirmative vote of not less than four of the members of the
13 governing body present at the hearing shall be required to adopt a plan amendment. Amendments
14 pertaining to land use and/or density changes will require five affirmative votes in adoption.

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

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

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

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

36 c. — *Second public hearing by city council.*

37 1. — The second public hearing on a large-scale amendment(s), shall occur within not more than
38 180 days after the receipt of reviewing agency comments. If the hearing is not held within
39 said time period, the amendment(s) shall be deemed to have been withdrawn.

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

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

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

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

22 (a) ~~Continuance and deferrals.~~

23 (1) ~~The city council, or the local planning agency/planning board, may continue or defer a scheduled public~~
24 ~~hearing to a date and time certain without further notice; provided, that the date and time of the~~
25 ~~continuance or deferral is announced at the originally scheduled hearing; provided, however, that~~
26 ~~notice in compliance with Florida's Government in the Sunshine Law, F.S. § 286.011, must be given~~
27 ~~prior to the continued public hearing date.~~

28 (2) ~~If a quorum physically present at the advertised public hearing location is not obtained at the time of~~
29 ~~the advertised public hearing, the city manager or the director (or said director's designee) may~~
30 ~~publicly announce the continuance of the public hearing without further notice; provided, that the~~
31 ~~location, date and time of the continuance or deferral is announced at the originally scheduled hearing.~~
32 ~~In addition, notice in compliance with Florida's Government in the Sunshine Law, F.S. § 286.011, must~~
33 ~~be given prior to the continued public hearing date.~~

34 (b) ~~Rescheduled meeting dates.~~ Prior to an advertised public hearing, if the city manager, or the director,
35 determines that a quorum physically present at the meeting site will not be obtained, the city manager, the
36 director, or the director's designee, may direct that the meeting be continued until a specific date and time
37 certain. Prior to the continued meeting, notice must be posted in a conspicuous location at the entrance to
38 the meeting room where the meeting was scheduled to take place of the location, date and time to which
39 the meeting was continued, and prior to the meeting, notice must be conspicuously posted on the city's
40 internet web site and on the doorway to the originally planned meeting location. Notice of the rescheduled
41 meeting must also be given in compliance with Florida's Government in the Sunshine Law, F.S. § 286.011,
42 prior to the continued or rescheduled public hearing date.

43 (ae) *Reliance on information presented by applicant.* The city and its departments, boards, and agencies, shall
44 have the right to rely on the accuracy of statements, documents, and all other information presented to
45 them by the applicant, or the applicant's agent or consultants, in review of an application ~~for a plan~~
46 ~~amendment approval issued pursuant to this Code.~~ The applicant shall execute an application form for the
47 comprehensive plan amendment must include the following statement: Under penalties of perjury, I declare
48 that I have read the foregoing application and all attachments thereto, and that the facts stated in it, are true

1 to the best of my knowledge," followed by the signature of the applicant making the declaration. The written
2 declaration shall be in conspicuous, bold type and printed or typed at the end of or immediately below the
3 document being verified and above the signature of the person making the declaration. Also in conspicuous,
4 bold type about the signature line, the applicant shall be advised that "as provided in § 92.525(3), Florida
5 Statutes, a person who knowingly makes a false declaration is guilty of the crime of perjury by false written
6 declaration, a felony of the third degree, punishable as provided in §§ 775.082, 775.083, or 775.084, Florida
7 Statutes."

8 ~~(be)~~ *Documents submitted at any public hearing.* The public is hereby advised that any document, paper, letter,
9 map, book, tape, photograph, film, sound recording, data processing software, or other material, regardless
10 of the physical form, characteristics, or means of transmission, submitted at or before a public hearing as a
11 part of said public hearing or with relation to a comprehensive plan amendment application, is hereby
12 declared to be a public record pursuant to F.S. ch. 119, and is automatically made a part of the record of the
13 public hearing at which it was submitted. The original public record may not be returned to the person
14 submitting the document, and all public hearing participants are hereby so advised.

15 **Secs. 38-13—38-30. Reserved.**

16 **ARTICLE II. PLANNING BOARD**

17 **Sec. 38-31. Established.**

18 The city planning board is hereby established, to serve as an advisory board to the city council, ~~{except in~~
19 ~~those limited areas where final action has been delegated}~~to the city council.

20 **Sec. 38-32. Membership; appointment and qualifications of members.**

- 21 (a) *Qualifications of members.* Members of the planning board shall be permanent residents and qualified
22 electors of the city. Although no specific experience requirements shall be necessary as a prerequisite to
23 appointment, consideration shall be given to applicants who have experience or who have shown interest in
24 the area of planning, zoning and related fields. Further consideration in the appointment of planning board
25 members shall be made so as to provide the planning board with the needed technical, professional,
26 business and/or administrative expertise to accomplish the duties and functions of the planning board as set
27 forth in this article, and as from time to time established by the city council.
- 28 (b) *Number of members; appointment.* The planning board shall be composed of seven members to be
29 appointed by the city council.
- 30 (c) *Number of members; appointment.* The appointment, removal, and terms of members shall be in accordance
31 with chapter 2, article IV of this Code.

32 **Sec. 38-33. Appointment and purpose of nonvoting member(s) to planning board sitting as**
33 **LPA.**

34 Pursuant to F.S. § 163.3174, ~~all the LPA local planning agencies that first review rezoning and comprehensive~~
35 ~~plan amendments in each municipality~~ shall include a representative of the school district as a nonvoting member-

36 ~~(1) Appointment. The District School Board of Collier County shall appoint the nonvoting representative of~~
37 ~~the school district to the planning board.~~

38 ~~(2) Purpose. The nonvoting school district representative shall attend planning board at~~ meetings at during
39 which the planning board LPA considers comprehensive plan amendments and rezonings, that would, if approved,
40 increase residential density on the property that is the subject of the application.

1 **Secs. 38-34—38-37. Reserved.**

2 **Sec. 38-38. Staff.**

3 The city manager ~~or his designee~~ shall ~~provide be the~~ professional staff ~~of to~~ the planning board.

4 **Sec. 38-39. Reserved.**

5 **Sec. 38-40. Powers and duties.**

6 The city planning board shall have the following powers and duties:

- 7 (1) Serve as the local planning agency (LPA) and land development regulation commission [to fulfill their](#)
8 [respective duties underas required by](#) F.S. §§ 163.3174 and 163.3194.
- 9 (2) Prepare or cause to be prepared the [city growth management comprehensive](#) plan or element or
10 portion thereof and submit to the city council an annual report recommending amendments to such
11 plan, element or portion thereof.
- 12 (3) Prepare or cause to be prepared the land development regulations and code to implement the [city](#)
13 [growth management comprehensive](#) plan, and submit to the city council an annual report
14 recommending amendments to the land development code.
- 15 (4) Initiate, hear, consider and make recommendations to the city council on applications for amendment
16 to the text of the [city growth management comprehensive](#) plan and development code.
- 17 (5) Initiate, review, hear and make recommendations to the city council on applications for amendment to
18 the future land use map of the [city growth management comprehensive](#) plan or the official zoning atlas
19 of the land development code.
- 20 (6) Hear, consider, and make recommendations to the city council on applications for conditional use
21 permits.
- 22 (7) Make its special knowledge and expertise available upon reasonable written request to and
23 authorization of the city council to any official, department, board, commission, or agency of the city,
24 other municipalities, the county, or state or federal governments.
- 25 (8) ~~Perform those functions, powers and duties as set forth in the city land development code as may be~~
26 ~~extended, altered, amended, reenacted or recodified in the future by the city council. Review proposed~~
27 ~~street names and make recommendations to the city council pursuant to section 42-2 of this code.~~
- 28 (9) Consider and take final action regarding [insubstantial PUD changes pursuant to section 30-63,](#)
29 [variances from LDC article XIV \(vegetation removal\), site development plans, site development plan](#)
30 [amendments and site improvement plans pursuant to LDC sections 30-674 and 30-675,](#) preliminary
31 subdivision plats [pursuant to LDC section 30-575,](#) and single-family residential boat dock extensions
32 [pursuant to section 54-115 of this code,](#) ~~excluding boat dock extensions for multifamily developments~~
33 ~~and boathouses~~ and other functions and duties as may be assigned in the LDC.

34
35 **Sec. 38-41. Appeal of decisions.**

36 As to any land development petition or application upon which the planning board takes final action, an
37 aggrieved party may appeal such final action to the city council [in accordance with the procedure in section 1-15 of](#)

~~this code. The city council may affirm, affirm with conditions, reverse, or reverse with conditions the action of the planning board. Such appeal shall be filed with the city manager within 30 days of the date of the final action by the planning board and shall be noticed for hearing with the city council, as applicable, in the same manner as the petition was noticed for hearing with the planning board. The cost of the notice shall be borne by the person filing the appeal.~~

Secs. 38-42—38-70. Reserved.

ARTICLE III. DEVELOPMENT AGREEMENTS

Sec. 38-71. Title of article.

This article shall be known and may be cited as the "Marco Island Development Agreement Ordinance."

Sec. 38-72. Definitions.

The definitions set forth in F.S. § 163.3221 are incorporated by reference for purposes of this article as if fully set forth in this article.

~~**Sec. 38-73. Computation of time.**~~

~~If any filing deadline set forth in this article falls on a Saturday, Sunday, or legal holiday, the deadline shall extend until the end of the next day that is not a Saturday, Sunday, or legal holiday.~~

Sec. 38-74. Intent of article.

It is the intent of this article to set forth the procedures and requirements necessary for the city to consider and enter into development agreements.

~~**Sec. 38-75. Applicability of article.**~~

~~This article shall be applicable to and effective within the boundaries of the city.~~

Sec. 38-76. Reserved.

Sec. 38-77. Application.

(a) Applications for development agreements shall be submitted to the city in the form of a letter request. ~~The city may require an applicant to submit such information as the city considers necessary to process the application. Unless otherwise provided as part of the application form, each application shall be accompanied by a city application form, information required on the form, and the form of development agreement proposed by the applicant. The city council shall establish, by resolution, the schedule of fees and charges imposed for filing and processing of each application. The schedule of fees may from time to time be amended by resolution without further amendment to this article.~~

(b) Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant ~~is a person~~ who has legal or equitable interest in the real property ~~within the boundaries of the city which that~~ is the subject of the development agreement may file an application to enter into a development

1 ~~agreement, and submits proof of such qualification to the satisfaction of the city as part of the application~~
2 ~~process. If there is a question as to the sufficiency of the applicant's interest in the subject real property, the~~
3 ~~city may require such information and verification as deemed necessary by the city to establish the~~
4 ~~applicant's interest.~~

5 ~~(c) If the city determines that an application is insufficient, the city shall provide the applicant with a statement~~
6 ~~of any additional information required and the processing of such application shall remain pending until such~~
7 ~~additional information is provided and the application is found sufficient and complete by the city.~~

8 **Sec. 38-78. Contents; implementation.**

9 (a) A development agreement shall, at a minimum, include the following:

10 ~~(1) A legal description of the lands subject to the development agreement and the names of all legal and~~
11 ~~equitable owners.~~

12 ~~(2) The duration of the agreement.~~

13 ~~(3) The development uses permitted on the lands, including population densities and building intensities~~
14 ~~and height.~~

15 (4) The land use designations of the property as set forth in the city's [comprehensive master plan of the](#)
16 [Future Land Use Element of the county's growth management plan.](#)

17 ~~(5) The current zoning of the property and the way in which such zoning has been determined to be~~
18 ~~consistent with the growth management [city's comprehensive plan.](#)~~

19 ~~(6) A description of public facilities that will service the development, including who shall provide such~~
20 ~~facilities.~~

21 ~~(7) The date any new facilities, if needed, will be constructed.~~

22 ~~(8) A schedule, where applicable, to ensure that public facilities are available concurrent with impacts of~~
23 ~~the development.~~

24 ~~(9) A description of any reservations or dedications of land for public purposes.~~

25 ~~(10) A description of all local development permits approved or needed to be approved for the~~
26 ~~development of the land.~~

27 ~~(11) A finding that the development permitted or proposed is consistent with the comprehensive plan and~~
28 ~~land development regulations applicable to the city.~~

29 ~~(12) Such conditions, terms, restrictions, or other requirements determined to be necessary by the city for~~
30 ~~the public health, safety, or welfare of its citizens.~~

31 ~~(13) A statement indicating that the failure of the agreement to address a particular permit, condition,~~
32 ~~term, or restriction shall not relieve the developer of the necessity of complying with the law governing~~
33 ~~such permitting requirement, condition, term, or restriction.~~

34 (14) With respect to any public facilities to be designed and/or constructed by the developer, a statement
35 that the design and construction shall be in compliance with all applicable federal, state, and city
36 standards and requirements in order to ensure the progress, quality and cost effectiveness of
37 construction of the public facilities, to resolve in a timely manner design and construction related
38 problems which may occur, and to protect the safety and welfare of the public. The standards and
39 requirements shall include but not be limited to guarantees of performance and quality and project
40 controls (including scheduling, quality controls, and quality assurance).

41 (b) A development agreement shall be implemented through the adoption of planned unit development (PUD)
42 zoning on the property to which land use intensities and densities are transferred and may provide that the
43 entire development or any phase thereof be commenced or concluded within a specific period of time.

- 1 (c) A development agreement may provide for signage, provision of off-street parking and landscaping for the
2 properties to be in accordance with the agreement.
- 3 (d) With respect to developer commitments that would be eligible for impact fee credits, nothing in this section
4 shall affect the eligibility to qualify for credits under appropriate impact fee ordinances.

5 **Sec. 38-79. Term.**

6 ~~The term of a development agreement shall not exceed 30 years or such time as F.S. §§ 163.3220—163.3243~~
7 ~~may provide. A development agreement may be extended by mutual consent of the city council and the~~
8 ~~developer, subject to the notice and hearing requirements of section 38-80.~~

9 **Sec. 38-80. Notices and hearings.**

- 10 (a) Notice of intent to consider a development agreement shall be provided:
- 11 (1) By the applicant publishing an advertisement approximately seven days before each public hearing on
12 the application in a newspaper of general circulation and readership in the county.
- 13 (2) By the applicant mailing notice by certified mail, return receipt requested, to all owners of property, as
14 reflected on the current year's tax roll, lying within 300 feet in every direction of the subject parcels.
15 Notice shall be mailed at least 15 calendar days prior to the first hearing on the application.
- 16 (b) ~~The form of the notices of intent to consider a development agreement shall specify:~~
- 17 ~~(1) The day, date, time and place of each hearing on the proposed development agreement and the body~~
18 ~~conducting the hearing;~~
- 19 ~~(2) The location of the lands subject to the development agreement;~~
- 20 ~~(3) The development uses proposed on the property, including the proposed population densities and proposed~~
21 ~~building intensities and height; and~~
- 22 ~~(4) Instructions in a form approved by the city for obtaining further information regarding the request, including~~
23 ~~the fact that a copy of the proposed development agreement can be obtained at the city's community~~
24 ~~development department office.~~
- 25 (c) The applicant shall provide proof of notification by submittal to the city of the following:
- 26 (1) An affidavit of publication from the newspaper, which shall be submitted at least three workdays prior
27 to each public hearing; and
- 28 (2) A list of all owners of property lying within 300 feet in every direction of the subject parcel and any
29 additional affected property owners, together with the return receipts for the mailed notice, which
30 shall be submitted to the city at least three workdays prior to the first hearing on the application.
- 31 (d) The city planning advisory board local planning agency shall conduct one hearing and the city council shall
32 conduct one public hearing on each application.
- 33 (e) The public hearings may take place during the regularly scheduled planning advisory board and city council
34 meetings. ~~The day, time, and place of the second public hearing (held by the city council) shall be announced~~
35 ~~at the first public hearing (held by the planning advisory board/local planning agency). At the conclusion of~~
36 ~~the second public hearing, the city council shall approve, approve with modifications, or deny the proposed~~
37 ~~development agreement.~~ Where transfer of density is proposed in connection with a development
38 agreement in accordance with section 38-76, the following factors shall be considered by the planning board
39 and by the city council in determining whether a proposed development agreement for density transfer
40 should be approved:

- 1 (1) Whether the location of the property to which density will be transferred is appropriate based on
2 consideration of the relevant policies of the city's future land use plan and future development plans
3 for the location;
- 4 (2) Whether an increase in residential density at the proposed location is compatible with neighboring
5 uses; and
- 6 (3) The extent to which the increase in residential density will impact public services and provisions for
7 mitigation of identified impacts to public services.

8 **Sec. 38-81. Amendment or cancellation by mutual consent.**

9 ~~A development agreement may be amended or canceled by mutual consent of the parties to the agreement
10 or by their successors in interest. Prior to amending a development agreement, the planning advisory board and
11 the city council shall hold public hearings on the proposed amendment in accordance with the notice and hearing
12 provisions of section 38-80.~~

13 **Sec. 38-82. Recording; effective date of agreement.**

14 ~~Within 14 days after the city enters into a development agreement, the city clerk shall have the agreement
15 recorded in the public records of Collier County. If the agreement is amended, canceled, modified, extended, or
16 revoked, the clerk shall have the amendatory, canceling, modifying, extending or revoking agreement recorded in
17 the public records. Neither the agreement, nor any amendatory, canceling, modifying, extending or revoking
18 agreement shall be effective until recorded in the public records of Collier County.~~

19 **Sec. 38-83. Periodic review of development.**

- 20 (a) ~~The city, through its community development department, shall review the development subject to a
21 development agreement every 12 months, commencing 12 months after the effective date of the
22 agreement.~~
- 23 (b) The city shall begin the review process by giving notice to the developer that the city intends to undertake a
24 periodic review of the development.
- 25 (c) Upon receipt of such notice of review, the developer shall submit to the city a monitoring and compliance
26 report which shall address each and every requirement or commitment of the development agreement,
27 including its status and the degree to which compliance has or has not been reached. In addition to the
28 compliance report by the developer, the city shall make such other review as it deems appropriate or
29 necessary.
- 30 (d) ~~If the city finds and determines that the developer has complied in good faith with the terms and conditions
31 of the agreement during the period under review, the review for that period shall be considered concluded.~~
- 32 (e) If the city makes a preliminary finding that there has been a failure to comply with the terms of the
33 development agreement, the city council shall conduct a public hearing at which the developer shall be given
34 the opportunity to demonstrate good faith compliance with the terms of the agreement. If the city council
35 finds and determines on the basis of substantial competent evidence that the developer has not complied
36 with the terms and conditions of the agreement during the period under review, the city council may modify
37 or revoke the agreement.

38 **Sec. 38-84. Governing laws and policies.**

39 ~~(a) The laws and policies governing the development of the land applicable to the city at the time of the
40 execution of a development agreement shall govern the development of the land for the duration of the
41 development agreement.~~

- 1 ~~(b) The city may apply subsequently adopted laws and policies to a development that is subject to a~~
2 ~~development agreement only if the city council has held a public hearing and determined that:~~
- 3 ~~(1) They are not in conflict with the laws and policies governing the development agreement and do not~~
4 ~~prevent development of the land uses, intensities, or densities in the development agreement;~~
 - 5 ~~(2) They are essential to the public health, safety, or welfare, and expressly state that they shall apply to a~~
6 ~~development that is subject to a development agreement;~~
 - 7 ~~(3) They are specifically anticipated and provided for in the development agreement;~~
 - 8 ~~(4) The city demonstrates that substantial changes have occurred in pertinent conditions existing at the~~
9 ~~time of approval of the development agreement; or~~
 - 10 ~~(5) The development agreement is based on substantially inaccurate information supplied by the~~
11 ~~developer.~~
- 12 ~~(c) This section does not abrogate any rights that may vest pursuant to common law.~~

13 **Sec. 38-85. Enforcement.**

14 ~~Any party, any aggrieved or adversely affected person as defined in F.S. § 163.3215(2), or the state land~~
15 ~~planning agency may file an action for injunctive relief in the circuit court of the county to enforce the terms of a~~
16 ~~development agreement or to challenge compliance of the development agreement with the provisions of F.S. §§~~
17 ~~163.3220—163.3243.~~

18 **Sec. 38-86. Modification or revocation of agreement to comply with subsequently enacted**
19 **state and federal law.**

20 ~~If state or federal laws are enacted after the execution of a development agreement which are applicable to~~
21 ~~and preclude the parties' compliance with the terms of a development agreement, such agreement shall be~~
22 ~~modified or revoked as is necessary to comply with the relevant state or federal laws.~~

23 **Chapter 40 SPECIAL DISTRICTS**

24 **ARTICLE I. IN GENERAL**

25 **Secs. 40-1—40-30. Reserved.**

26 **ARTICLE II. HIDEAWAY BEACH DISTRICT**

27 **Sec. 40-31. Establishment.**

28 The city ~~does~~ hereby establish~~es~~ the Hideaway Beach District, ~~hereinafter~~ (the "district") as a dependent
29 special district within the meaning of F.S. ch. 189, for all purposes consistent with, and as authorized by F.S. ch. 189
30 and all other applicable law.

31 **Sec. 40-32. Establishment of district boundary.**

32 The geographic boundary for the district shall include and incorporate all property described in Exhibit A,
33 attached to Ordinance No. 04-05, all of which is located within the municipal boundaries of the city.

1 **Sec. 40-33. Purpose, powers, functions, duties and authority.**

2 The district shall have all powers as authorized by law, to effectuate its purpose to improve, renourish,
3 preserve, maintain, monitor and provide public access to the beach property located within the boundaries of the
4 district, and such other improvements and appurtenances within the district as may be necessary for the
5 improvement, renourishment, preservation, maintenance, monitoring and providing of access to such beach lands.
6 In addition, as necessary to effectuate its purposes as set forth herein, the district shall have the following powers:

- 7 (1) The right to exercise any and all provision or powers granted to the district by applicable law;
- 8 (2) The full and complete right to contract;
- 9 (3) The authority to prescribe, fix, maintain and regulate fees, charges or rents for the use of any district
10 facilities or services;
- 11 (4) With the prior approval of the city by a resolution of the city council, to borrow money, issue bonds
12 and other types of securities, pledge or otherwise encumber any of the district's property or assets
13 upon terms and conditions to be determined by the district board;
- 14 (5) The right to adopt and enforce reasonable rules and regulations or procedures pertaining to the use,
15 acquisition, maintenance, development, operation or disposal of any of the properties, services,
16 facilities, or projects of the district;
- 17 (6) The right to do, and to perform all such things separately or in conjunction with a county, municipality,
18 other special districts or other political subdivision of the state whether the same is within or without
19 the territorial limits of the district;
- 20 (7) The authority to employ a staff and such other technical assistants and other employees as the district
21 board shall determine to be necessary;
- 22 (8) The right to conduct and pay for studies, plans and designs to effectuate the purpose of the district,
23 which action may include, but is not limited to, work plans for expansion, staffing plans and financing
24 plans;
- 25 (9) The right to enter into interlocal agreements or other contracts with public or private entities, if
26 necessary, for the purpose of accomplishing the purposes of the district;
- 27 (10) The right to enter into contracts with public or private entities for the provision of assistance in
28 planning, financing and constructing any and all facilities and services as determined to be appropriate
29 and desirable by the district board;
- 30 (11) The right to contract for appropriate engineering and financial feasibility studies;
- 31 (12) The right to maintain an office at such place or places within the territorial boundary of the district as
32 the district board may designate;
- 33 (13) The right to employ and compensate such personnel, consultants and technical and professional
34 assistants as the district board shall deem necessary to the exercise of the district powers and to the
35 performance of the duties set forth in this section;
- 36 (14) The right to accept and receive, utilize or expend, in furtherance of its functions, funds, grants and
37 services from the federal government or its agencies, from departments, agencies and
38 instrumentalities of state, municipal, county or other local governments, or from private or civic
39 sources;
- 40 (15) The right to invest in accordance with applicable state law any surplus money, including such money in
41 any sinking fund or other fund established for the purpose of providing for the payment of the principal
42 or interest of any bonded or other indebtedness or for any other purpose;

- 1 (16) The right to levy such tax and special assessments as may be authorized; and to charge, collect, and
2 enforce fees and other user charges;
- 3 (17) The right to hold, control, and acquire by donation or purchase, or dispose of, any easements,
4 dedications, platted reservations, or any reservations for those purposes authorized by this article and
5 to make use of such easements, dedications, or reservations for any of the purposes authorized by this
6 article;
- 7 (18) The right to hold, control and acquire by donation or purchase, or dispose of, any district property for
8 those purposes authorized by this article and to make use of such property for any of the purposes
9 authorized by this article;
- 10 (19) The right to have and exercise such powers as are reasonably implied in or not inconsistent with this
11 article and which the district board determines are necessary and proper to carry out the objectives
12 and purposes of the district.

13 **Sec. 40-34. Governing board.**

- 14 (a) The governing body of the district, which shall be designated as the board (the "district board"), shall be
15 appointed by the City Council of the city ("city council"). The district board shall consist of five district board
16 members (individually, "member"). Each member shall hold office for a term of three years. Members shall
17 be residents or property owners within the district. Members shall serve at the pleasure of the city council.
18 Any vacancy in the district board shall be filled by an appointment made by the city council for the balance of
19 the unexpired term within 60 days of the occurrence of such vacancy. The district board shall exercise the
20 powers granted to the district. No member may serve as a representative on the county coastal advisory
21 committee.
- 22 (1) Commencing with the 2020 appointments, city council shall appoint Members as follows: Two
23 members for an initial two year term and three members for an initial four year term. Upon expiration
24 of the initial 2020 appointments, the members shall serve three year terms.
- 25 (b) A majority of the members of the district board shall constitute a quorum for the purposes of conducting its
26 business and exercising its powers and for all other purposes. Action taken by the district board shall be upon
27 a vote of a majority of the members present unless general law or a rule of the district requires a greater
28 number. The district board shall keep a permanent record book in which shall be recorded minutes of all
29 meetings, resolutions, proceedings, certificates, bonds given by all employees, and any and all corporate
30 acts. The record book shall at reasonable times be opened to inspection in the same manner as state,
31 county, and municipal records pursuant to F.S. ch. 119. The record book shall be kept at the office or other
32 regular place of business maintained by the district board.
- 33 (c) The district board shall elect one supervisor as chairman and one supervisor as vice-chairman. The chairman
34 shall preside at board meetings and execute all contracts and other legal documents on behalf of the district.
35 The chairman shall be elected for the term of one year. If the chairman shall cease to be a supervisor or shall
36 for any reason be unable to serve as chairman, a successor shall be elected by the district board for the
37 unexpired portion of the term. The vice-chairman shall be elected for a term of one year and shall have all of
38 the duties of the chairman in his/her absence. If neither the chairman nor vice chairman is in attendance and
39 willing to chair a meeting at which a quorum is present, the district board may elect a chairman pro-tem for
40 the duration of that meeting.
- 41 (d) All powers, privileges and duties vested in or upon the district shall be exercised and performed by and
42 through the district board; provided, however, the exercise of any and all executive, administrative and
43 ministerial powers may be delegated by the district board to any of its officers, staff, employees, agents or
44 designees, which delegation may be re-delegated or withdrawn by the district board. The district board shall
45 fix and publish the time and place or places at which its regular meetings shall be held, and shall provide for
46 the calling and holding of special meetings at the request of any supervisor upon appropriate notice. The
47 district board shall adopt rules, regulations, resolutions, and orders for conducting its business.

1 (e) Supervisors shall serve without compensation, but shall be reimbursed for per diem and travel in accordance
2 with F.S. § 112.061 or other applicable state law.

3 **Sec. 40-35. Financing.**

4 Subject to the provisions of section 40-33(4), the district, in order to finance the purposes and operations of
5 the district, shall have the power to borrow money and issue bonds, revenue anticipation notes, or certificates
6 payable from and secured by a pledge of funds, revenues, taxes and assessments, warrants, notes, or other
7 evidence of indebtedness; and to cooperate or contract with other persons or entities, including other
8 governmental agencies as necessary, convenient, incidental, or proper in connection with furthering any power,
9 duty, or purpose authorized by applicable law and to take any other action not inconsistent with applicable law.

10 **Sec. 40-36. Consistent with comprehensive plan and district as best alternative.**

11 The creation of the district is consistent with the city's comprehensive plan and all other applicable growth
12 management rules, regulations, ordinances, and law. The district is the most efficient and effective method by
13 which to achieve the purposes set forth above (as opposed to private alternatives such as a homeowner's
14 association, private partnership, neighborhood association, or public alternatives such as MSTU, MSBU, special
15 independent district, etc.).

16 **Sec. 40-37. Applicable financial disclosure, noticing, and reporting requirements.**

17 The district will provide all financial disclosures required by state law relating to dependent special districts,
18 including but not limited to, all financial disclosures relating to bonds, financing, ad valorem taxes, non-ad valorem
19 special assessments, and the like. Any and all meetings of the district board shall be noticed in a newspaper of
20 general circulation for not less than one week prior to the meeting. Any and all notices that are required to be
21 provided to the landowners within the district shall be provided by U.S. Mail delivery or by posting public notice in
22 a designated area within the district, which area shall be specified by the district board. The district will comply
23 with all reporting requirements required by state law relating to dependent special districts.

24 **Sec. 40-38. Budget and approval thereof.**

25 On or before each July 15, the district board shall prepare or have prepared under its direction a proposed
26 budget for the ensuing fiscal year. The proposed budget shall include an estimate of all necessary expenditures of
27 the district for the ensuing fiscal year and an estimate of income to be received by the district for such ensuing
28 fiscal year. The budget shall be balanced; that is the total of the estimated receipts including any balances brought
29 forward shall at least equal the estimated expenditures. No later than each August 1, such proposed budget shall
30 be delivered to the city manager of the city. The budget for the district shall be approved and adopted by the city
31 council of the city no later than the September 30 following delivery of the same to the city manager.

32 **Sec. 40-39. Taxes to be levied.**

33 The beach renourishment and other services in this article shall be provided from taxes levied only within the
34 district. Pursuant to the authority of Section 9(b), Article VII of the Florida Constitution, the city council is
35 authorized to levy ad valorem taxes within the district provided such levy has been approved by majority vote of
36 the qualified electors residing in the district voting in an election called for such purpose. Such taxes shall be levied
37 and collected at the same time and in the same manner as provided by law for municipal ad valorem taxes. The
38 property appraiser and the tax collector or [of] the county are specifically authorized and directed to take all
39 necessary and desirable actions to carry out the purpose of this article.

40
41

1 **Chapter 42 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES**

2 **ARTICLE I. IN GENERAL**

3 **Sec. 42-1. Definitions.**

4 The following words, terms and phrases, when used in articles I and II of this chapter, shall have the
5 meanings ascribed to them in this section, except where the context clearly indicates a different meaning. These
6 definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall
7 prevail in case of conflict:

8 *Applicant* means the owner of record of property, or his authorized agent, making a submission to the city
9 pursuant to article I or II of this chapter.

10 ~~*Bicycle path* means that portion of a street, cross-walkway and the like, paved or otherwise, intended for the~~
11 ~~use of bicycles, and, if properly sized, for pedestrians.~~

12 *Frontage* means the length of the property line of any one premises along a street on which it borders.

13 ~~*Lot, corner* has the meaning ascribed to it in section 30-10 of this code. means a lot located at the intersection~~
14 ~~of two or more streets. A lot abutting a curved street or streets shall be considered a corner lot if straight lines~~
15 ~~drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of~~
16 ~~less than 135 degrees.~~

17 ~~*Lot, interior* means a lot other than a corner lot, with only one frontage on a street.~~

18 ~~*Lot of record* means:~~

19 ~~(1) A lot which is part of a subdivision recorded in the public records of the county; or~~

20 ~~(2) A lot, parcel, or the least fractional unit of land or water under common ownership which has limited~~
21 ~~fixed boundaries, described by meets and bounds or other specific legal description, the description of~~
22 ~~which has been so recorded in the public records of the county, on or before the effective date of the~~
23 ~~ordinance from which this chapter is derived.~~

24 ~~*Person in individual corporation, governmental agency, business, estate, trust, partnership, firm, joint*~~
25 ~~*venture, syndicate, fiduciary, society, organization, or association* means two or more persons having a joint or~~
26 ~~common interest or any other entity, and its designated agents, successors or assigns.~~

27 ~~*Property* means a lot.~~

28 ~~*Right-of-way* means a strip of land, public or private, occupied or intended to be occupied by a street,~~
29 ~~crosswalk, electrical transmission line, or gas pipeline, storm drainageway, water main, or sanitary or storm sewer~~
30 ~~main, or for similar special use.~~

31 ~~*Sidewalk* means that portion of a right-of-way or cross-walkway, paved or otherwise surfaced, intended for~~
32 ~~pedestrian use and also bicycle use, if properly sized.~~

33 ~~*Street, arterial* means a street that provides a high degree of mobility. Arterials connect major developments~~
34 ~~such as business districts, commercial centers, and residential communities. The average daily two-way trip~~
35 ~~generation rate exceeds 4,000 vehicle trips per day. An arterial street is referred to as a minor arterial in the city's~~
36 ~~master plan.~~

37 ~~*Street, local* means a street that provides land access, and can be local residential streets, local downtown~~
38 ~~streets, and local commercial/industrial streets. Locals involve travelling to and from collector facilities. Trip~~
39 ~~lengths are short, volumes are low and speeds are low. The average daily two-way trip generation rate ranges~~
40 ~~from zero to 2,000 vehicle trips per day.~~

1 ~~Street, major collector means a street that provides land access and public or private movement within~~
2 ~~residential, commercial and industrial areas. Major collectors penetrate and may have continuity within residential~~
3 ~~areas. The average daily two-way trip generation rate exceeds 4,000 vehicle trips per day. A major collector street~~
4 ~~is referred to as a collector road in the city's master plan.~~

5 ~~Street, minor collector means a street that provides land access and public or private movement within~~
6 ~~residential, commercial, and industrial areas. Minor collectors penetrate, but should not have continuity through,~~
7 ~~residential areas. Operating speeds and volumes are low. The average daily two-way trip generation rate ranges~~
8 ~~from 2,000 to 4,000 vehicle trips per day. A minor collector street is referred to as a local collector road in the city's~~
9 ~~master plan.~~

10 ~~Street, public means any street designated to serve more than one property owner, which must be dedicated~~
11 ~~to the public and accepted by the city council.~~

12 **Sec. 42-2. Procedure for naming and renaming streets.**

- 13 (a) The city council is authorized to name and rename city streets.
- 14 (b) For new streets, the owner of the property for which a proposed street is to be platted may recommend the
15 name of the street. Following review by the planning board, the city council may accept the name or rename
16 the street.
- 17 (c) The procedure to rename streets shall be as follows:
- 18 (1) Any person desiring to rename a street shall first circulate a petition among the property owners
19 abutting the street to be renamed.
- 20 (2) The petition shall state the proposed name for the street.
- 21 (3) Upon receipt of the signatures of 75 percent of the property owners abutting the street, including their
22 local address, the petition shall be submitted to the city manager.
- 23 (4) Upon verification of the required number of signatures, the city manager shall submit the petition to
24 rename the street to the planning board.
- 25 (5) The planning board shall conduct a public hearing following public notice at least 30 days prior to the
26 public hearing. The planning board shall consider the impact of the name upon the 911 emergency
27 communications system and shall receive input from local law enforcement, emergency medical
28 services, fire departments, and other applicable agencies. The planning board shall receive public
29 comment and shall recommend approval or denial to the city council.
- 30 (6) The city council may accept the petition and rename the street or reject the petition.
- 31 (d) If the city council desires to initiate the renaming of a street, the city council shall direct the planning board
32 to conduct a public hearing on the proposed name of the new street and to provide a recommendation to
33 the city council. The city council may then act to rename the street by a majority vote.

34 **Secs. 42-3—42-30. Reserved.**

35 **ARTICLE II. SIDEWALKS**

36 **Sec. 42-31. Penalties, ~~additional remedies~~Reserved.**

- 37 (a) In addition to the remedies set forth in section 42-39, ~~a violation of this article is punishable according to the~~
38 ~~penalties and procedures set forth in chapter 14 of this code if any person fails or refuses to obey or comply~~
39 ~~with or violates any of the provisions of this article, such person, upon conviction of such offense, shall be~~

1 ~~guilty of a misdemeanor and shall be punished by a fine not to exceed \$500.00 or by imprisonment not to~~
2 ~~exceed 60 days in the county jail, or both, in the discretion of the court. Each violation or noncompliance~~
3 ~~shall be considered a separate and distinctive offense. Further, each day of continued violation or~~
4 ~~noncompliance shall be considered as a separate offense.~~

5 ~~(b) Nothing contained in this section shall prevent or restrict the city from taking such other lawful action in any~~
6 ~~court of competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance. Such~~
7 ~~other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an~~
8 ~~action at law for damages.~~

9 ~~(c) Further, nothing in this section shall be construed to prohibit the city from prosecuting any violation of this~~
10 ~~article by means of a code enforcement board established pursuant to the authority of F.S. ch. 162, and~~
11 ~~chapter 14, article II.~~

12 ~~(d) All remedies and penalties provided for in this section shall be cumulative and independently available to the~~
13 ~~city, and the city shall be authorized to pursue any and all remedies set forth in this section to the full extent~~
14 ~~allowed by law.~~

15 **Sec. 42-32. Purpose and intent of article.**

16 The purpose and intent of this article is to:

- 17 (1) Promote the health, safety and welfare of the residents and visitors of the city by establishing
18 requirements for the installation and maintenance of sidewalks.
- 19 (2) Delineate the responsibility between the city and property owners in connection with the installation
20 and maintenance of sidewalks;
- 21 (3) Improve transportation safety through the construction and maintenance of pedestrian ways.
- 22 (4) Provide physical and psychological benefits to persons desiring to walk within their neighborhoods or
23 to and from commercial areas.

24 **Sec. 42-33. City of Marco Island construction standards handbook adopted.**

25 The Construction Standards Handbook for Work Within the Public Right-of-Way, City of Marco Island, a copy
26 of which is attached to Ord. No. 15-18 , adopted July 20, 2015, as Exhibit "A," is incorporated in this article by
27 reference and is made part of this article ~~until superseded by resolution.~~

28 **Sec. 42-34. Requirements for new construction.**

- 29 (a) *Sidewalk plan required.* Prior to issuance of any preliminary subdivision plat approval, final site development
30 plan approval, or building permit to erect a structure on vacant land, an applicant shall submit a sidewalk
31 plan to the building services division. The sidewalk plan shall be in accordance with the minimum
32 specifications and design requirements adopted by the city. The sidewalk required for single-family dwelling
33 units shall be shown on the building permit plot plan.
- 34 (b) *Plan review.* The sidewalk plan shall be reviewed by the building services division, public works department,
35 or as otherwise designated by the city manager. The plan shall be drawn to a suitable scale and shall
36 delineate the location of the sidewalk within the right-of-way. The sidewalk design shall be compatible with
37 the storm drainage flow from private property or within the public right-of-way.
- 38 (c) *Installation.* Prior to the issuance of any certificate of occupancy for a use required to provide sidewalks in
39 accordance with this section, all required sidewalks shall be installed and in place as indicated by the plans
40 approved by the building services division, inspected and accepted by the city.

1 **Sec. 42-35. Sidewalks at intersections.**

2 Where sidewalks do not exist, property owners of corner lots, prior to the issuance of a certificate of
3 occupancy, shall construct a sidewalk on each property line abutting public rights-of-way. At the intersection, the
4 sidewalk shall extend from the property to the street, where such sections are required to maintain the continuity
5 of the pedestrian way. Sidewalks shall not be constructed in a swale configuration and shall cross over swales with
6 an applicable culvert pipe.

7 **Sec. 42-36. Duty of abutting property owners to construct and maintain sidewalks.**

- 8 (a) *Generally.* Excluding property owners within Hideaway and Key Marco PUD's and Olde Marco (north of the
9 centerline of Old Marco Lane), it shall be the duty of every owner of abutting property to construct or
10 reconstruct, maintain and keep in good condition and repair, sidewalks in front of or abutting upon each
11 parcel of the owner's property.
- 12 (1) *Vacant lots.* Sidewalk construction shall not be required for vacant lots until the lot is developed (or
13 partially developed), unless the city council determines a sidewalk is needed to complete a safe route
14 to school, in which case sidewalk construction shall be required to be properly permitted and
15 completed by the property owner within nine months (or less if so determined by council) from the
16 date of council's determination of need. Where there is no sidewalk abutting several adjacent vacant
17 lots, to complete a safe route to school, the city may design and construct the required sidewalk and
18 assess the abutting properties for the costs in accordance with section 42-39.
- 19 (2) *Improved lots.* Upon issuance of a notice of violation pursuant to chapter 14 of this from the Ccode,
20 enforcement division, the property owner of an improved lot shall be required to properly permit and
21 construct a sidewalk within 12 months (or less if so determined by the city's code enforcement special
22 magistrate) for residential properties and within 18 months (or less if so determined by the city's code
23 specialenforcement magistrate) for commercial properties. Sidewalks must comply with the city's
24 current construction standards at the time of permitting. Where there is no sidewalk abutting several
25 adjacent improved lots, the city may design and construct the required sidewalk and assess the
26 abutting properties for the associated costs in accordance with section 42-39.
- 27 (b) *Maintenance.* It is unlawful for any property owner, ~~occupant or agent of any property~~ to allow a sidewalk in
28 front of or abutting such property to remain in a condition that renders it unsafe, dangerous or detrimental
29 for the purpose for which it is intended.
- 30 (1) If more than 50 percent of the total linear footage of sidewalk needs repair (as determined by the city),
31 the property owner must replace the abutting sidewalk in total to the city's current standards at the
32 time of permitting.
- 33 (2) If 50 percent or less of the abutting sidewalk needs repair (as determined by the city), the damaged
34 sections may be replaced in kind with similar construction and material. Concrete leveling with a
35 flowable material will be permitted as an alternate to replacement. Sidewalk grinding will be
36 considered on a case by case basis. A property owner may use asphalt to repair an existing asphalt
37 sidewalk, but when a new building is built on the abutting lot, the asphalt sidewalk must be replaced
38 with a concrete sidewalk in compliance with the city's current construction standards at the time or
39 permitting.
- 40 (c) *Damage.* Any sidewalk damage during new construction or renovation is presumed to be caused by the
41 owner or the owner's agent undertaking construction or renovation. It shall be the owner's responsibility to
42 promptly repair or replace any sidewalk damaged during construction or renovation at the owner's expense.
- 43 (d) *Duty to inspect.* AThe property owner is responsible for ensuring the, ~~occupant or agent shall~~ inspection of
44 all sidewalks in front of or abutting upon the owner's property for unsafe conditions. Where a sidewalk is in
45 the public right-of-way, and is in an unsafe condition, the property owner, ~~occupant or agent thereof, or~~

1 ~~third party~~ shall immediately notify the city of any unsafe condition by written notice. Upon investigation and
2 determination by the city that the condition was not caused by action of the owner, occupant or agent
3 thereof, or third party, the city will not charge the owner, ~~occupant, agent or third party~~ if the city repairs the
4 condition. If it is determined that the owner, occupant or agent thereof, or third party caused the damage,
5 then the ~~property owner person who caused the damage~~ shall be required to repair or replace the damage in
6 the manner provided in this ~~division article~~ for the construction of new sidewalks at ~~said person's the~~
7 ~~owner's~~ own cost; or pay the city to make such repairs or replacement. If the property owner, ~~occupant or~~
8 ~~agent thereof~~ fails to notify the city of any unsafe condition caused by a third party, the property owner,
9 ~~occupant or agent~~ cannot raise the defense to a claim of liability that the unsafe condition was caused by a
10 third party. If the owner, ~~occupant, agent or third party~~ does not repair or replace the damage or otherwise
11 pay the city, the city shall assess the owner of the property for costs incurred by the city for repairs or
12 replacement. ~~Such assessment, if not paid within 30 days, shall become a lien against the property or as~~
13 ~~provided in this Code or state law.~~

- 14 (e) *Encroachments.* It is the duty of each owner of abutting property to maintain the area encompassing the
15 entire width of the sidewalk and driveway apron by 7.5 in height in such a way that it is free of overgrowth of
16 grass, weeds, sand, debris, and all encroachments including vegetative encroachments. ~~A clearance zone~~
17 ~~encompassing the entire width of the sidewalk by 7½ feet in height shall be maintained. Vegetative~~
18 ~~encroachments are not permitted.~~

19 **Sec. 42-37. Duty of abutting property owners to construct and maintain driveway aprons.**

20 It shall be the duty of each owner of abutting property to construct or reconstruct, maintain, and keep in
21 good repair driveway aprons extending or connecting sidewalk segments. Such driveway aprons shall not be
22 obstructed by vehicles or other objects so as to interfere with pedestrian use.

23 **Sec. 42-38. Authority of city to do work.**

24 Whenever the city manager ~~or his designee shall~~ determines that a property owner has not complied with
25 the requirements of this article, the city manager or his designee shall take action to have the sidewalk or driveway
26 apron constructed, reconstructed, repaired, or cleared of overgrown vegetation, debris, tree limbs, or other
27 obstructions.

28 **Sec. 42-39. Assessments for work done by city.**

- 29 (a) If a sidewalk or driveway apron is constructed, reconstructed, repaired, or cleared of overgrown vegetation,
30 debris, tree limbs, or other obstructions at the expense of the city, the cost of the construction, including all
31 administrative and engineering fees, shall be calculated and assessed to the abutting property owner
32 pursuant to the procedure in chapter 14 of this code. ~~An invoice shall be mailed to the property owner for~~
33 ~~all costs associated with the design and construction of the sidewalk, including an administrative fee of no~~
34 ~~less than \$200.00 per parcel of property.~~

- 35 ~~(b) If the invoice is not paid at the expiration of a 20-day period, the city manager may assess such costs against~~
36 ~~such parcel. The assessment shall describe the land and show the cost of engineering, construction,~~
37 ~~maintenance, and administrative expenses, and shall include an additional administrative expense of~~
38 ~~\$200.00 per parcel. Such assessment shall be a legal, valid, and binding obligation which shall run with the~~
39 ~~property until paid. The assessment shall be due and payable 20 days following the mailing of the notice of~~
40 ~~assessment, after which interest shall accrue at the rate of 12 percent per annum on any unpaid portion~~
41 ~~thereof.~~

- 42 ~~(c) The city manager, or the city manager's designee, shall mail a notice to the owner or owners of record of~~
43 ~~each of said parcels of land described in the assessment, at the last available address for such owner or~~
44 ~~owners that such costs have been assessed against the above property and shall become a lien on the~~
45 ~~property 30 days after such assessment.~~

1 (d) Any owner of a parcel which has been assessed pursuant to this section may request a hearing before the
2 administrative review committee to show cause, if any, why the expenses and charges incurred by the city
3 under this section are excessive or unwarranted or why the expenses should not constitute a lien against the
4 property. The request for a hearing before the administrative review committee shall be made to the city
5 manager within 20 days after receipt of the assessment notice from the city. The decision of the
6 administrative review committee shall be final subject to the right of the owner to appeal the decision of the
7 administrative review committee to the city council. Any such appeal to the city council shall be filed with
8 the city manager within ten days after the hearing of the administrative review committee.

9 (e) The city council hereby creates the administrative review committee for the purposes described in section
10 42-39(d). The following provisions shall apply to the administrative review committee:

11 (1) *Composition.* The committee shall have three members. The members of the committee shall be the
12 then-current finance director, public works director, and purchasing and contracts manager.

13 (2) *Quorum.* Meetings of the committee shall require the presence of all members.

14 (3) *Meetings.* All meetings of the committee shall be public meetings and held at a location within the City
15 of Marco Island.

16 ~~(f) After the expiration of one year from the date of recording of the assessment of lien, as provided herein, a
17 suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted, conducted, and
18 enforced in conformity with the procedures for foreclosure of municipal special liens as set forth in F.S. ch.
19 173, which provisions are hereby incorporated herein in their entirety to the same extent as if such
20 provisions were set forth herein verbatim.~~

21 ~~(g) The liens for delinquent assessments imposed herein shall remain liens, coequal with the lien of all state,
22 county, district and municipal taxes, superior in dignity to all other filed liens and claims, until paid as
23 provided herein.~~

24 **Sec. 42-40. Trespass by city officers or agents while in performance of duty.**

25 Any city employee or person authorized by the city manager shall be immune from prosecution, civil or
26 criminal, for reasonable real faith trespass upon real property while in the discharge of duties imposed by this
27 article.

28 **Sec. 42-41. Authority of city manager to contract for work.**

29 The city manager is authorized to enter into contracts with any person for such period of time, for such
30 consideration and under such conditions as shall be deemed necessary and advisable by the city manager, for the
31 purpose of effectuating and carrying out the provisions of this article.

32 ~~**Sec. 42-42. Private right of action**~~

33 ~~Any person, including the city, that is injured, aggrieved or against whom a civil action for damage, injunction
34 or other relief is brought, to recover for injuries or damages arising out of a violation of chapter 42, article II, or to
35 correct a condition in violation of chapter 42, article II, may bring a civil action in any court of competent
36 jurisdiction against the adjacent or abutting property owner, occupant or agent of such property, or third party,
37 who contributed to the violation of chapter 42, article II, for damages according to the percentage that the
38 property owner, occupant, agent, or third party's violation, negligence or wrongful acts or omissions contributed
39 to any alleged injuries or damages. The city may assert as a defense to any action that a violation of chapter 42,
40 article II caused or allowed to be caused by an adjacent or abutting property owner, occupant or agent of such
41 property, or third party reduces the city's liability in whole or in part by such property owner, occupant or agent of
42 such property, or third party's violation, negligence or wrongful acts or omissions.~~

43 **Secs. 42-423—42-70. Reserved.**

1 **ARTICLE III. PRIVATE CONSTRUCTION ACTIVITIES IN PUBLIC RIGHTS-OF-WAY**

2 **Sec. 42-71. Definitions.**

3 The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them
4 in this section, except where the context clearly indicates a different meaning. These definitions are supplemental
5 to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.:

6
7 City means the City of Marco Island, including the office of the city manager, the public works department, or
8 a designee.

9 Offending material means any object placed, constructed, or grown in any public right-of-way without a
10 county or city permit and that may endanger any person, damage the right-of-way, restrict existing or planned
11 drainage, or impair normal maintenance. Offending material does not include any such object placed, constructed,
12 or grown, which conforms to an approved city right-of-way landscaping design, including a subdivision plan,
13 according to the city approved final construction plans and specifications, or an approved county permit issued
14 prior to October 1, 1998.

15 Responsible person means the individual, person, firm, private or governmental entity, corporation,
16 association, department or authority under whose control, authorization, or direction any offending material has
17 been placed, constructed or grown in any city or county right-of-way. Whenever the true identity of any such
18 responsible person remains unknown, the term "responsible person" shall then include all owners of the fee title
19 to the real property upon or over which the offending material has been placed.

20 **Sec. 42-72. Penalties; additional remedies.**

21 (a) A violation of this article shall be punishable according to the penalties and procedures set forth in chapter
22 14 of this code is a civil violation. If any person, whether public or private, shall fail or refuse to obey or
23 comply with any provision of this article, such person, upon conviction thereof, shall be punished by a fine
24 not to exceed \$500.00 in the discretion of the court. Each day of violation or noncompliance may be
25 considered as a separate and distinct violation. In addition, any person convicted of violating any provision of
26 this article shall pay all costs and expenses involved in the case.

27 ~~(b) Nothing contained in this section shall prevent or restrict the city from taking such other lawful action in any~~
28 ~~court or competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance. Such~~
29 ~~other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief and an~~
30 ~~action at law for damages.~~

31 ~~(c) Nothing in this article shall be construed to prohibit the city from prosecuting any violation of this article by~~
32 ~~means of the code enforcement board of the city.~~

33 ~~(d) All remedies and penalties provided for in this article shall be cumulative and independently available to the~~
34 ~~city, which is authorized to pursue any and all remedies set forth in this article or otherwise lawful.~~

35 **Sec. 42-73. Purpose of article.**

36 The purpose of this article is to protect the public health, safety, and welfare against hazards and
37 inconveniences resulting from private construction in the public rights-of-way and to protect the structural and
38 physical integrity of city-owned or city-controlled public road rights-of-way facilities and materials including but
39 not limited to roads, soils, bridges, and/or drainage facilities.

1 **Sec. 42-74. Provisions supplemental.**

2 This article is cumulative and in addition to any other applicable city ordinance, rule or regulation.

3 **Sec. 42-75. City of Marco Island construction standards handbook adopted.**

4 There is hereby created a Construction Standards Handbook for Work Within the Public Right-of-Way, a copy
5 of which is attached to Ord. No. 15-18 , adopted July 20, 2015, as Exhibit "A" and incorporated herein by reference.

6 **Sec. 42-76. Permit.**

- 7 (a) *Required.* It shall be unlawful for any responsible person to dig, excavate, obstruct, or place any construction
8 or other material, place any object, including landscape material, or perform any other work which disturbs
9 the existing structure and/or compaction of soil in any right-of-way provided for public use in the city,
10 including any public right-of-way maintained by the county within the boundaries of the city, without first
11 obtaining a [city](#) permit for such work ~~from the city manager, public works department, or designee~~ as
12 specified in this article or in the handbook adopted by this article.
- 13 (b) *Application.* Application for each permit shall be made on forms provided by the city. Such application shall
14 include but not necessarily be limited to the following information:
- 15 (1) The precise physical location of the construction.
- 16 (2) The type of facility to be constructed.
- 17 (3) The method of construction to be used.
- 18 (4) The expected time schedule for completion of construction.
- 19 (5) Sketches and drawings in duplicate to completely depict the nature of the proposed construction.
- 20 (6) Any other information required in the handbook adopted by this article.
- 21 (7) Any additional information reasonably required by the city because of unique circumstances of the
22 project.
- 23 (c) *Responsibility for compliance; payment of fee.* The permittee shall be responsible for all conditions of the
24 permit and to pay the applicable permit fee then established by resolution of the city council.
- 25 (d) *Approval or denial.* The city shall either approve the application and issue the permit or notify the applicant
26 of the reason for delay or denial. If a notice of delay is issued, that notice shall state the time period within
27 which the city intends to take further action regarding that application. If no such time period is specified in
28 the notice of delay, the permit shall be deemed to be denied if final action is not taken by the city within 30
29 days after the issuance date of the notice of delay. Expiration of that 30-day period without final action shall
30 constitute a denial of the permit application.
- 31 (e) *Appeals.* If the city denies the issuance of such a permit, the applicant may appeal the denial by filing a
32 written notice of appeal with the construction board of appeals and adjustments, [in accordance with the](#)
33 [procedure in section 1-16 of the code](#) not later than ten working days after the effective date of the notice of
34 denial. ~~The appellant may appear before the board. The decision of the board shall be final.~~
- 35 (f) *Standards for issuance.* No permit shall be issued unless the proposed construction conforms with the then-
36 current edition of the following referenced publications. In the case of conflict or inconsistency, the more
37 restrictive rule shall apply:
- 38 (1) The handbook adopted by this article.

- 1 (2) Construction methods or specifications contained in state department of transportation standard
2 specifications for road and bridge construction, and the state department of transportation road
3 design standards.
- 4 (3) The FDOT Manual of Uniform Minimum Standards for Design, Construction and Maintenance for
5 Streets and Highways.
- 6 (4) The county unified land development code, or the city land development code, whichever is applicable.

7 If standards for the proposed construction are not contained in these references, the city may impose (as
8 reasonable applicable standards) additional conditions and/or stipulations, including standards as to
9 sidewalks/bikeways, traffic control devices, and roadway improvements, as part of the permit for the proposed
10 construction.

- 11 (g) *Payment of costs of work.* All work performed under any city permit shall be at the expense of the permittee
12 and at no expense to the city.
- 13 (h) *Suspension or revocation.* The city may suspend or revoke the permit whenever any stipulation and/or
14 condition of permit is not being fully and promptly complied with, or when deemed necessary by the city to
15 protect the physical safety and welfare of the public.

16 **Sec. 42-77. Removal of offending material.**

17 Offending material is a public nuisance and is subject to removal by the city as follows:

18 ~~(1) Upon becoming aware of the presence of offending material, the city shall attempt to notify any~~
19 ~~responsible person. Notice shall be deemed served by personal service, mail, or posting of a notice of~~
20 ~~violation upon the property adjacent to the right-of-way. The notice shall require removal of the~~
21 ~~offending material not later than seven days after receipt of such notice, unless otherwise directed by~~
22 ~~the city manager or his designee.~~

23 ~~(2) After expiration of the designated grace period, the city may cause any then remaining offending~~
24 ~~material to be removed and be disposed of at the expense of the responsible person.~~

25 ~~(3) If, in the opinion of the city manager or his designee, emergency removal is necessary to protect the~~
26 ~~physical safety of the traveling public and/or to protect public property, or if the offending material is~~
27 ~~an unauthorized sign, the offending material may be removed without any attempt to provide notice~~
28 ~~to any responsible person.~~

29 ~~(4) Upon failure of~~ After the property owner of the abutting property or his agent has refused to abate
30 the activity or condition described in the notice by the specified date, the city may, through its
31 employees, servants, agents, or contractors, enter upon the property and take such steps as are
32 reasonably required to affect the abatement of the nuisance.

33 ~~(5) After the abatement of the nuisance by the city, the cost to the city shall be calculated, and shall~~
34 ~~include an administrative fee of \$100.00 per parcel. An invoice shall be sent to the property owner or~~
35 ~~his agent and shall be paid within 20 days of the mailing of the invoice.~~

36 ~~(6) If the invoice is not paid in full, a certified letter, return receipt requested, shall be mailed to the~~
37 ~~property owner or agent advising that a notice of assessment of lien shall be recorded in the official~~
38 ~~records of the county and thereafter shall constitute a lien against the land on which the violation~~
39 ~~occurred or exists and upon any other real or personal property owned by the violator. The notice of~~
40 ~~assessment of lien shall include the lien number, the date, a legal description of the property, the name~~
41 ~~of the recorded owners, and an explanation of the cause of the lien. The owner or agent shall be~~
42 ~~afforded the opportunity to pay all assessments due, plus a late fee of \$25.00, within 14 days from the~~
43 ~~date of mailing. If full payment is not received within the 14-day period, the city manager or his~~
44 ~~designee shall record the notice of assessment of lien in the official records of the county. Such~~
45 ~~assessment shall be a legal, valid, and binding obligation which shall run with the property until paid.~~

1 ~~(7) After the expiration of one year from the date of recording of the notice of assessment of lien, as~~
2 ~~provided in this section, a suit may be filed to foreclose the lien. Such foreclosure proceedings shall be~~
3 ~~instituted, conducted, and enforced in conformity with the procedures for the foreclosure of municipal~~
4 ~~special assessment liens, as set forth in F.S. ch. 173, which provisions are incorporated in this section in~~
5 ~~their entirety to the same extent as if such provisions were set forth in this section verbatim.~~

6 ~~(8) The liens for delinquent assessments imposed under this section shall remain liens coequal with the~~
7 ~~lien of all state, county, district, and municipal taxes, superior in dignity to all other filed liens and~~
8 ~~claims, until paid as provided in this section.~~

9 10 11 12 13 14 15 16 17 **Chapter 46 TELECOMMUNICATIONS**

18 **ARTICLE I. IN GENERAL**

19 **Secs. 46-1—46-30. Reserved.**

20 **ARTICLE II. CABLE TELECOMMUNICATIONS SERVICES**

21 **Sec. 46-31. Title of article.**

22 This article shall be known and may be cited as the "Cable Television Standards Ordinance."

23 **Sec. 46-32. Definitions.**

24 The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them
25 in this section, except where the context clearly indicates a different meaning. These definitions are supplemental
26 to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict:

27 *Access* means any programming or channel designated for use by any person other than the company.

28 *Access facilities* means any channel capacity, facilities, or equipment designated for public, educational, or
29 governmental use, and facilities and equipment for the use of such channel capacity.

30 *Basic service* means any service tier which includes the retransmission of local television broadcast signals
31 and any public, educational and governmental programs required to be carried on the basic tier.

32 *Cable operator* means any person who:

33 (1) Provides cable service over a cable system and directly or through one or more affiliates owns a
34 significant interest in such cable system; or

35 (2) Otherwise controls or is responsible for, through any arrangement, the management and operation of
36 such a cable system under a franchise with the city.

37 *Cable service* means:

- 1 (1) The one-way transmission to subscribers of:
2 a. Video programming; or
3 b. Other programming services; and
4 (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or
5 other programming services.

6 *Cable system* means a facility consisting of a set of closed transmission paths and associated signal
7 generation, reception, and control equipment that is designed to provide cable service and which includes video
8 programming and other lawful communications services and which is provided to multiple subscribers within a
9 community, but this term does not include:

- 10 (1) A facility that serves only to retransmit the television signals of one or more television broadcast
11 stations;
12 (2) A facility that serves subscribers without using any public right-of-way;
13 (3) A common carrier facility which is subject, in whole or in part, to the provisions of 47 USC 201—226,
14 except that such facility shall be considered a cable system (other than for purposes of 47 USC 541(c))
15 to the extent such facility is used in the transmission of video programming directly to subscribers; and
16 (4) Any facilities of an electric utility used solely for operating its electric utility system.

17 *Cable telecommunications* means cable television and telecommunications services via a cable system.

18 *Channel* means a portion of the electromagnetic frequency spectrum which is capable of delivering both the
19 audio and video portions of a television signal. At the time of enactment of the ordinance from which this article is
20 derived, such capability generally requires a capacity of six MHz. This is subject to changes in technology.

21 *City* means the City of Marco Island, a charter city of the state, and all the territory within its present and
22 future boundaries, including any area over which the city exercises jurisdiction or control by virtue of any law. The
23 city council is the authority of the city.

24 ~~*City attorney* means the city attorney or his designee, or any successor to the power of the city attorney.~~

25 ~~*City council* means the city council or its designee.~~

26 ~~*City manager* means the city manager or his designee, or any successor to the power of the city manager.~~

27 *Construction completion date* means the date, after receiving a request from the franchisee, on which the
28 city or its designee issues a certificate of completion to a franchisee. That certificate shall not be unreasonably
29 withheld.

30 *Existing franchisee* means any cable operator who possesses a valid, current cable television franchise
31 granted by the county, that is in good standing as of the effective date of the ordinance from which this article is
32 derived.

33 *FCC* means the Federal Communications Commission or any successor agency.

34 *Franchise* means and includes any authorization granted pursuant to federal and state law and this article in
35 terms of a franchise privilege, permit, license or otherwise to construct, or have constructed, operate and maintain
36 a cable system. Any such authorization, in whatever term granted, and the fees charged thereunder shall neither
37 supersede nor take the place of any license, license fee or permit authorization which might otherwise be required
38 for the privilege of transacting and carrying on cable service under any other city ordinance licensing or regulating
39 business within such areas.

40 *Grantee, franchisee and company* mean the person to whom a franchise is granted by the city council under
41 this article, and the lawful successor, transferee or assignee of such person.

42 *Gross revenues* means all revenue received by a grantee arising from or attributable to the sale of cable
43 television video or audio program services, videotext services and video games provided by the grantee within the

1 city or derived from the operation within the city of its system, including but not limited to fees charged to
2 subscribers for basic cable service; fees charged to subscribers for an optional video or audio service; fees charged
3 to subscribers for any tier of video or audio program service other than basic cable service; installation,
4 disconnection and reconnection fees for the provision of video or audio program services; leased channel fees,
5 video or audio program service; equipment rentals; revenues received by the grantee from home shopping
6 channels, marketing, and launch and carriage revenues from advertising sold by the grantee or its agents. This sum
7 shall be the basis for computing the fee imposed pursuant to section 46-40. The term "gross revenues" does not
8 include converter or other equipment deposits; bad debts; any sales, excise or any other taxes collected by the
9 grantee on behalf of any state, city, county or other governmental unit; refunds to subscribers by the grantee;
10 reimbursement for expenses (including returned check fees, copy expenses and similar items); or items excluded
11 by local, state or federal law. Notwithstanding the foregoing, revenues received for the provision of data
12 transmission, point-to-point telecommunications, telephones or telephone services shall be included in gross
13 revenues only to the extent permitted by law.

14 *Institutional network* and *I-Net* mean a communication network which is constructed and/or operated by the
15 cable operator and which is generally available only to local governments.

16 ~~*Marco Island* means Marco Island, Florida, or the area within the present and future territorial city limits and
17 such territory outside of the city over which the city has jurisdiction or control by virtue of any law.~~

18 ~~*Person* means any person, firm, partnership, association, corporation, or organization of any kind.~~

19 *Public, educational or governmental access (PEG)* means channel capacity designated for public, educational,
20 or governmental use.

21 *Street* and *right-of-way* mean the surface of and the space above and below any publicly owned or
22 maintained property or right-of-way, street, road, highway, freeway, land, path, alley, court, sidewalk, parkway or
23 drive, now or hereafter constructed, opened, laid out or extended within the present limits of the city as defined
24 by section 2.01 of the Charter or as may hereafter be added to, consolidated or annexed to the city.

25 *Subscriber* and *customer* mean any person lawfully receiving any portion of the cable service provided by a
26 grantee pursuant to a franchise granted in accordance with this article.

27 **Sec. 46-33. Violations; penalties.**

28 (a) *Generally; amount of penalty.* A violation of this article or a franchise issued pursuant to this article shall
29 result in the imposition of a penalty. A penalty may be imposed for up to \$500.00 per day for the specific
30 offenses set out in this section. Any penalty imposed under this section may be recovered from the
31 performance bond or letter of credit required in section 46-37.

32 (b) *Notice to cure deficiency.* Upon notice to cure specified deficiencies, the grantee shall have 30 days in which
33 to cure the deficiencies. Failure to cure any deficiency shall constitute a violation of this article. If, during the
34 30-day notice period, the deficiencies are satisfied, the city shall declare the notice to cure null and void.
35 However, should the grantee fail to cure any deficiency, the city manager shall issue a notice of intention to
36 impose a penalty for one or more violations.

37 (c) *Notice of intention to impose penalty; hearing.*

38 (1) If the city manager concludes that a grantee has committed a violation pursuant to this section, the
39 manager shall issue a notice of intention to impose a penalty by certified mail to the grantee. The
40 notice shall set forth the basis for the penalty, and shall inform the grantee that the penalty will be
41 imposed from the date of the notice unless the notice of penalty is appealed for hearing before the city
42 council and the city council rules that:

43 a. The violation has been corrected; or

44 b. An extension of time or other relief should be granted.

- 1 (2) A grantee desiring a hearing before the city council shall send a written notice of appeal of the fine by
2 certified mail to the city manager within ten days following the date on which the city sent the notice
3 of intention to impose a penalty. The hearing on the grantee's appeal shall be within 30 days following
4 the date on which the city receives the written notice of appeal. After the hearing, should the city
5 council sustains in whole or in part the city manager's imposition of a penalty, the city manager may
6 thereafter draw upon the performance bond or the letter of credit required by this article at any time.
7 Unless the city council indicates to the contrary, the penalty shall be imposed beginning with the date
8 on which the city sent the notice of the intention to impose a penalty and continuing thereafter until
9 such time as the violation ceases, as determined by the city manager. The penalty shall be paid 30 days
10 after the notice of intention to impose the penalty, if not appealed, or 30 days following the decision of
11 the city council to sustain the penalty in whole or in part.
- 12 (3) The city council shall stay or waive the imposition of a penalty as set forth in this section upon a finding
13 that any failure or delay is the result of an act of God or due to circumstances beyond the reasonable
14 control of the grantee.
- 15 (d) *Violations.* The following conditions constitute violations for which penalties may be levied pursuant to this
16 article:
- 17 (1) For failure to complete construction in accordance with the franchise, up to \$500.00 for each offense.
18 A separate and distinct offense shall be deemed committed each calendar day on which a violation
19 occurs or continues;
- 20 (2) For failure to provide, upon written request, data, documents, reports, and/or information, \$100.00
21 per day for each day or part thereof that each violation occurs or continues. A separate and distinct
22 offense shall be deemed committed each calendar day on which a violation occurs or continues;
- 23 (3) For failure to test, analyze and report on the performance of the system following a written request to
24 do so, \$250.00 per day for each day or part thereof that such noncompliance continues. A separate and
25 distinct offense shall be deemed committed each calendar day on which a violation occurs or
26 continues;
- 27 (4) For failure to provide in a continuing manner the types of services proposed in the accepted
28 application or renewal proposal, unless the city council specifically approves a delay or change or the
29 franchisee has obtained modification of its obligation pursuant to 47 USC 545 of the Cable
30 Communications Policy Act of 1984, as amended, \$500.00 per day for each day or part thereof that
31 each noncompliance continues. A separate and distinct offense shall be deemed committed each
32 calendar day on which a violation occurs or continues;
- 33 (5) For failure of a franchisee to comply with operational, maintenance, or technical standards or
34 consumer protection standards, \$500.00 for each day or part thereof that such noncompliance
35 continues. A separate and distinct offense shall be deemed committed each calendar day on which a
36 violation occurs or continues;
- 37 (6) For failure to comply with any material provision in this article for which a penalty is not otherwise
38 specifically provided, up to \$100.00 for each offense. A separate and distinct offense shall be deemed
39 committed each calendar day on which a violation occurs or continues; and
- 40 (7) For any other action or inaction by the franchisee, as agreed upon between the city and the franchisee,
41 and set forth in the franchise agreement. A separate and distinct offense shall be deemed committed
42 each calendar day on which a violation occurs or continues.

43 **Sec. 46-34. Purpose of article.**

44 This article is enacted under the home rule power of the city for the purpose of providing necessary
45 regulations, conditions and requirements which shall be uniformly applied to:

-
- 1 (1) The grant and renewal of nonexclusive cable television franchises for the installation, operation,
2 maintenance and provision of cable television service within the territorial limits of the city.
 - 3 (2) Protection and control of the use of city-owned easements and public rights-of-way by cable television
4 franchisees.
 - 5 (3) Authorization of the provision of cable television service by any cable operator who possess a valid,
6 current franchise granted by the county that is in good standing as of the effective date of the
7 ordinance from which this article is derived.

8 **Sec. 46-35. Franchise required; granting of franchise.**

- 9 (a) *Franchise required.* No person may operate a cable system in the city without first obtaining a franchise as
10 provided in this article, except as provided by subsection (i) of this section.
- 11 (b) *Application.* Any person that desires a cable television franchise shall file an application, in a format provided
12 by the city, which shall include not less than:
 - 13 (1) The identity of the franchise applicant, including all affiliates of the applicant.
 - 14 (2) A description of the cable service that will be offered or provided by the franchise applicant over its
15 existing or proposed facilities.
 - 16 (3) A description of the transmission media that will be used by the franchisee to offer or provide such
17 cable service.
 - 18 (4) A proposed construction plan (two copies) with sufficient detail to identify:
 - 19 a. The location and area the applicant's proposed cable telecommunications system shall serve; and
 - 20 b. The routes, if any, for interconnection with cable telecommunications systems of other providers
21 and to PEG access origination facilities.
 - 22 Subject to plan approval and following construction, the construction drawings shall accurately depict
23 the constructed configuration of the cable system. A computer aided design (CAD) disk of record
24 construction shall be provided to the city in an approved format and layering system.
 - 25 (5) A preliminary construction schedule, construction completion date and anticipated system activation
26 date.
 - 27 (6) Acknowledgment that the applicant's traffic control plan shall conform with the state department of
28 transportation's uniform traffic control procedures as related to public safety issues regarding lane
29 closures and construction in the public way.
 - 30 (7) Financial statements prepared in accordance with generally accepted accounting principles
31 demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the
32 facilities.
 - 33 (8) Information in sufficient detail to establish the applicant's technical qualifications, experience and
34 ability to provide the cable television services described in its application.
 - 35 (9) Information to establish that the applicant has obtained all other governmental approvals and permits
36 to construct, operate and offer cable television services.
 - 37 (10) An accurate map showing the location of any existing cable television and/or telecommunication
38 facilities in the city that the applicant intends to lease.
 - 39 (11) A description of the services or facilities that the applicant will offer the city and other public,
40 educational and governmental institutions.

- 1 (12) A description of the applicant's commercial customer and residential subscriber line extension policies.
- 2 (13) All fees, deposits or charges required pursuant to section 46-36.
- 3 (14) Such other and further information as may be requested by the city manager.
- 4 (c) *Determination by city.* Within 150 days following receipt of a completed application, the city shall, upon
- 5 application of the following standards, issue a written determination granting or denying the application in
- 6 whole or in part. If the application is denied, the written determination shall include the reasons for denial.
- 7 (1) The legal, character, financial and technical qualifications of the applicant.
- 8 (2) The construction arrangements proposed by the applicant.
- 9 (3) Whether the services that the applicant proposes to offer satisfy the community's need for cable
- 10 television services.
- 11 (4) The deleterious effect, if any, on public health, safety and welfare if the franchise requested is granted.
- 12 (5) Whether the applicant is providing adequate public, educational and governmental access channel
- 13 capacity, facilities and financial support.
- 14 (6) Applicable federal and state telecommunications laws, regulations and policies.
- 15 (7) Such other factors as may demonstrate that the grant to use the public ways may or may not serve the
- 16 community's interest.

17 If the city council finds the application is in compliance with this article and is satisfied with the ability of the
18 applicant to perform and that the community's interests shall be served, the city shall grant the applicant a
19 franchise.

- 20 (d) *Applicability of state and federal law.* Any cable television franchise granted pursuant to this article is subject
- 21 to the Cable Communications Policy Act of 1984, as amended, F.S. § 166.046, and other applicable state and
- 22 federal laws.
- 23 (e) *Franchise nonexclusive.* No franchise granted under this section shall confer any exclusive right, privilege, or
- 24 franchise.
- 25 (f) *Term of grant.* The term of a franchise granted pursuant to this article shall not be valid for more than 20
- 26 years.
- 27 (g) *Rights granted.* No franchise granted under this section shall convey any right, title or interest in the public
- 28 ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and
- 29 term stated in the grant. Further, no franchise shall be construed as any warranty of title.
- 30 (h) *Authority to grant additional franchises.* The grantor specifically reserves the right to grant such additional
- 31 franchises as it deems appropriate, subject to applicable state and federal law.
- 32 (i) *Existing franchises.* Any cable television operator who possesses a valid, current franchise granted by the
- 33 county that is in good standing as of the effective date the ordinance from which this article is derived shall
- 34 not be required to secure a new franchise until such time as its current franchise expires, or is transferred, or
- 35 is renewed. Existing franchisees shall be subject to all the provisions of this article unless otherwise
- 36 exempted in this article. All existing franchisees shall provide copies of all existing agreements between the
- 37 existing franchisee and the county within 30 days of the effective date of the ordinance from which this
- 38 article is derived. Any franchise or agreement not so provided shall not be recognized as valid by the city.

39 **Sec. 46-36. Application fee.**

40 Applicants for a franchise under this article shall pay an application fee to the city of \$3,000.00, which shall
41 be due and payable to the city upon submission to the city of an application for a franchise. The city council may

1 waive the fee for an incumbent operator seeking a franchise renewal pursuant to the informal rules provided in
2 section 626 of the Cable Communications Policy Act of 1984.

3 **Sec. 46-37. Bonding requirements.**

4 (a) *Construction bond.*

5 (1) Simultaneously with the execution of the franchise agreement, the franchisee shall post either a
6 construction bond or an irrevocable letter of credit with the city. Such instruments shall be issued by a
7 state bank or a federally insured lending institution in an amount equal to 110 percent of the projected
8 cost of construction and installation of the system. Existing grantees shall post a bond or irrevocable
9 letter of credit with the city as required by the city manager at the same time as and in conjunction
10 with submission of a construction plan or reconstruction plan, and in any event at least 30 days prior to
11 the start of construction or reconstruction. The bond or letter of credit will be returned to the
12 franchisee at the end of six years or at such prior time as the system has been completed and approved
13 by the city, provided that:

14 a. The franchisee has met or exceeded the construction schedule required by the grantee's
15 franchise agreement; and

16 b. The franchisee has in good faith complied with all terms and conditions of the franchise
17 agreement and all provisions of this article as well as the rules and regulations required and
18 permitted under this article.

19 (2) If the franchisee shall fail to perform the obligations set out in subsection (a)(1) of this section, the
20 franchisee shall forfeit in total to the city the referenced construction bonds.

21 (3) The construction bonds shall not be in lieu of any other guarantee or indemnification required by this
22 article and shall be in addition to the performance bond or irrevocable letter of credit required in this
23 section.

24 (4) An individual construction bond will not be required for projects that fall under the "blanket permit"
25 condition, as outlined in the Collier County Right-of-Way Ordinance (county Ordinance No. 98-64,
26 section I.D), as may be amended or superseded by an applicable city ordinance.

27 (b) *Permanent performance and payment bond.*

28 (1) Simultaneously with the execution of the franchise agreement, or assignment of the franchise in the
29 case of a transfer, the franchisee shall furnish a performance bond or an irrevocable letter of credit to
30 the city. Such instruments shall be issued by a state bank or a federally insured lending institution in
31 the amount of \$10,000.00. The performance bond or letter of credit shall be used to guarantee the
32 compliance with performance requirements and payment of all sums which may become due to the
33 city under this article and/or under any franchise agreement entered into by the city and the
34 franchisee. The performance bond or letter of credit shall be maintained in the full amount specified in
35 this section throughout the term of the franchise and for one year after the franchise expires or is
36 terminated, without reduction or allowances for any amounts which are withdrawn or paid pursuant to
37 this article.

38 (2) Any cable operator who possess a valid, current franchise granted by the county that is in good
39 standing as of the effective date of the ordinance from which this article is derived shall not be
40 required to furnish a performance bond until such time as its current franchise expires, or is
41 transferred, or is renewed.

42 (3) The rights reserved to the city with respect to the bond or the letter of credit are in addition to all
43 other rights of the city.

1 **Sec. 46-38. Termination, suspension or expiration of franchise.**

- 2 (a) *Rights of city.* The city reserves the right to suspend, terminate or cancel a franchise and all rights and
3 privileges of a franchisee thereunder after due process as specified by subsection (c) of this section for just
4 and reasonable cause or if any one of the following occurs:
- 5 (1) The franchisee, after 30 days' notice by certified mail by the city, violates any provision of this article or
6 any rule, order or determination of the city made pursuant to this article, except if such violation by
7 the franchisee is without fault or through excusable negligence.
- 8 (2) The franchisee becomes insolvent or unable or unwilling to pay its debts, or is adjudged bankrupt.
- 9 (3) The franchisee attempts to evade any of the provisions of this article or of the franchise agreement or
10 practices any fraud or deceit upon the city.
- 11 (4) The franchisee fails to commence construction within one year from the effective date of the
12 ordinance from which this article is derived.
- 13 (5) The franchisee fails to complete construction pursuant to the requirements of this article within the
14 time required by its franchise.
- 15 (6) The franchisee fails to provide service to its subscribers as required by the terms of this article, the
16 franchise agreement, or the Cable Communications Policy Act of 1984, as amended, whichever is
17 stricter.
- 18 (b) *Suspension.* The city reserves the right to suspend any or all of the rights of a franchisee upon a finding that
19 the franchisee is failing to provide efficient service to its subscribers within the city or for any grounds
20 specified in subsection (a) of this section. This shall include the right of the city to prohibit further expansion
21 of service areas until service in the areas being served is brought up to minimum acceptable standards.
- 22 (c) *Procedures for termination.* The franchise may be terminated in accordance with the following procedures:
- 23 (1) The city manager shall notify the franchisee in writing of the exact nature of the alleged violation
24 constituting grounds for termination and give the franchisee 30 days, or other greater amount of time
25 as the city manager may specify, to correct such violation or to present facts and argument in
26 refutation of the alleged violation.
- 27 (2) If within the designated time the franchisee does not remedy and/or put an end to the alleged
28 violation, the city council, after a public hearing, may direct the termination of the franchise if it
29 determines that such action is warranted.
- 30 (d) *Right to hearing on termination.* If the city shall decide to terminate for cause a franchise granted under this
31 article, it shall give the grantee 60 days' written notice of its intention to terminate, and stipulate the cause.
32 If during the 60-day period the cause shall be cured to the satisfaction of the city, the city shall declare the
33 notice to be null and void. In any event, before a franchise may be terminated, the grantee must be provided
34 with an opportunity to be heard before the city council in accordance with due process procedures. If a
35 grantee's franchise is terminated, the decision shall be subject to judicial review as provided by law.
- 36 (e) *Sale of system to new franchisee.* If operation of the cable system is discontinued for any reason for a
37 continuous period of 30 days or the franchise held by a grantee to construct, operate, or maintain a cable
38 system is terminated by the city council pursuant to the terms of this article, and all negotiations to settle the
39 differences between the parties have failed (provided, however, that such negotiations shall not be
40 required), the city council may advertise and seek another to operate the system. If a franchise is granted to
41 another person, the terminated franchisee may be required to sell the cable system to the new franchisee at
42 a price to be determined by three competent independent appraisers, one each appointed by the
43 terminated franchisee, the new franchisee, and the city council. The appraisers to be appointed shall use the
44 then-best methods of appraising to determine this value. The appraisers' fees shall be shared equally by the
45 terminated franchisee and the new franchisee. The terminated franchisee shall execute such deeds, bills of

1 sale and other documents as may be necessary to effectuate this sale. The terminated franchisee shall fully
2 cooperate with these appraisers.

3 (f) *Purchase of system by city; sale of capital improvements.* In the event of the early termination of the
4 franchise as provided in this section, the city shall have the option of purchasing the cable business for the
5 fair market value of the capital improvements. The city may also require the grantee to sell any capital
6 improvements as provided in this section to any successor grantee as set forth in subsection (e) of this
7 section. In any event, the city may require the grantee to continue to provide service for a reasonable period
8 not to exceed six months in order to ensure uninterrupted service to subscribers.

9 (g) *Removal of facilities and equipment.*

10 (1) Should the grantee's franchise be terminated or expire, and not purchased as provided in this section,
11 and at such time as the successor is ready to provide service, but no later than six months from
12 termination or expiration, the grantee shall begin removal of its property within the public way, unless
13 permitted by the city to abandon the property in place. In so removing such plants, structures, and
14 equipment, the grantee shall refill, at its own expense, any excavations made by it and shall leave such
15 public and private places in as good condition as that prevailing prior to the company's installation of
16 its equipment and appliances without affecting, altering, or disturbing in any way the electric
17 distribution or telephone cables, wires, or attachments or any poles. The city council or other officer,
18 or his appointee, shall inspect and approve the condition of such public ways and public places and
19 cables, wire attachments, and poles after removal. Liability insurance and indemnity provided for in
20 this article shall continue in full force and effect during the entire period of removal.

21 (2) In the event of any such removal, the grantee shall restore the public right-of-way to a condition
22 satisfactory to the city. Upon abandonment, which shall only be done as the city directs, the grantee
23 shall transfer ownership of all such abandoned property to the city and submit to the city an
24 instrument in writing, subject to the approval of the city attorney, effecting such transfer.

25 (3) If the city or the state is forced to remove the system, the work shall be performed at the expense of
26 the terminated grantee.

27 **Sec. 46-39. Transfer or assignment of franchise.**

28 (a) No transfer of control of a franchise or assignment of a franchise to operate a cable system, other than a pro
29 forma transfer or assignment to a parent or wholly owned subsidiary corporation or other form of
30 organization, shall take place, whether by force or voluntary sale, lease, mortgage, assignment,
31 encumbrance, foreclosure, attachment, merger, or other form of disposition, without prior notice to and
32 approval by the city council. The notice shall include filing particulars of the proposed transaction. The city
33 council shall act by resolution. The city council shall have 120 days after the receipt of the notice and all
34 supporting documents within which to approve or disapprove a transfer of control or assignment of the
35 franchise. If the proposed transfer or assignment is not acted upon within 120 days, approval shall be
36 deemed to have been given.

37 (b) Notice of any such proposed transfer or assignment, together with copies of all documents pertaining
38 thereto, shall be in writing filed with the city clerk. The proposed transferee or assignee shall agree in writing
39 to comply with all provisions of this article and other provisions and requirements as the city council might
40 order.

41 (c) For the purpose of this section, the term "control" is not limited to majority stock ownership, but includes
42 actual working control in whatever manner exercised. A transfer of control shall be deemed to have occurred
43 upon the acquisition or accumulation by any person or group of persons of ten percent of the voting shares
44 of the company.

45 (d) In the absence of extraordinary circumstances, the city council will not approve any transfer or assignment of
46 the franchise before completion of initial construction of the cable system or within the first three years of
47 operation thereafter.

1 **Sec. 46-40. Franchise fee.**

2 (a) *Amount; payment.*

3 (1) Within 60 days after each quarter of its fiscal year, after acceptance of a franchise, the grantee shall
4 pay to the city for constructing, operating, and maintaining the cable system, and for the privilege of
5 providing the cable service during the ensuing fiscal year, a sum equal to five percent of its gross
6 revenue for the preceding quarter.

7 (2) An existing franchisee shall have 30 days following the effective date of the ordinance from which this
8 article is derived in which to commence payment to the city, for the privilege of constructing,
9 operating, and maintaining a cable system and providing the cable service during the ensuing fiscal
10 year. A sum equal to five percent of its gross revenue for the preceding quarter or portion thereof,
11 commencing with the effective date of the ordinance from which this article is derived, shall be paid to
12 the city.

13 (3) The payment of this fee is in addition to any privilege or use tax or ad valorem taxes which the city may
14 levy. At any time, the city council, its employees or other designated representative shall have the right
15 to inspect all financial documents. Acceptance of payments under this section shall not be construed as
16 a release or as an accord and satisfaction of any claim the city may have for further or additional sums
17 payable under this article or for the performance of any other obligations under this article. In the
18 event of holding over after expiration or other termination of any franchise granted under this article,
19 without the consent of the city, the grantee shall pay to the city reasonable compensation and
20 damages of not less than 100 percent of its total gross profits during such period.

21 (b) *Adjustments.* The five percent franchise fee provided for in this section shall be reviewed every five years
22 during the term of this franchise, and the franchise fee, at the sole option of the city council, shall be
23 adjusted upward if the city council determines that an upward adjustment is necessary in order to maintain
24 the franchise fee consistent with:

25 (1) Franchise fees being paid by cable telecommunications companies operating under similar conditions;

26 (2) The costs incurred by the city to administer this franchise;

27 (3) The value of the company's right to use city public grounds, highways, roads, streets, alleys, sidewalks,
28 public ways, and utility easements as may be available; and

29 (4) Any applicable statutes, laws, rules and regulations.

30 If the franchise fee is adjusted, such adjustment shall be effective at the beginning of the next immediate file
31 quarter of the company's fiscal year during which such adjustment is made. The city may unilaterally adjust the
32 franchise fee upward only after giving notice to the company and holding a hearing.

33 (c) *Annual financial statement; audits.* The grantee shall provide the city an annual financial statement within 60
34 days of the close of the calendar year, certified by an official of the franchisee responsible for the system's
35 financial statements, reflecting the total amounts of gross revenues and all payments and computations for
36 the previous calendar year. Upon ten days' prior written notice, the city shall have the right to conduct an
37 independent audit of the franchisee's records. If, after resolving any dispute arising from such audits, the
38 franchisee has made a franchise fee underpayment of three percent or more, the franchisee shall assume all
39 reasonable costs of such audits. In other events, the city shall bear all costs associated with such audits.

40 (d) *Effect of acceptance of payment.* Unless otherwise provided by law, no acceptance of any payment by the
41 city shall be construed as a release or as an accord and satisfaction of any claim the city may have for further
42 or additional sums payable as a franchise fee under this article or any franchise agreement ordinance for the
43 performance of any other franchise obligation by the grantee.

1 **Sec. 46-41. Limitations on franchise.**

- 2 (a) In addition to the limitations otherwise appearing in this article, the franchise is subject to the following
3 limitations: Grantees shall at all times during the life of a franchise granted under this article be subject to all
4 lawful exercise of the police power by the city and other duly authorized regulatory state and federal bodies
5 and shall comply with any and all ordinances which the city has adopted or shall adopt applying to the public
6 generally, and shall be subject to all laws of the state and the United States.
- 7 (b) Time shall be of the essence of any franchise granted under this article. A grantee shall not be relieved of its
8 obligation to comply promptly with a provision of this article by the failure of the city to enforce prompt
9 compliance. Failure of the city to enforce any breach by the franchisee shall not constitute a waiver by the
10 city.
- 11 (c) A franchise granted under this article shall not relieve a franchisee of any obligations under any preexisting
12 pole or conduit use agreements it may have with the city, a utility company, or others maintaining poles or
13 conduits in the streets of the city.
- 14 (d) Any poles, cables, electronic equipment or other appurtenances of a franchisee to be installed in, under,
15 over, along, across or upon a street shall be so located so as to cause minimum interference with the public
16 use of the street and to cause minimum interference with the rights of other users of the streets or of
17 property owners who adjoin any of the streets. All such installations in or upon property owned or controlled
18 by the city shall be subject to the prior approval of the city.
- 19 (e) In the event of disturbance of any public or private property by a franchisee, it shall at its own expense, and
20 in a manner approved by the city, replace and restore public and private property to no less than the same
21 condition as before the work that caused such disturbance was done.
- 22 (f) Grantees shall construct, maintain and operate their cable telecommunications systems so as to cause
23 minimum inconvenience to the general public. All excavations shall be properly guarded and protected. At
24 the franchisee's sole cost and expense, the street shall be restored immediately upon completion of all work.
- 25 (g) Grantees shall, upon reasonable notice from any person holding a building moving permit issued by the city,
26 county or state, temporarily alter their facilities to permit the moving of such building. The actual cost of
27 such altering shall be borne by the person requesting the altering, and grantees shall have the right to
28 request payment in advance. For the purposes of this article, reasonable notice shall be construed to mean
29 written notice received by the franchisee at least five business days prior to the move.
- 30 (h) If at any time in case of fire or disaster in the city it shall become necessary in the judgment of the city
31 manager or the chief of the fire department or their designee to cut or move any of the wires, cables,
32 amplifiers, appliances, or appurtenances thereto of a franchise, such cutting or moving may be done, and any
33 repairs rendered necessary thereby shall be made by the franchisee at no expense to the city.

34 **Sec. 46-42. Installation of facilities.**

35 All facilities of a franchisee shall be constructed, installed and located in accordance with the following terms
36 and conditions, unless otherwise specified in a franchise agreement:

- 37 (1) Without cost to the city, the grantee may be required by the city to locate and identify its cable
38 television facilities within the public rights-of-way.
- 39 (2) The city reserves the right, upon 90 days' notice, to require the grantee at its expense to protect,
40 support, temporarily disconnect, relocate or remove from the city's street any property of the grantee
41 by reason of traffic conditions, public safety, street construction or excavation, change or
42 establishment of street grades, or installation of sewers, drains, water pipes, power or communication
43 lines, tracts, or other types of structures or improvements by governmental agencies or any structures
44 of public improvement. In emergencies, no specific notice period shall be required. The city shall

- 1 endeavor to notify and seek comment from the grantee, with respect to minimizing disruption to the
2 cable system, where public projects may affect the grantee's cable system.
- 3 (3) Cable television facilities shall be installed within existing underground duct banks or conduit whenever
4 excess capacity exists.
- 5 (4) A franchisee with permission to install overhead facilities shall attach its cable telecommunications
6 facilities on utility poles only when pole space is available and comply with the provisions of the
7 National Electrical Safety Code.
- 8 (5) Whenever any existing electric utilities, cable facilities or telecommunications systems are located
9 underground within a public way of the city, a grantee with permission to occupy the same public way
10 must also locate its cable television facilities underground at no cost to the city.
- 11 (6) Whenever any new or existing electric utilities, cable or telecommunications systems are located or
12 relocated underground within a public way, a grantee that currently occupies the same public way shall
13 relocate its facilities, without cost to the state or city, underground within a reasonable period of time,
14 which shall not be later than one year from the date of notification. Absent extraordinary
15 circumstances or undue hardship as determined by the cable television administrator, such relocation
16 shall be made concurrently to minimize the disruption of the public ways.
- 17 (7) Whenever a public way exists to accommodate the grantee's system, the grantee shall not locate its
18 facilities off the public way, unless to serve customers, and shall make every effort to locate its cable
19 telecommunications facilities within the public way before seeking private easements within the city.
20 The grantee shall, at no cost to the city, relocate its facilities and appliances which are in conflict with
21 city projects to upgrade or construct roadways.
- 22 (8) The grantee shall locate, place and construct its cable telecommunications facilities so as not to
23 interfere with the construction, location and maintenance of sewer or water mains, lines or
24 connections. The grantee shall implement preventive measures to protect existing facilities within the
25 public rights-of-way.
- 26 (9) The grantee shall restore and replace landscaped areas, pavement, pedestrian lighting, sidewalks,
27 curbs, gutters or other facilities damaged by the grantee or its contractors with like material to their
28 former condition at the grantee's expense, and shall thereafter, from time to time, but no longer than
29 one year from the completion of the job, readjust, fill and finish such facilities as may be necessary due
30 to settling of the earth associated with the grantee's disruption of the public way.
- 31 (10) Whenever a new cable system will exhaust the capacity of a public street or utility easement to
32 reasonably accommodate future cable telecommunications carriers or facilities, the grantee shall
33 provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future
34 carriers.
- 35 (11) The grantee shall adhere to all federal, state and local regulations regarding the location, construction,
36 and maintenance of its cable telecommunications facilities within the public rights-of-way.
- 37 (12) All grantees are required to obtain construction permits for the erection of a cable telecommunications
38 system. Nothing in this section shall prohibit the city and a franchisee from agreeing to an alternative
39 plan review process or alternate permit and construction procedures. Such alternative procedures
40 must be stated in the franchise agreement.

41 **Sec. 46-43. Right to use public rights-of-way not warranted.**

42 It is understood that the city does not have the unqualified right to authorize a grantee the use of all public
43 rights-of-way. Some rights-of-way may not be under the grantor's control, because of reservations in favor of the
44 dedicators or because of other legal impediments; therefore, in granting a franchise, the city does not warrant or
45 represent as to any particular public right-of-way that it has the right to authorize the grantee to install or maintain

1 portions of its cable system therein. The burden and responsibility for making such determination shall be upon
2 the franchisee.

3 **Sec. 46-44. Additional rights of city.**

- 4 (a) *Amendment of article; conflicting regulations.* The city may add to or modify or delete provisions of this
5 article as it shall deem necessary in the exercise of its regulatory powers, provided that such additions or
6 revisions are reasonable and in keeping with the public interest and welfare. Such additions or revisions shall
7 be made only after a public hearing for which grantees shall have received written notice at least 15 days
8 prior to such hearing. In the event of a conflict between any provision of this article (or amendment to it) and
9 a franchise granted pursuant to this article, the provisions of the franchise shall control.
- 10 (b) *Completion of work by city.* In the event of the failure by the grantee to complete any work required in
11 section 46-42 or any work required by city law or this article within the time established and to the
12 satisfaction of the city, the city may cause such work to be done and the grantee shall reimburse the city the
13 costs thereof within 15 days after receipt of an itemized list of such cost.
- 14 (c) *Emergency use of facilities.* The city reserves the right, in the event of an emergency or disaster, to require
15 the grantee to make available to the city manager, or his appointee, at his request, the grantee's facilities, at
16 no cost, for emergency use during such emergencies or disaster period.
- 17 (d) *Access to grantee's records.* The city reserves the right, during the life of any franchise granted under this
18 article, to have access at all reasonable hours to the grantee's plans, contracts and engineering, accounting,
19 financial, statistical, customer, and service records relating to the property and the operations of the grantee
20 and to all other records required to be kept under this article upon reasonable request.
- 21 (e) *Use of poles and conduits for municipal networks.* The city reserves the right, during the life of any franchise
22 granted under this article, to install and maintain free of charge upon the poles and conduits of the grantee
23 any wire and pole fixture necessary for municipal networks such as police and fire networks, on the condition
24 that such installations and maintenance thereof do not interfere with the operations of the grantee.
- 25 (f) *Inspections and tests.* The city reserves the right, during the life of any franchise granted under this article, to
26 reasonably inspect and supervise, at the grantee's cost, all construction or installation work performed
27 subject to the provisions of the article to ensure compliance with the terms of this article. The city may also
28 perform measurements upon and randomly inspect any portion of a grantee's system to ensure compliance
29 with the technical standards under which the grantee is authorized to operate. Upon the city's request, the
30 grantee will perform the tests, submitting the results to the city.
- 31 (g) *Performance reviews.* The city reserves the right, during the life of any franchise granted under this article,
32 upon 30 days' notice, to hold a public hearing for the express purpose of reviewing the general and specific
33 performance of the grantee with regard to all franchise provisions contained in this article or in the future
34 adopted by the city.
- 35 (h) *Governmental rights and powers generally.* Neither the granting of any franchise nor any governing provision
36 of any franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the
37 city.
- 38 (i) *Right of eminent domain.* Nothing in this article shall in any way or to any extent be construed to waive,
39 modify or abridge the city's right of eminent domain in respect to a franchisee.
- 40 (j) *Delegation of powers; enumeration not exclusive.* Any right or power in or duty impressed upon any officer,
41 employee, department or board of the city shall be subject to transfer by the city council by law to any other
42 officer, employee, department or board. The city reserves the rights not specifically granted in this article,
43 and the enumeration of the rights in this article shall not be construed to be a limitation of any right or
44 power the city may otherwise have.

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- 1 (k) *Hearing on provision of additional channel capacity.* The city shall have the authority to order a hearing no
2 less than every three years on the provision of additional channel capacity, if, after a hearing, the city
3 determines that:
 - 4 (1) A requirement for additional capacity exists; and
 - 5 (2) Consideration has been made or will be made for adequate rates to allow the company a fair rate of
6 return on its additional investment.
- 7 (l) *Use of fiber optic cable.* Any expanding or hybrid fiber and coaxial cable upgrade of the cable system shall use
8 fiber optic cable to the greatest extent possible to provide the highest quality of service and reduce the
9 number of cascaded amplifiers.
- 10 (m) *Institutional network capacity.* With respect to institutional network capacity, a minimum of two six-MHz
11 data channels, two forward and two reverse data paths, shall be reserved by the grantee on its cable system
12 for use by the city, unless otherwise provided in the franchise agreement. The grantee shall provide these
13 data channels without charge to the city. These data channel circuits shall be coordinated so as to provide
14 error-free data transmission within and between all fiber optic and coaxial cable segments.
- 15 (n) *Service to governmental facilities and public schools.* As a condition of the franchise, the grantee shall
16 provide television and I-Net service to all local governmental facilities and all public school facilities without
17 charge.
- 18 (o) *Contracts for exclusive service.* No franchisee or other multichannel video programming distributor shall
19 enter into or enforce an exclusive contract for the provision of cable service or other multichannel video
20 programming with any person, or demand the exclusive right to serve a person or location, as a condition of
21 extending service to that or any other person or location.
- 22 (p) *Limiting compensation for provision of cable service.* No franchisee or other multichannel video programming
23 distributor shall engage in acts that have the purpose or effect of limiting compensation for the provision of
24 cable service or services similar to cable service in the city, except for such actions as are expressly
25 authorized by law.

26 **Sec. 46-45. Service area.**

27 The franchisee of any franchise granted under this article is empowered to provide service to all potential
28 subscribers now or in the future who are located within any portion of the city as provided by the franchise
29 agreement.

30 **Sec. 46-46. Emergency alert override system.**

31 The grantee shall install and maintain an emergency alert system pursuant to the FCC's rules and the state's
32 emergency alert system plan. The emergency alert system shall be activated by the grantee pursuant to the state's
33 emergency alert system plan.

34 **Sec. 46-47. Public, educational and governmental access.**

- 35 (a) The city shall have the right to establish an authority or commission to administer for the city all community
36 media (access) activities. The city may establish, consistent with federal and state law, requirements in
37 franchises with respect to the designation and use of channel capacity on a franchisee's cable system for
38 public, educational and governmental access television program telecasts on the basic tier.
- 39 (b) The city shall have the right to direct the grantee to collect fees from customers to support the annual
40 operating and capital requirements of a community media (access) operation and related access facilities.
41 The fee shall be collected and remitted to the city for deposit in a special revenue fund, designated for this
42 purpose, each month.

1 **Sec. 46-48. Additional capacity; interconnections.**

- 2 (a) *Authority to order provision of additional capacity.* The city shall have the authority to order a public hearing
3 from time to time on the provision of channel capacity for public bandwidth on the network. If, after a
4 hearing, the city determines that provisions have been made to allow the company a fair rate of return on its
5 investments, the city shall order the company to provide such additional capacity within a reasonable
6 amount of time. If the city finds that additional public channel bandwidth is necessary, the company shall,
7 within three months from receipt of written notice from the city, make additional channel bandwidth
8 available.
- 9 (b) *Interconnection requirement.* A grantee shall interconnect PEG access channels and I-Net with any or all
10 other cable systems in contiguous adjacent areas, upon the directive of the city. Interconnection of cable
11 systems may be accomplished by direct cable connection, microwave, satellite, or other appropriate method.
- 12 (c) *Interconnection procedure.* Upon receiving the directive of the city to interconnect, a franchisee shall
13 immediately initiate negotiations with the other affected cable systems in order that all costs may be shared
14 equally among cable systems for both construction and operation of the interconnection link.
- 15 (d) *Relief from interconnection order.* A grantee may be granted reasonable extensions of time to interconnect
16 or the city may rescind its order to interconnect upon the submission of a petition by the grantee to the city.
17 The city shall grant the request if it finds that a grantee has negotiated in good faith and has failed to obtain
18 an approval from the cable systems of the proposed interconnection or that the cost of the interconnection
19 would cause an unreasonable or unacceptable increase in subscriber rates.
- 20 (e) *Cooperation with agencies associated with interconnection.* A grantee shall cooperate with any
21 interconnection corporation, regional interconnection authority, or city, county, state and federal regulatory
22 agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing
23 for the interconnection of cable systems within the boundaries of the city.

24 **Sec. 46-49. Rate regulation.**

25 The city may, in its sole discretion, regulate cable television rates pursuant to the provisions of the Federal
26 Cable Act then in effect and the rules, regulations, and orders of the Federal Communications Commission as they
27 may be amended or superseded from time to time.

28 **Sec. 46-50. Rights of subscribers.**

- 29 (a) Grantees shall not deny service to or otherwise discriminate against subscribers or citizens on the basis of
30 race, color, religion, national origin, age, gender, disability, family status, marital status, veteran status, or
31 sexual orientation.
- 32 (b) Grantees shall not exclude any high-cost area, any rural location or any person based on that person's
33 income.
- 34 (c) Grantees shall comply at all times with all other applicable federal, state and local laws relating to
35 nondiscrimination with respect to the provision of goods and services.
- 36 (d) Grantees shall adhere to applicable equal employment opportunity requirements of federal and state law.
- 37 (e) In the course of providing their services, grantees shall take reasonable steps to prevent the invasion of a
38 subscriber's right of privacy as such right is defined by applicable federal and state law.

39 **Sec. 46-51. Unlawful connections; theft of service.**

40 It shall be unlawful for any person to attach or maintain an electronic, mechanical or other connection to any
41 cable, wire, decoder, converter, descrambler, device or equipment of a cable system or to remove, tamper with,

1 modify or alter any cable, wire, decoder, converter, descrambler, device or equipment of a cable system for the
2 purpose of intercepting or receiving any programming or service transmitted by such cable system which such
3 person has not been authorized by the cable system to receive.

4 **Sec. 46-52. Indemnification of city.**

5 (a) It shall be expressly understood and agreed by and between the city, employees and officials and any
6 grantee under this article that the grantee shall save the city, its employees and officials harmless and
7 indemnify it and them from all loss sustained by the city, its employees and officials on account of any suit,
8 judgment, execution, claim or demand whatsoever, including but not limited to copyright infringement and
9 all other damages arising out of the award of a franchise or the installation or operation or maintenance of
10 the cable system authorized in this article, whether or not any act or omission complained of is authorized,
11 allowed or prohibited by this article and any franchise granted under this article.

12 (b) By its acceptance of a franchise granted under this article, the grantee agrees to pay all expenses incurred by
13 the city, employees and officials in defending itself with regard to all damages and penalties mentioned in
14 subsection (a) of this section. These expenses shall include all reasonable out-of-pocket expenses, such as
15 consultants' or attorneys' fees, and shall also include the reasonable value of any services rendered by the
16 city attorney or his staff or any other employees of the city.

17 **Sec. 46-53. Filing of copies of communications with regulatory agencies.**

18 The grantee shall simultaneously file and maintain with the city council copies of all petitions, applications
19 and communications, relative to any franchise granted pursuant to this article, transmitted by the grantee to, or
20 received by the grantee from, all federal and state regulatory commissions or agencies having competent
21 jurisdiction to regulate the operations of any broadband telecommunications network authorized under this
22 article.

23 **Sec. 46-54. Rehearing of decisions of city council.**

24 Any person aggrieved by any nonlegislative order or decision of the city council shall have the right to
25 petition the city council for a rehearing and reconsideration of any order, regulation or decision. Such a petition
26 must be filed within ten days following the rendition of such order, regulation or decision. The effect of the filing of
27 a petition for rehearing shall operate to stay the order or decision sought to be reviewed until the petition is
28 disposed of. If a petition for rehearing has been denied, such aggrieved party may have such order or decision
29 reviewed by certiorari to the county circuit court or by other proceedings as may be prescribed by court rules,
30 within 30 days after the disposition of their petition for rehearing. The proceedings before the city council shall be
31 deemed quasijudicial in nature, and such review shall be limited to the record made before the city council.

32 **Sec. 46-55. Scope of article and franchise agreement.**

33 This article will govern all activities of cable operators within the territorial limits of the city to the extent that
34 such activities may be regulated. Franchise agreement provisions will govern any activities of the parties not
35 specifically regulated by this article.

36 **Sec. 46-56. Amendment of article.**

37 This article may be amended at any time by a majority vote of the properly constituted city council, provided
38 that the city council shall hold a public hearing for such purposes and afford all interested persons an opportunity
39 to be heard with respect to such amendment. The city manager shall submit notice of the public hearing and
40 proposed amendments to each franchisee in writing at least 30 days prior to the public hearing. This reservation of
41 authority includes the right to impose rate regulation at such future dates as it may be deemed necessary by the
42 city council if current federal laws allow such regulation.

1 **Sec. 46-57. Compliance with applicable laws.**

2 A grantee shall comply fully with local ordinances and state and federal laws, and with all rules issued by
3 regulatory agencies now or hereafter in existence.

4 **Sec. 46-58. Limitation on grantee's recourse against city.**

5 The grantee shall have no recourse whatsoever against the city or its officers, boards, commissioners, agents,
6 or employees for any loss, cost, expense or damage arising out of any provision or requirement of this article or
7 because of its enforcement.

8 **Sec. 46-59. Failure of city to enforce compliance.**

9 The grantee shall not be relieved of its obligation to comply promptly with any of the provisions of the
10 franchise by any failure of the city to enforce prompt compliance.

11 **Sec. 46-60. Applicability of state and federal law.**

12 This article and any disputes arising from its adoption or from any franchise granted pursuant thereto shall
13 be governed by the laws of the state and the city consistent with applicable FCC rules and regulations required to
14 be observed in the enforcement of this article.

15 **Sec. 46-61. Conflicts between article and terms of franchise.**

16 This article shall not be deemed conclusive as to the terms and conditions of any franchise issued under this
17 article. The final terms and conditions of such franchise shall be determined by the grantee's franchise agreement
18 with the city.

19 **Sec. 46-62. Operation without franchise prohibited.**

20 It shall be unlawful for any person to construct, operate or maintain a cable system in the city without a
21 franchise.

22 **Secs. 46-63—46-90. Reserved.**

23 ***ARTICLE III. COMMUNICATION TOWERS***

24 **Sec. 46-91. Intent and purpose.**

25 This article applies to specified communication towers that support any antenna designed to receive or
26 transmit electromagnetic energy, such as but not limited to telephone, television, radio or microwave
27 transmissions. This article sets standards for construction and facilities siting; minimizes adverse visual impacts of
28 towers and antennas through careful design; provides siting and vegetation screening; avoids potential damage to
29 adjacent properties from tower failure; maximizes the use of existing rooftops and towers; and minimizes the need
30 to construct new towers.

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1 **Sec. 46-92. Permitted uses and development standards.**

2 (a) Rooftop towers, rooftop antenna structures and rooftop antennas are permitted in all zoning districts except
3 in the residential single family and RMF-6 zoning districts. Rooftop towers, rooftop antenna structures and
4 rooftop antennas as specified are subject to the following. Height of towers and structures specified herein
5 are inclusive and any antennas affixed thereto and are measured from the required base flood elevation
6 unless otherwise provided.

7 (1) Rooftop towers, antenna structures, and antennas are a permitted use up to a height of 20 feet above
8 the maximum roofline (~~established as the vertical distance from the first finished floor elevation or as~~
9 ~~measured from the required base flood elevation to~~ the highest point of the roof surface of a flat or
10 Bermuda roof, to the deck line of a mansard roof and to the mean height level between eaves and
11 ridge of gable, hip, and gambrel roofs). ~~Any antenna structure, tower or antenna that exceeds its~~
12 ~~permitted use height as provided herein shall require a variance, wherein the height of the structure,~~
13 ~~tower, and all antennas shall be determined on a case by case bases. The city council is authorized to~~
14 ~~grant variances from this provision pursuant to section 30-65 of the land development code.~~ Distance
15 from residential single family and RMF-6 zoning districts shall be a major consideration in determining
16 the maximum height of rooftop towers, antennas and/or structures for variance considerations.

17 (2) Rooftop towers and antenna structures shall be set back from the closest outer edge of the roof a
18 distance not less than ten percent of the rooftop length and width, but not less than five feet, if the
19 antenna can function at the resulting location;

20 (3) Rooftop antenna structures and dish type antennas shall be painted to make them unobtrusive;

21 (4) Except for antennas that cannot be seen from street level, such as architecturally designed panel
22 antennas on parapet walls, antennas shall not extend out beyond the vertical plane of any exterior
23 wall;

24 (5) Where technically feasible dish type antennas shall be constructed of open mesh design;

25 (6) Where feasible, the design elements of the building (i.e., parapet wall, screen enclosures, other
26 mechanical equipment) shall be used to screen the rooftop communications tower, structure, and
27 antennas;

28 (7) The building and roof shall be capable of supporting the roof-mounted antenna, structure and tower.

29 (b) Ground mounted, self-supporting, guyed, and monopole communication towers are prohibited in all zoning
30 districts except as follows:

31 (1) All ground mounted communication towers may be allowed as a conditional use on sites approved for
32 fire stations, police departments, substations and governmental offices where not permitted by right in
33 the applicable zoning district.

34 (2) In the single family residential and RMF-6 zoning districts all ground mounted communication towers,
35 ground mounted antennas, or antennas shall only be permitted as follows:

36 a. One satellite dish having a diameter of 1.2 meters (approximately 47 inches) or less shall be
37 allowed without a permit if the dish is located in the rear yard and compliant with accessory
38 structure setbacks. Satellite dishes having a diameter of 36 inches or less shall be allowed
39 without a permit if the dish is attached to the side or rear of the principal structure and within
40 allowed protrusion limits.

41 b. New satellite dishes over 1.2 meters in diameter, antennae(s) or other signal receiving or
42 transmitting equipment shall be reviewed in accordance with the conditional use procedures as
43 set forth in section 30-642.7.4 [sic] of the land development code.

44 c. The installation of antennae(s) or other signal receiving/transmitting equipment that creates
45 electrical interference or is deemed to be out of scale or character of the neighborhood is

- 1 prohibited unless a compelling public purpose can be established by the applicant, and
2 acknowledged by the city.
- 3 d. The maximum permitted height for an antennae and/or antenna structure attached to a
4 residential structure is 40 feet as measured from the required base flood elevation ~~or first~~
5 ~~finished floor elevation (whichever is applicable).~~
- 6 e. The maximum permitted height for an approved freestanding tower inclusive of antennas is 35
7 feet as measured from the required base flood elevation ~~or first finished floor elevation~~
8 ~~(whichever is applicable).~~
- 9 f. Additional height may be requested under the variance provisions contained in [section 30-65 of](#)
10 [the land development code-LDC.](#)
- 11 g. All existing satellite dishes located on a single-family lot with a diameter in excess of 1.2 meters
12 (approximately 47 inches) shall be removed by December 31, 2003, provided the satellite dish is
13 inoperable and/or not being utilized.
- 14 (c) All owners of approved towers are jointly and severally liable and responsible for any damage caused to off-
15 site property as a result of a collapse of any tower owned by them.
- 16 (d) No tower shall be artificially lighted except as required by the Federal Aviation Administration (FAA), the
17 Federal Communications Commission (FCC), or other applicable laws, ordinances or regulations.
- 18 (e) Any tower that is voluntarily not used for communications for a period of one year shall be removed at the
19 tower owners expense. If a tower is not removed within three months after one year of such voluntary non-
20 use, the city may obtain authorization to remove the tower and accessory items from a court of competent
21 jurisdiction, and after removal shall place a lien on the subject property for all direct and indirect costs
22 incurred in dismantling and disposal of the tower and accessory items, plus court costs and attorney fees.
- 23 (f) All new metal towers including rooftop towers, shall comply with the standards of the then latest edition
24 published by the Electric Industries Association (currently EIA/TIA 222-E) or the publication's successor
25 functional equivalent unless amended for local application by resolution of the city.
- 26 (g) A building permit and site plan shall be submitted to the city for all new communication towers and antennas
27 [except as provided in \(b\)\(2\)a. of this section](#)
- 28 (h) No communication tower shall be located on any land or water if such location thereon creates or has the
29 potential to create harm to the site as a source of biological productivity, as indispensable components of
30 various hydrologic regimes, or as irreplaceable and critical habitat for native species of flora or fauna.
- 31 (i) For all towers, a statement from the applicant or an official document that specifies that the tower and its
32 antennas will comply with all applicable regulations of the FCC shall be filed with the city manager or
33 designee.
- 34 (j) All new non-ionizing electromagnetic radiation (NIER) sources shall comply with the then current applicable
35 standards adopted by the federal government. The city shall not be required by this section to enforce such
36 standards.
- 37 (k) As to communications towers and antennas, including rooftop towers, antenna structures and antennas, the
38 height provisions of this section supersede all other height limitations specified in the land development
39 code.
- 40 (l) Subject to general law, provisions in deed restrictions and private restrictive covenants supersede this
41 section to the extent they are more restrictive.
- 42 (m) Willful, knowing failure of any owner to comply with any of the provisions herein shall be a violation of this
43 section and shall be subject to general penalty provisions of this article, and shall be grounds for revocation.
- 44 (n) Notwithstanding anything to the contrary in any city ordinance, any then nonconforming tower that is
45 destroyed by any means to an extent of more than 50 percent of its actual replacement cost at the time of

1 destruction, as determined by a cost estimate submitted to the director of community development
2 directoraffairs, shall not be reconstructed or repaired without conditional use approval.

- 3 (o) Notwithstanding anything to the contrary in any city ordinance, ~~including any provision of the general~~
4 ~~provisions ordinance (ex: nonconformities)~~, a nonconforming tower(s) and/or accessory structure(s) may be
5 voluntarily reconstructed in any zoning district at its site subject to the conditional use procedures of the
6 land development code. The extended useful life of the tower and/or accessory structure that will result
7 from reconstruction shall not be construed to be an enlargement, intensification, increase or extension of
8 the nonconforming use.

9 **Sec. 46-93. Definitions.**

10 The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them
11 in this section, except where the context clearly indicates a different meaning. These definitions are supplemental
12 to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict. As used
13 in this article:

14 *Antenna* includes wire and dish type antennas.

15 *Antenna structure* is a base, stand, or other method of stabilizing an antenna but the primary purpose is
16 other than raising a height of an antenna.

17 *Approved tower or site* is a tower or site that was approved under Ordinance No. 91-84 or is approved under
18 this article.

19 ~~*City manager* includes designees of the city manager.~~

20 *Government* means the United States government and any agency thereof, City of Marco Island and any
21 agency thereof, and any district.

22 ~~*Old tower or site* means a tower or site that was approved prior to the effective date of Ordinance No. 91-84.~~
23 ~~A "new" tower or site means a tower or site that requires approval under this article.~~

24 ~~*Rent* means to rent, lease, or otherwise provide tower or site space.~~

25 *Tower* is a structure for the primary purpose to raise the height of an antenna.

26 ~~*Unavailable to the applicant* means a tower that cannot mandate the applicant's tower, antenna, and related~~
27 ~~facilities.~~

28 ~~*Unavailable* means that no additional tower or site capacity is available to anyone.~~

29 *Zoning district* includes areas zoned conventionally or as planned unit developments (PUD).

30 ~~The singular includes the plural and vice versa unless the context clearly indicates otherwise.~~

31 ~~Height of towers and structures specified herein are inclusive and any antennas affixed thereto and are~~
32 ~~measured from the required base flood elevation.~~

33 **Chapter 50 TRAFFIC AND VEHICLES**

34 **ARTICLE I. IN GENERAL**

35 **Sec. 50-1. Florida Uniform Traffic Control Law adopted.**

36 There is hereby adopted by reference the Florida Uniform Traffic Control Law, F.S. ch. 316, as amended,
37 which laws shall be in full force and effect in the city as if fully set forth in this section, and shall be considered as
38 part of this chapter.

1 **Sec. 50-2. Powers and duties of city manager.**

- 2 (a) The city manager, except as otherwise directed by the city council, is hereby authorized and is given the full
3 power to designate direction of traffic; designate time limits and locations for parking; designate reservation
4 of parking places; designate maximum and minimum speeds insofar as such speeds shall not conflict with the
5 laws of the state; establish through streets and stop crossings, traffic control devices indicating prohibited or
6 limited parking, restricted speed zones, one-way streets, through or arterial streets, stop signs, U-turns,
7 school zones, and vehicles weight limits; and designate crosswalks, safety zones, truck routes, and traffic
8 lanes on streets and parts of streets indicating and directing the flow of traffic.
- 9 (b) The city manager shall have authority, ~~when he deems it in the interest of public safety or convenience,~~ to
10 temporarily close any street or alley or portion of any street or alley to vehicular or foot traffic or to divert
11 such traffic therefrom when the city manager deems it in the interest of public safety or convenience. Such
12 provisions and designations shall be of the same force and effect as if provided for specifically by ordinance,
13 and any violation thereof shall be unlawful.
- 14 (c) The city manager shall be responsible for performing all functions relating to traffic as are required of
15 municipalities by state law.
- 16 (d) The existence of official traffic control devices in any place within the corporate limits of the city shall be
17 prima facie evidence that such official traffic control devices were erected or placed by and at the direction
18 of the city manager, and in accordance with the provisions of this section.
- 19 (e) Any person failing or refusing to comply with the directions indicated on any official traffic control device
20 erected or placed in accordance with the provisions of this section, when so placed or erected, shall be guilty
21 of a violation of this ~~Cc~~code.

22 **Sec. 50-3. Powers and duties of public safety and public works departments.**

- 23 (a) The ~~public safety~~police department, under the direction of the city manager, shall have full power and be
24 charged with all duties in relation to the direction of vehicle traffic and enforcement of all laws governing
25 vehicle traffic.
- 26 (b) The public works department, under the direction of the city manager, shall have full power and be charged
27 with all duties in relation to the planning, engineering, and management of vehicular and pedestrian traffic.

28 **Sec. 50-4. Specifications for traffic control devices.**

29 All traffic control signs, signals, markings, and devices shall conform to the then current Manual of Uniform
30 Traffic Control Devices for Streets and Highways of the state department of transportation.

31 **Secs. 50-5—50-30. Reserved.**

32 ***ARTICLE II. STOPPING, STANDING AND PARKING***

33 **Sec. 50-31. Findings and purpose.**

34 The City Council of Marco Island ~~does~~ hereby makes the following findings ~~the following of~~ facts:

- 35 (1) The improper and nonregulated parking is detrimental to the health, safety and welfare of the citizens
36 of Marco Island.
- 37 (2) The maintenance and control of access to buildings, both public and private, for handicapped persons
38 is important to citizens of Marco Island.

-
- 1 (3) The clear passage of public roadways and streets, including parking lots, business access, city and
2 county parks, and all other facilities is vital to the citizens of Marco Island.
- 3 (4) The protection of the quality of life and economy for the City of Marco Island, its businesses and its
4 citizens can be accomplished by controlling parking and access to facilities.

5 **Sec. 50-32. Title and citation.**

6 This article shall be known as and may be cited as the "City of Marco Island Parking Control Ordinance."

7 **Sec. 50-33. ~~Applicability Reserved.~~**

8 ~~This article shall apply to and be enforced within the corporate limits of the City of Marco Island.~~

9 **Sec. 50-34. Definitions.**

10 The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them
11 in this section, except where the context clearly indicates a different meaning. These definitions are supplemental
12 to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.:

13 *Bicycle* means any device propelled by human power, or any moped propelled by a pedal-activated helper
14 motor with a manufacturer's certified maximum rating of 1½ brake horsepower, upon which any person may ride,
15 having two tandem wheels, either of which is 20 inches or more in diameter, and including any device generally
16 recognized as a bicycle though equipped with two front or two rear wheels.

17 *Bus* means any motor vehicle designed for carrying more than ten passengers and used for the
18 transportation of persons, and any motor vehicle, other than a taxicab, designed and used for the transportation
19 of persons for compensation.

20 *Business district* means the territory contiguous to, and including, a roadway when 50 percent or more of the
21 frontage thereon, for a distance of 300 feet or more is occupied by buildings and used for business.

22 ~~*City road right-of-way* means any strip of land granted, dedicated or deeded to the public occupied or~~
23 ~~intended to be occupied by a road, sidewalk, utility, storm drainage pipes, swales, green space, landscaping, etc.~~

24 *Crosswalk* means:

- 25 (1) That part of a roadway at an intersection included within the connections of the lateral lines of the
26 sidewalks on opposite sides of the highway, measured from the curbs or, in the absence of curbs, from
27 the edges of the traversable roadway;
- 28 (2) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossings
29 by lines or other markings on the surface.

30 *Curb loading zone* means a space adjacent to a curb reserved for the exclusive use of vehicles during the
31 loading or unloading of passengers or materials.

32 *Department* means the state department of highway safety and motor vehicles.

33 ~~*Designated Disabled-accessible parking space* means any parking space posted with a sign bearing the~~
34 ~~internationally accepted wheelchair symbol and the caption "PARKING BY DISABLED PERMIT ONLY."~~

35 ~~*Handicapped Disabled person* means any person with permanent long-term mobility problems who has been~~
36 ~~issued an exemption entitlement parking permit pursuant to F.S. § 320.0848.~~

37 *Driver* means any person who drives or is in actual physical control of a vehicle on a highway, or who is
38 exercising control of a vehicle or steering a vehicle being towed by a motor vehicle.

1 *Fire lane* means the 12-foot wide strip of pavement immediately adjacent to the building of a business center
2 together with a 12-foot wide strip of pavement providing ingress and egress from public roads to the buildings of a
3 business center.

4 ~~*Handicapped person* means any person with permanent mobility problems who has been issued an
5 exemption entitlement parking permit pursuant to F.S. § 320.0848.~~

6 *Intersection* means the area embraced within the prolongation or connection of the lateral curb lines; or, if
7 none, then the lateral boundary lines of the roadways of two highways which join one another at, or
8 approximately at, right angles; or the area within which vehicles travel upon different highways joining at any
9 other angle may come in conflict.

10 *Motor vehicle* means any vehicle which is self-propelled but not operated upon rails, but not including any
11 bicycle or moped.

12 *Official traffic control devices* means all signs, signals, markings, and devices, placed or erected by authority
13 of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

14 *Official traffic control signal* means any device, whether manually, electrically, or mechanically operated, by
15 which traffic is alternately directed to stop and permitted to proceed.

16 *Operator* means any person who is in actual physical control of a motor vehicle upon the highway, or who is
17 exercising control over or steering a vehicle being towed by a motor vehicle.

18 *Owner* means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an
19 agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions
20 stated in the agreement and with an immediate right of possession as vested in the conditional vendee, or lessee,
21 or mortgagor, shall be deemed the owner, for the purposed of this definition.

22 *Park or parking* means the standing of a vehicle, whether occupied or not, otherwise and temporarily for the
23 purpose of and while actually engaged in loading or unloading merchandise or passengers as may be permitted by
24 law under this article.

25 *Parking enforcement officer* includes the police chief, and any city police officer, ~~any designee of the police~~
26 ~~chief,~~ any community service officer, any city code compliance personnel, the Sheriff and any Deputy Sheriff of
27 Collier County, and any state law enforcement officer.

28 ~~*Pedestrian* means any person afoot.~~

29 ~~*Person* means any natural person, firm, copartnership, association, or corporation.~~

30 *Public parking space* means any parking space on city-owned/leased property or on private property which
31 the owner, lessee, or person in control of such property provides for use by members of the public other than
32 employees of such owner, lessee, or person, including, but not limited to, parking spaces at shopping centers,
33 stores, offices, motels, malls, restaurants, and marinas.

34 *Safety zone* means the area or space officially set apart within a roadway for the exclusive use of pedestrians
35 and protected or so marked by adequate signs or authorized pavement markings as to be plainly visible at all times
36 while set apart as a safety zone.

37 *Served by rules of civil procedure* means when served by certified mail or sheriff's service.

38 ~~*Sidewalk* means that a portion of a street between the curbline, or the lateral line, or a roadway and the
39 adjacent property lines, intended for use by pedestrians.~~

40 *Standing* means the temporary stopping of a passenger vehicle for the purpose of and while actually
41 engaged in picking up and discharging persons.

42 *Stop or stopping* means when prohibited, means any stopping of a vehicle whether occupied or not, except
43 when necessary to avoid conflict with other traffic, or in compliance with the directions of a law enforcement
44 officer, traffic control sign, or signal.

1 ~~Street or highway means the entire width between the boundary lines of every way or place of whatever~~
2 ~~nature when any part thereof is open to the use of the public for purposes of vehicular traffic.~~

3 ~~Swale means an open drainage feature along a roadway used for stormwater conveyance. The swale area is~~
4 ~~the area between the edge of the pavement of a roadway, or curb, and the inside edge of sidewalk (or right-of-way~~
5 ~~boundary if no sidewalk is present.)~~

6 *Trailer* means any vehicle designed for carrying persons or property and for being drawn by a motor vehicle.

7 *Traffic* means pedestrians, ridden or herded animals, and vehicles, and other conveyances wither singly or
8 together while using any street or highway for purposes of travel.

9 *Vehicle* means every device, in, upon, or by which any person or property is or may be transported or drawn
10 upon a roadway, street, or highway, except devices moved by human power.

11 **Sec. 50-35. Jurisdiction.**

12 The provisions of this article prohibiting the stopping, standing or parking of a vehicle shall be in effect upon
13 all streets and highways within the incorporated area of the City of Marco Island and shall apply at all times or as
14 indicated on official signs, except when it is necessary to stop a vehicle to avoid conflict with other traffic or is in
15 compliance with the directions of a law enforcement officer or traffic-control device.

16 **Sec. 50-36. Placement of official signs.**

17 The city manager ~~or his designee~~ shall investigate changes concerning parking restrictions to be placed upon
18 streets and highways in the incorporated area of the city. The city manager may make changes which shall be in
19 accordance with the terms of this article in an effort to clearly inform the public and to aid in compliance with the
20 conditions set forth. These changes shall include, but are not limited to:

- 21 (1) All night parking;
- 22 (2) Angle parking;
- 23 (3) Parking on the left side of one-way streets or highways;
- 24 (4) Parking on one-way streets;
- 25 (5) Parking in hazardous places;
- 26 (6) Curb loading zones;
- 27 (7) Bus stops, taxi stands, etc.;
- 28 (8) Prohibited parking;
- 29 (9) Limited parking;
- 30 (10) Determined and designated meter parking zones; and
- 31 (11) Tow-away zone.

32 Upon the order of the city manager enacting restrictions or prohibiting parking, standing, or stopping in certain
33 areas along city streets or alleys, such streets or alleys may be posted with signs specifying the restrictions or
34 prohibitions of parking, standing, or stopping.

35 **Sec. 50-37. Prohibited parking.**

36 Except when necessary to avoid conflict with other traffic, or in compliance with law or the direction of a law
37 enforcement officer or official traffic control device, no person shall:

- 38 (1) Stop, stand or park a vehicle:

- 1 (a) Upon a street in such a manner or under such conditions as to obstruct or interfere with the free
2 movement of traffic;
- 3 (b) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
- 4 (c) On a sidewalk, bike path, or bike lane; if any portion of a vehicle obstructs or projects over the
5 edge of the sidewalk, bike path, or bike lane, the vehicle is in violation of this section;
- 6 (d) Within an intersection;
- 7 (e) On a crosswalk;
- 8 (f) Alongside or opposite any street, or obstruction when stopping, standing or parking would
9 obstruct traffic;
- 10 (g) Upon any bridge or other elevated structure upon a highway, where parking is not provided for;
- 11 (h) Within any appropriately signed or marked fire lane;
- 12 (i) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately
13 opposite the ends of a safety zone, unless the city manager or the state department of
14 transportation indicates a different length by signs or marking;
- 15 (j) Within 50 feet of a driveway entrance to any fire station and on the side of a street or highway
16 opposite the entrance to any fire station within 75 feet of said entrance;
- 17 (k) In the median area between traffic lanes;
- 18 (l) At any place where official signs prohibit standing;
- 19 (m) On any improved surface adjacent to a roadway designed and marked for parking for a period
20 longer than 72 consecutive hours;
- 21 (n) On any improved surface in a city parking lot designed and marked for parking for a period longer
22 than 72 consecutive hours;
- 23 (o) On any improved surface meeting the criteria of (m) and (n) of this section: outside of the
24 marked parking space;
- 25 (p) Excluding on private property, next to a curb line painted yellow designating a no-parking zone;
- 26 (q) With expired or unregistered license plates on any street, street right-of-way, swale or public
27 access parking area, except as provided for in section 30-1007.
- 28 (2) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a
29 passenger or passengers:
 - 30 (a) In front of a public or private driveway;
 - 31 (b) Within 15 feet of a fire hydrant;
 - 32 (c) Within 20 feet of a crosswalk at an intersection;
 - 33 (d) Within 30 feet upon the approach to any flashing signal, stop sign or traffic control signal located
34 at the side of a roadway;
 - 35 (e) Within 100 feet of intersecting road right-of-way;
 - 36 (f) On any roadway pavement maintained by the city on other than duly designated parking lanes;
 - 37 (g) At any place where official signs prohibit or restrict parking, or in excess of time periods
38 authorized by such signs;
 - 39 (h) Along or adjacent to any curb painted red or yellow, or across the delineated boundaries of a
40 public parking place;

- 1 (i) Seaward of the coastal construction setback line.
- 2 (3) Stand or park a vehicle on a swale, or in a swale area, whether the vehicle is occupied or not, except
- 3 momentarily to pick up or discharge a passenger, or passengers, or property, under the following
- 4 circumstances:
- 5 (a) Between the hours of 2:00 a.m. and 6:00 a.m., except this prohibition shall not apply in
- 6 residential districts between November 15 and January 15 of each calendar year, unless
- 7 otherwise temporarily modified by council resolution, as deemed in the best interest of the city,
- 8 or unless the record owner of the property adjacent to a swale or swale area has requested
- 9 specific enforcement of this provision in writing during the relevant time period each year;
- 10 (b) When prohibited by an official sign;
- 11 (c) On any curbed swale;
- 12 (d) At any time within 500 feet of the entrance to Resident's Beach;
- 13 (e) At any time within 500 feet of the entrance to the South Beach pedestrian access;
- 14 (f) At any time within 500 feet of the entrance to the Tigertail Beach;
- 15 (g) At any time within 500 feet of the entrance to the Madeira beach access path;
- 16 (h) At any time within 500 feet of the entrance to the Marriott's Crystal Shores beach access path;
- 17 (i) Facing against the direction or flow of traffic for that side of the roadway;
- 18 (j) Angled parking unless posted as authorized;
- 19 (k) If the vehicle is a trailer; parking is prohibited at any time except when attached to a vehicle and
- 20 being used in conjunction with an ongoing maintenance or repair operation such as utility
- 21 repairs, public works and landscape maintenance.
- 22 (l) Except between the hours of 7:00 a.m. and midnight for vehicles parking in swales and alleys
- 23 adjacent to commercially zoned districts, unless otherwise temporarily modified by council by
- 24 resolution, as deemed in the best interest of the city.
- 25 (4) Willfully obstruct the free, convenient, and normal use of any public street, highway or road, by
- 26 impeding, hindering, stifling, retarding or restraining traffic or passage thereon, or by endangering the
- 27 safe movement of vehicles or pedestrians travelling thereon:
- 28 (a) Nor shall any person stop, stand or park a vehicle within an alley in a business district in such a
- 29 manner as to obstruct the free movement of emergency vehicles or vehicular traffic except when
- 30 otherwise noted by street signage or while the driver remains with the vehicle and is actually
- 31 engaged in the expeditious loading or unloading of material, and in no event for a period of more
- 32 than 20 minutes;
- 33 (b) Nor shall any person stop, stand or park a vehicle within an alley in such position as to block the
- 34 driveway or entrance to any abutting property.

35 **Sec. 50-38. ~~Handicapped-Disabled-accessible~~ parking.**

- 36 (1) No person shall park any vehicle or bicycle in any public, disabled-accessible parking space located on city
- 37 owned or leased property or private property within the incorporated areas of the city when such public the
- 38 parking space has been designated for the use of handicapped-disabled persons, unless such person is a
- 39 handicapped-person-disabled or unless such person is momentarily parking in such parking place-space for
- 40 the purpose of unloading or loading a handicapped-disabled person. All parking spaces provided for the
- 41 physically disabled after August 26, 1991, must be marked by the owner of the parking facility in accordance
- 42 with state statutes and a sign must be posted stating that there is a \$250.00 fine for illegally parking in the

1 space. However, failure on the owner's part to post the fine for illegally parking in a handicapped space shall
2 not release the violator of their obligation to pay the fine.

3 (2) Whenever any parking enforcement officer finds a vehicle in violation of F.S. § 316.1955, the officer shall:

4 (a) Have the vehicle in violation removed to any lawful parking space or facility or require the operator or
5 other person in charge of the vehicle immediately to remove the unauthorized vehicle from the
6 parking space. Whenever any vehicle is removed by a parking enforcement officer or agency to a
7 storage lot, garage, or other safe parking space, the cost of such removal and parking shall be a lien
8 against the vehicle; or

9 (b) Charge the operator or other person in charge of the vehicle in violation with a noncriminal traffic
10 infraction, punishable as provided in section 50-39.

11 (3) Violation of F.S. § 316.1955 shall be punishable as provided in section 50-39.

12 **Sec. 50-39. Violations**

13 (a) Pursuant to F.S. § 318.14, any person cited for a violation of sections 50-37 and 50-38 of this article shall be
14 deemed to be charged with a noncriminal violation and shall be assessed a civil penalty according to the
15 following schedule:

16 (1) ~~Handicapped parking:~~ A \$250.00 fine for each uncontested violation of section 50-38 of this article or,
17 as determined by the county judge, up to \$250.00 for a contested violation of section 50-38 of this
18 article. Pursuant to F.S. § 318.18(6), the clerk of courts shall dismiss the ~~handicapped~~ parking citation if
19 the following items of proof are presented to the clerk:

20 a. Proof that the person committing the violation had a valid ~~handicapped-disabled~~ parking permit
21 or ~~handicapped~~ license plate for the cited vehicle on the issuance date of the citation;

22 b. A signed affidavit in accord with F.S. § 318.18(6); and

23 c. A \$5.00 dismissal fee.

24 (2) ~~A \$95.00 fine Ninety-five dollars~~ for a violation of any provision of section 50-37 of this article. Fines
25 and late payment penalty for violations of section 50-37 are to be distributed as follows.

26 (b) Each day any violation occurs or continues shall be a separate offense. For parking in excess of the time
27 authorized in a public parking space, each succeeding equal time period beyond that authorized as the
28 maximum time period for said parking place shall constitute a separate offense.

29 (c) The amount of any penalty specified in this section shall be increased by an additional 50 percent of the
30 specified amount if payment is not received by the clerk ~~within ten (10) days of the citation issuance prior to~~
31 ~~notice being mailed to the registered owner pursuant to subsection 50-41(3).~~

32 **Sec. 50-40. Issuance of city parking citations.**

33 (1) When any parking enforcement officer finds a vehicle in violation of the provisions of this article or signs
34 erected pursuant to the provisions of this article, ~~they~~ shall issue a parking citation to the vehicle by placing
35 said citation in a conspicuous place on the vehicle. Such parking citation form shall contain language
36 providing notice of the following:

37 (a) The type of violation and amount of penalty imposed by this article.

38 (b) The procedures to be followed in either paying said penalty or electing not to pay such penalty and
39 requesting a hearing before a county judge concerning the parking violation.

40 (c) The penalty for failure to comply with directions contained on the citation.

1 (2) The parking enforcement officer shall determine the registered owner of the vehicle for which a citation was
2 issued and shall complete the citation form. The original copy of the citation form shall be forwarded to the
3 city police department when completed for processing.

4 **Sec. 50-41. Payment of civil penalties and proceedings to enforce payment violations.**

5 (a) Any person issued a city parking citation, pursuant to sections 50-37 or 50-38, shall answer the citation by
6 either of the following procedures within ten days after the date of issuance of the citation.

7 (1) Payment of the penalty indicated on the citation may be remitted to the City of Marco Island, pursuant
8 to the directions on such citation; or

9 (2) A hearing may be requested by the person receiving such citation or the cited vehicle's registered
10 owner for the purpose of presenting evidence before a county judge concerning a parking violation.
11 Any person requesting a hearing shall execute a statement on a hearing request form indicating his/her
12 willingness to appear at such hearing at a time and place specified thereon. This hearing request will be
13 filed with the police department, who will schedule a hearing through the clerk of the courts.

14 Any person who requests a hearing and does not appear in accordance with said statement shall be
15 subject to contempt proceedings or to other such penalties as the court may, in its discretion, impose
16 to require compliance with this article.

17 (b) Pursuant to the provisions of F.S. § 316.1967, an election to request a hearing constitutes a waiver of the
18 right to pay the penalty indicated on the parking citation, and a county judge after said hearing may impose a
19 fine not to exceed \$100.00, plus court costs for each parking violation. However, an election to request a
20 hearing pertaining to a [handicap-disabled-accessible](#) parking violation constitutes a waiver of the right to pay
21 the penalty indicated on the parking citation, and a county judge after said hearing may impose a \$250.00
22 fine, plus court costs per violation.

23 (c) Upon receipt of a complete parking citation submitted by a parking enforcement officer, pursuant to sections
24 50-37 and 50-38, the police department shall notify the registered owner first listed on such citation of its
25 issuance if there has been no response to the citation pursuant to subsection (a)(1) of this section. Such
26 notice shall be sent by regular mail on the [fourteenth-14th](#) day after the citation was issued and shall inform
27 said registered owner concerning the nature and location of the parking violation and shall require payment
28 of the fine or attendance at a hearing at a time and place specified in such notice. Pursuant to the provisions
29 of F.S. § 316.1967, a county judge after said hearing should make a determination as to whether a parking
30 violation has been committed and may impose a fine not to exceed \$100.00, plus court costs, except for
31 handicap parking violations, for which a fine of up to \$250.00 may be imposed, plus costs. Any person upon
32 which service is obtained, pursuant to this section who does not appear at a hearing as directed by the
33 notice shall be subject to contempt proceedings or to such other penalties as the court may, in its discretion,
34 impose to require compliance with said notice.

35 **Sec. 50-42. Owner's liability for parking violations.**

36 (1) The owner of a vehicle is responsible and liable for payment of any parking ticket violation unless the owner
37 can furnish evidence that the vehicle was, at the time of the parking violation, in the care, custody or control
38 of another person. In such instances, the owner of the vehicle is required, within a reasonable time after
39 notification of the parking violation, to furnish to the appropriate law enforcement authorities the name and
40 address of the person or company who leased, rented or otherwise had the care, custody or control of the
41 vehicle. The owner of a vehicle is not responsible for parking ticket violations if the vehicle was, at the time,
42 stolen or in the care, custody or control of some person who did not have permission of the owner to use the
43 vehicle.

44 (2) At any hearing of the case involving illegal parking in which the owner of said vehicle is being tried under this
45 article, it shall be sufficient evidence upon which the court may rely to establish the name of the registered

1 owner of such vehicle if a law enforcement officer shall state under oath that he has made inquiry of the
2 department of highway safety and motor vehicles or office of the county tax collector and has been advised
3 by them of the identity of such registered owner. Otherwise, the court may defer the final determination of
4 such case until a certified record or appropriate certificate can be obtained from the office of the
5 department of highway safety and motor vehicles or the county tax collector's office indicating the
6 registered owner of the vehicle on the date in question.

7 **Sec. 50-43. Disposition of fines and forfeitures for parking violations; authorized costs.**

8 Except as otherwise provided in this section, all moneys received by the clerk of the county court as a result
9 of parking citation issued by a municipality shall be paid to that municipality as provided by Florida State Statute.

10 **Sec. 50-44. Impoundment.**

11 (a) The police chief or any police officer is authorized to provide for the removal of a vehicle to a vehicle storage
12 lot (or other place designated by the police chief):

- 13 (1) Where such vehicle is parked in a posted tow away zone;
- 14 (2) Where such vehicle constitutes an obstruction of traffic;
- 15 (3) Where such vehicle has been parked or stored without moving for a period exceeding 24 hours;
- 16 (4) Where such vehicle has been involved in an accident and the driver is unable to remove the vehicle;
- 17 (5) Where such vehicle is wrecked, dismantled, inoperative or in an obvious state of disrepair;
- 18 (6) When the driver of a vehicle is taken into custody by the police department and the vehicle would
19 thereby be left unattended upon a street;
- 20 (7) When removal is necessary in the interest of public safety because of fire, flood, storm or other
21 emergency reason;
- 22 (8) When any vehicle has been stolen or operated without the consent of the owner and located on public
23 or private property;
- 24 (9) When any vehicle displays illegal license plates or fails to display the current lawfully required plates
25 and is located upon any public street or other property open to the public for the purpose of vehicular
26 travel or parking;
- 27 (10) When any vehicle has been operated by a person, known or otherwise, who has failed to stop in the
28 case of a vehicle crash involving personal injury, impaired driving, or property damage in excess of
29 \$1,000.00;
- 30 (11) When the vehicle's owner is found to have three or more unpaid parking or traffic citations and is
31 located upon any public street or other property open to the public for the purpose of vehicular travel
32 or parking;
- 33 (12) When the vehicle is parked continuously in the same place for more than the permitted amount of
34 time as defined in section 50-37 and the vehicle remains in place for 12 consecutive hours after
35 issuance of a parking citation describing said violation;
- 36 (13) The vehicle is parked upon any public street or other property open to the public for the purpose of
37 vehicular travel or parking which has been declared a temporary or no parking zone due to a state of
38 the emergency proclamation issued by the City of Marco Island;
- 39 (14) Where such vehicle is parked in a fire lane;
- 40 (15) If a vehicle is removed pursuant to this section, the registered owner will be notified in writing within
41 five business days that the vehicle was towed and the procedure for reclaiming the vehicle. An

1 inventory receipt will be suitable for this purpose. The notification will be sent to the address on record
2 with the state department of highway safety and motor vehicles.

3 (16) The police department will provide the Collier County Communications Center with a full description of
4 the towed vehicle within 12 hours of impoundment. This information will be made available to the
5 applicable storage area upon their request.

6 (17) No vehicle impounded in an authorized storage area pursuant to this section shall be released there
7 from until the charges for towing the vehicle into the storage area and storage and administrative
8 charges have been paid. The charge for the towing or removal of any impounded vehicle and storage
9 charges shall be set by the city manager, which charges are to be based upon the actual cost of the
10 removal and storage of the vehicle, as may be set forth in the city's contract with the authorized
11 towing service, as well as an administrative fee set by the city manager.

12 (18) Any person seeking to release an impounded vehicle shall appear at the police department to furnish
13 satisfactory evidence of identity and ownership or right to possess. Proof of current insurance status
14 must also be shown. No vehicle may be released if there is an administrative, evidentiary or judicial
15 hold placed on said vehicle.

16 (19) No owner or operator shall remove an impounded vehicle from the place of storage without complying
17 with the above procedures. Possession of the vehicle which has been impounded and unlawfully taken
18 from the place of storage, by the owner or operator, shall constitute prima facie evidence that it was
19 removed by the owner or operator.

20 (20) No vehicle storage facility may release an impounded vehicle without written authorization by the
21 Marco Island Police Department to do so.

22 (b) The administrative fees to be charged by the municipality relative to the impoundment of vehicles as
23 authorized by this section are to be set by the city manager.

24 **Sec. 50-45. ~~Amount of parking fees~~Reserved.**

25 ~~All municipal parking violation fees shall be \$95.00 if paid within ten days with the exception of handicap fees~~
26 ~~which will be \$250.00.~~

27 **Chapter 52 UTILITIES**

28 **ARTICLE I. IN GENERAL**

29 **Secs. 52-1—52-30. Reserved.**

30 **ARTICLE II. UTILITY OPERATION AND REGULATIONS**

31 **DIVISION 1. GENERALLY**

32 **Sec. 52-31. Findings.**

33 It is hereby ascertained, determined and declared that:

34 (1) The City of Marco Island, Florida, in November, 2003, acquired all potable and nonpotable water
35 supply, treatment, storage and distribution systems and wastewater collection, transmission,

1 treatment, disposal, reuse and reclaimed water systems located in the city and adjacent
2 unincorporated areas of Collier County and owned by Florida Water Services Corporation ("FWSC"),
3 together with any future extensions or expansions thereof (the "FWSC System").

4 (2) The City of Marco Island, Florida, possesses and/or will contract for the technical and professional
5 capacity to own, operate, maintain and administer the FWSC System and is capable of providing other
6 services set forth in F.S. § 180.06.

7 (3) The City of Marco Island desires to avail itself of the provisions and benefits of F.S. ch. 180, and to
8 create a zone or area and prescribe reasonable regulations requiring all persons or entities living or
9 doing business within said area to connect, when available, with any water, wastewater, or re-use
10 water system or alternative water supply system, including, but not limited to, reclaimed water;
11 aquifer storage and recovery, and desalination systems.

12 (4) The service area created includes the property lying within the corporate boundaries of the city and
13 areas in adjacent unincorporated areas of Collier County previously served directly by the FWSC
14 system. The Key Marco (CDD) area, a certificated area, is served potable water by the county pursuant
15 to a bulk purchase agreement with FWSC and is now incorporated within the city's limits. The service
16 area also includes adjacent areas currently with systems owned and operated by Collier County,
17 including parts of the Goodland Area, that is provided by the city upon the execution of an interlocal
18 agreement(s) between the city and Collier County. The areas lying beyond the corporate limits of the
19 city are described on figures "1A" and "1B" and shall be generally referred to herein as "adjacent
20 service area." This article does not amend any boundary of any utility service area, nor affect any utility
21 service agreement. The city shall not provide any utility service listed in subsection (a), above, into any
22 Collier County Water-Sewer District area except to the extent authorized by the county.

23 (5) The service area described herein possesses long-range capital improvements adequate to protect the
24 health, safety and welfare of the persons or corporations, living or doing business therein in the
25 following respects, among others:

- 26 a. The cleaning or environmental improvement of bodies of water for sanitary purposes;
- 27 b. The providing of a water supply for domestic, municipal or industrial uses;
- 28 c. The collection and disposal of sewage including wastewater reuse and other liquid wastes;
- 29 d. The construction of reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping
30 stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection
31 systems, treatment and disposal works incidental;
- 32 e. The construction of such other buildings and facilities as may be required to properly and
33 economically operate and maintain the foregoing facilities and utility systems for the fulfillment
34 of the purposes of F.S. ch. 180.

35 (6) There exists a need for the provision and enhancement of the services and facilities described in
36 subsection e. above to the residents, landowners and other persons and entities living in and
37 conducting business within the city and in the adjacent service area.

38 (7) It is in the best interest of the citizens of the City of Marco Island, Florida, and adjacent service area for
39 the city to provide the above enumerated services for the orderly growth of the city and the adjacent
40 service area in an efficient manner for their collective health, safety and welfare both now and in the
41 future.

42 **Sec. 52-32. Declaration.**

43 The City of Marco Island hereby declares there to exist an urban service area within which the city is engaged
44 in certain activities authorized by F.S. § 180.06, such activities shall specifically include the duty, obligation, power
45 and authority to acquire, obtain, construct, maintain, provide, collect, distribute, dispose of, regulate, finance and

1 charge for the supply of potable and nonpotable water, treatment, storage, or distribution systems, facilities and
2 associated services and wastewater collection, transmission, treatment, disposal, reuse or nonpotable water
3 systems, facilities, and associated services to customers and land served by the FWSC system, or any future
4 expansion thereof. Such urban service area shall be composed of and include the area located within the city's
5 corporate limits and the adjacent service area. By declaring the existence of this urban service area, the city
6 proposes and intends to exert its influence and control as the general purpose local government regarding the
7 services to be provided through the enactment of this article to the exclusion of the control of any other local
8 government. This declaration is provided in conformance with F.S. ch. 180 and is necessary for the promotion of
9 the health, safety and welfare of the public. For those systems currently owned and operated by Collier County,
10 such control and ownership shall remain with Collier County unless such control and/or ownership is transferred to
11 the city through an interlocal agreement.

12 **Sec. 52-33. Amendment of the urban service area boundary.**

13 It is recognized that future conditions may exist from time to time, which would necessitate amending the
14 boundaries of the urban service area to include more or less area. Such amendments shall be made by the city
15 council in accordance with F.S. § 180.02.

16 **Sec. 52-34. Provision of reasonable regulations.**

17 The city may prescribe by subsequent ordinance or amendment hereto, adopted in accordance with F.S. ch.
18 180, reasonable regulations regarding all persons or entities living or doing business within the urban service area
19 regarding their connection, when available, with any service or utility facilities constructed, provided, operated or
20 to be constructed, provided or operated under provisions of F.S. ch. 180.

21 **Sec. 52-35. Reservation.**

22 The city reserves the right to determine the manner, location, degree and extent of any utility service
23 extensions within the urban service area by subsequent ordinance or resolution adopted in accordance with the
24 procedures set forth in F.S. ch. 180.

25 **Sec. 52-36. Purpose.**

26 The purposes of declaring an urban service area for the City of Marco Island and the surrounding area by this
27 article are as follows:

- 28 (1) To prepare for the city's proposed acquisition of the FWSC system and to provide for long-range capital
29 improvements for the betterment of the health, safety and welfare of the public as a part of the city's
30 long-range planning activities within the city and adjacent service area.
- 31 (2) To clearly identify an area for long range capital improvements relating to water and wastewater utility
32 facilities and services.
- 33 (3) To provide for the efficient extension of municipal or urban services upon acquisition by the city of the
34 FWSC system.
- 35 (4) To work with Collier County as the adjacent service provider and clearly identify that, upon acquisition
36 of the FWSC system, the city will provide water and wastewater related services and facilities within
37 the urban service area defined herein and avoid the duplication of such services, and to provide
38 opportunities for the transfer of ownership and/or operation of systems between Collier County and
39 the city upon execution of an interlocal agreement between Collier County and the city.

1 **Sec. 52-37. Absence of mortgage revenue certificates or debentures.**

2 There are currently no mortgage revenue certificates or debentures issued by the city to finance any water
3 or wastewater related project within the urban service area; and, upon the city's acquisition of the FWSC system,
4 the lien of any indebtedness owed by FWSC relating to the FWSC system will be paid, defeased or released as it
5 relates to the FWSC system and the urban service area defined herein.

6 **Sec. 52-38. Annual rate adjustment by index.**

7 Effective and commencing on October 1, 2004, and for each annual anniversary thereafter, there shall be an
8 automatic rate adjustment for monthly water and wastewater usage fees, provided that, initially, such adjustment
9 shall be subject to customer notice and council meeting as required by law. Rate adjustment shall be based upon
10 and equal to the then-current percentage increase of the Florida Public Service Commission Deflator Index (the
11 "deflator index"). In the event that the deflator index exceeds three percent, the proposed increase in water and
12 wastewater rates shall be presented to city council of the city (the "city council") for approval by resolution. The
13 automatic rate adjustment provided herein shall not preclude the city council from increasing or decreasing rates
14 as deemed necessary or appropriate at any time by resolution.

15 **Sec. 52-39. Current customers.**

16 Prior to acquisition in November 2003, the city provided wastewater services to approximately 1,200
17 accounts billed on flat monthly rates. Those customers with accounts established prior to the effective date of the
18 acquisition of the water and wastewater systems from Florida Water Services, Inc. shall continue to be billed on
19 that established schedule which is on file in the City Clerk's Office, included as exhibit "A". The city reserves the
20 right to modify the monthly rates that these original customers are charged.

21 **Sec. 52-40. General provisions.**

- 22 (a) *Compliance.* All water, wastewater, and/or reclaimed water service users are required to comply with all
23 regulations and ordinances of the city governing such use.
- 24 (b) *Responsibility of city.* The city shall only be responsible for a good faith effort to provide reasonable water,
25 wastewater, and reclaimed water service. Water service is subject to the continuing availability of raw water
26 supply, and water, wastewater, and reclaimed water service is subject to the availability of the respective
27 treatment plants capacity and all requirements of the law.
- 28 (c) *Service not guaranteed.* Location within the service areas of the city does not guarantee water or wastewater
29 service. In the event that service or service capacity is not available for any reason, the property affected
30 may be removed by ordinance from the service area without any liability attaching to the city.
- 31 (d) *Promulgation and enforcement of procedures and regulations.* The city manager shall have the power to
32 promulgate procedures and regulations relative to the water, wastewater, and reclaimed water system. Such
33 procedures and regulations shall be provided in the utilities department manual of standards and
34 specifications. Said manual will be adopted by city council and amended when necessary, by resolution.
35 Water, wastewater, and reclaimed water construction improvements, rehabilitation, and repairs shall meet
36 or exceed the requirements of the manual.

37 **Sec. 52-41. Definitions.**

38 The following words and phrases as used in this article shall have the following meanings. [These definitions](#)
39 [are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of](#)
40 [conflict.](#)

1 *Address* means the "house number" (a numeric or alphanumeric designation) that, together with the street
2 name, describes the physical location of a specific property. This includes "rural route" numbers but excludes post
3 office box numbers. If a lot number in a mobile home park or similar community is used by the U.S. Postal Service
4 to determine a delivery location, the lot number shall be the property's address. If a lot number in a mobile home
5 park or similar residential community is not used by the U.S. Postal Service (e.g., the park manager sorts incoming
6 mail delivered to the community's address), then the community's main address shall be the property's address. If
7 a property has no address it shall be considered "even-numbered".

8 *Biochemical oxygen demand (BOD)* means the quantity of oxygen utilized in the biochemical oxidation of
9 organic matter under standard laboratory procedure in five days at 20 degrees Celsius, expressed in milligrams per
10 liter (mg/l).

11 ~~City means the City of Marco Island, a Florida municipality. As used interchangeably, it~~ means the city, the
12 city utility department, and the water, wastewater, and reclaimed water systems owned and operated by the city.

13 *Companion meter* means a meter used to record a single-family residential user's non-sewer related usage
14 also known as outdoor usage. It is used to determine the amount of water that is not entering into the sewer
15 system and thus is not subject to the monthly wastewater consumption charge. Connection and meter installation
16 is regulated by the Florida Department of Environmental Protection Code, utilities department manual of
17 standards and specifications (also known as Marco Island Utilities Technical Standards Manual), the Florida
18 Building Code and Marco Island Land Development Code.

19 *Cross connection* means any physical arrangement whereby a public water supply is connected directly or
20 indirectly with any other water supply system, wastewater, drain, conduit, pool, storage reservoir, plumbing
21 fixture, or any other device, facility or system which contains or may contain contaminated water, sewage, waste
22 material, or other material or substance of unknown or potentially unsafe quality which may be capable of
23 imparting contamination to the public water supply as a result of backflow. Bypass arrangements, jumper
24 connections, changeable devices, or other devices through which or because of which backflow could occur are
25 deemed to constitute cross connections.

26 *Customer* means any person, firm, corporation, or government entity, using or receiving water, reclaimed
27 water, or wastewater collection services from the city.

28 ~~Department~~ means the [city Marco Island Utilities Department of the City of Marco Island](#).

29 ~~Director~~ means the director, ~~or designated representative,~~ in charge of the department, who is hereby
30 invested with the authority and responsibility to administer and operate the water, wastewater, and reclaimed
31 water systems of the city, and implement and enforce the provisions of this article.

32 *Discontinuation of service* means the cessation of a service.

33 *Engineering manager* means the individual or firm who approves technical specifications and drawings
34 relating to the installation, construction, and rehabilitation of city utilities.

35 *Equivalency factor* means a factor used to represent the relative relationship between service connections
36 based on water meter size. The equivalency factor is determined by dividing the continuous flow criteria per meter
37 size by the continuous flow criteria of a five-eighths-inch meter as published by the American Water Works
38 Association, and incorporated in F.A.C. 25-30.055.

39 *Existing landscaping* means any landscaping which has been planted and in the ground for more than 90
40 days.

41 *Grease* means a material either liquid or solid, composed primarily of fat or oil from animal or vegetable
42 sources and is synonymous for the intent of this article with the terms fats, oils and grease.

43 *Landscaping* means shrubbery, trees, lawns, sod, grass, groundcovers, plants, vines, ornamental gardens,
44 and such other flora, not intended for resale, which are situated in such diverse locations as residential landscapes,
45 recreation areas, cemeteries, public, commercial, and industrial establishments, public medians, and rights-of-way
46 except athletic play areas as defined in F.A.C. 40E-24.101(2).

1 *Living unit* means any place of abode, which is suitable for permanent or transient family or individual
2 residential use. Each such living unit shall be considered as single and separate.

3 *Lot* means any place, division or parcel of land.

4 *Master control valve* means the manually operated valve, located immediately downstream after the meter,
5 which controls total flow to the customer's property.

6 *Multifamily residence* means all places of dwelling other than single-family residences and duplexes having
7 three or more living units.

8 *New landscaping* means any landscaping which has been planted and in the ground for 90 days or less.

9 ~~*Persons* means any individual, firm, company, association, society, partnership, corporation, or group.~~

10 *Public wastewater systems* means a central sanitary sewer collection system owned and operated by the City
11 of Marco Island or owned and operated by a private utility company that has a franchise granted by the Collier
12 County Water and Wastewater Authority to provide and operate a sewer collection and transmission system
13 within the legal boundaries of the City of Marco Island.

14 *Reclaimed water* means water, treated wastewater or wastewater effluent that has been appropriately
15 treated and which, as a result of the treatment of wastes, is suitable and usable for direct beneficial uses or a
16 controlled use by and for public agricultural, commercial, residential, or industrial developments, projects or
17 purposes including, but not limited to, irrigation purposes in green areas of developments or other appropriate
18 areas; water that has received at least secondary treatment and is reused after flowing out of a wastewater
19 treatment plant.

20 *Residence with guesthouse occupying the same premises* means a residence with a guesthouse occupying the
21 same premises shall be considered as a single-family residence if served by a single water connection and meter.

22 *Sanitary sewer* is used interchangeably with sewer line and wastewater line. Sanitary sewer means a pipe
23 which carries sewage and to which stormwaters, service waters, and groundwaters are not intentionally admitted.

24 *Service line* means that conduit for utility service directly after the meter or delivery box fittings.

25 *Significant industrial user* means any individual user of the city's wastewater disposal system who:

- 26 (1) Has a discharge flow of 25,000 gallons or more per average workday; or
27 (2) Has a flow greater than five percent of the flow in the city's wastewater treatment system; or
28 (3) Has in his wastes toxic pollutants as defined pursuant to federal or state statutes and rules; or
29 (4) Is found by the city, the state control agency, or the U.S. Environmental Protection Agency (EPA) to
30 have significant impact, either singly or in combination with other contribution industries, on the
31 wastewater treatment system, the quality of sludge, the system's effluent quality, or air emissions
32 generated by the system.

33 *Single-family residence or single-family dwelling* means ~~a building containing only one~~ ~~any single-family~~
34 ~~dwelling unit [unattached to any other dwelling unit?] and also includes each dwelling unit in a duplex (two-family~~
35 ~~dwelling); interchangeable with the word household. In the case of a duplex, each unit shall be regarded as a~~
36 ~~single-family dwelling.~~

37 *System* is used interchangeably with utility system. System means all water, wastewater, and reclaimed
38 water mains, transmission lines, storage and pumping facilities, valves, service connections, meters, and treatment
39 facilities.

40 *Urban service area* means the geographic area served by the city utilities as defined by Ordinance No. 03-13,
41 as amended.

42 *Utility agreement* means a written agreement between the city and a property owner that establishes the
43 terms and conditions pursuant to which the city will provide water, wastewater, and/or reclaimed water service.

1 *Wasteful and unnecessary* means allowing water to be dispersed without any practical purpose to the water
2 use; for example, excessive landscape irrigation, leaving an unattended hose on a driveway with water flowing,
3 allowing water to be dispersed in a grossly inefficient manner, regardless of the type of water use; for example,
4 allowing landscape irrigation water to unnecessarily fall onto pavement, sidewalks and other impervious surfaces;
5 allowing water flow through a broken or malfunctioning water delivery or landscape irrigation system.

6 *Wastewater* is used interchangeably with sanitary sewage and means a combination of any type of water-
7 carried waste from residences, business buildings, institutions, industrial establishments, and any and all customer
8 facilities together with such ground, surface, and stormwaters as may be present, but does not mean nor include
9 hazardous or toxic waste.

10 **Sec. 52-42. Illegal utility system connections.**

- 11 (a) It shall be unlawful to make or cause to be made any connection with the city water, wastewater, and/or
12 reclaimed water system for providing water, wastewater, or reclaimed water service to users; to use or be
13 supplied with water or reclaimed water from the city without the water passing through a meter provided by
14 the city; or in a manner so as to serve or connect any existing or additional dwelling units or commercial
15 developments without paying all systems development charges, connection user fees, and all other required
16 charges for said additional dwelling units or commercial development; in a manner so as to enable a user to
17 discharge into the wastewater collection system of the city without paying all system development charges,
18 connection fees, user fees, and all other required charges for said wastewater service; or to make a
19 connection in a manner that bypasses the proper recording of water usage passing through a meter or series
20 of meters provided by the city or the user whether the meter(s) is (are) located within the easement or on
21 the user's property.
- 22 (b) Any person who is found by the city to have made or caused to have made any connection prohibited by
23 paragraph (a) above shall be required by the city, in addition to any penalties imposed by this Code for
24 violation of the above, to pay the following to the city:
- 25 (1) An amount equal to three times the unpaid plant capacity fees, connection fees and utility service
26 charges imposed by the city for such connection and water and/or wastewater service provided. Said
27 fees and charges shall be computed using the rates in effect at the time of the discovery of said illegal
28 connection. For residential connections, the utility service charges shall be estimated by using the
29 average water, wastewater, and/or reclaimed water use for similar types and sizes of residential users
30 during the entire period from the date a certificate of occupancy was issued for any dwelling unit found
31 illegally connected to the system until the date of collection. For commercial connections, water,
32 wastewater, and/or reclaimed water service charges shall be estimated by using the average water
33 and/or wastewater use for similar types and sizes of commercial users during the entire period from
34 the date a certificate of occupancy was issued for any portion of the project served until the date of
35 collection.
- 36 (2) All costs of investigation and collection, including time, labor, material, attorneys' fees, court costs, and
37 professional fees of any kind necessitated to determine that such illegal connection existed.
- 38 (c) All persons making or causing said connection to be made and/or receiving the benefit of the utility services
39 shall be jointly and severally liable for the payment of the above-described amounts to the city. Water
40 service shall be discontinued to such persons, firms, contractors, corporations, associations or partnerships
41 until said amount is paid in full. In the event that any corporation is found to be liable for such sums and is
42 not solvent or is without assets to make appropriate payment, the individual officers, directors and
43 shareholders of such corporation shall be liable for such payment to the city.

44 **Sec. 52-43. Easements, planting shrubbery therein.**

45 Any persons planting shrubbery, trees, or other plants in dedicated utility easements within the city does so
46 at their own peril. Tree plantings or shrubbery shall not be placed so as to destroy any water, reclaimed water, or

1 wastewater utility lines. Whenever plantings obstruct the ingress and/or egress for the purposes of the easement
2 they shall be removed upon request by the city, and in the event of failure by the owner to so move them, the city
3 shall do so and the expense of same charged to the property owner. When plantings placed over utility lines cause
4 damage to the utilities systems, the property owner shall bear the cost of repair or replacement of the damaged
5 utilities.

6 **Sec. 52-44. Connections.**

- 7 (a) The owner of each lot or parcel of land within the city's exclusive urban service area or legal boundaries,
8 upon which lot or parcel of land any improvement is now situated or shall hereafter be situated, shall
9 connect or cause such improvement to be connected with the public water, wastewater, and/or reclaimed
10 water facilities and use such facilities within 90 days following notification to do so. All such connections shall
11 be made in accordance with the utilities department manual of standards and specifications.
- 12 (b) All connections to the water, wastewater, and reclaimed water system shall be approved by the city
13 manager, or his designee. The fee to connect for utility services shall consist of the capital facilities fee
14 (impact fee), tapping fee, meter or delivery box cost, connection charges, hydrants, lift stations, equipment,
15 and when required, plan review fee, and line extensions. Such fees shall be paid upon issuance of a building
16 permit unless otherwise provided by a utility agreement.
- 17 (c) No person, unless expressly authorized by the city manager or designee, shall tamper with, work on, or in
18 any way alter or damage any part of the utility system. Tampering or work shall include, but is not limited to,
19 opening or closing of valves, turning on hydrants, or causing of any water to flow from the system.
- 20 (d) Connections to the city's water, wastewater, and/or reclaimed water system for any purpose whatsoever are
21 to be made only by city employees or contractors in full approval of the director. No connection of any
22 description, temporary or otherwise, is permitted on the customer's installation between that portion of the
23 customer's installation for domestic water and reclaimed water service and that portion of the customer's
24 installation for fire protection purposes. That portion of the customer's installation for domestic water and
25 reclaimed water service shall be metered. The customer's fire protection service shall be installed with a
26 detector check type of meter or any metering device approved by the director. No temporary pipes, nipples,
27 or connections are permitted except during construction as authorized by the director, and under no
28 circumstances are connections allowed which may permit water to by-pass the meter or metering
29 equipment.

30 **Sec. 52-45. Utility agreements.**

31 The city manager shall be authorized to negotiate and execute utility agreements for the provision of
32 water, wastewater, and/or reclaimed water. The utility agreement may provide for the allocation of service
33 capacity, responsibilities for the construction and installation of utility systems, a schedule of payments for
34 capacity charges, the obligation to provide easements, the obligation by a developer to install systems at its
35 expense, inspections, transfer of reserved service capacity, payment of service charges, and other provisions as
36 may be required.

37 **Sec. 52-46. Extensions.**

38 The city manager is authorized to extend utility mains and provide utility service to customers within the
39 boundary of the urban service area.

40 **Sec. 52-47. Powers and authority of inspectors.**

- 41 (a) Duly-authorized employees of the city bearing proper credentials and identification shall be admitted with
42 permission from proper authorities to all properties for the purposes of inspection, observation,

1 measurement, sampling and testing pertinent to discharge to the wastewater system or to distribution of the
2 water system in accordance with the provisions of these regulations.

3 (b) While performing the necessary work on private properties referred to herein, the authorized employees of
4 the city shall observe all safety rules applicable to the premises established by the company, and the
5 company shall, to the extent permitted by law, be held harmless for injury or death to the employees, and
6 the city shall, to the extent permitted by law, indemnify the company against loss or damage to its property
7 by city employees and against liability claims and demand for personal injury or property damage asserted
8 against the company, except as such may be caused by negligence or failure of the company to maintain safe
9 conditions as required by these regulations.

10 (c) Duly-authorized employees of the city bearing proper credentials and identification shall be permitted to
11 enter all private properties through which the city holds an easement for the purposes of, but not limited to,
12 inspection, observation, measurement, sampling, repair, and maintenance of any portion of the water
13 and/or wastewater facilities lying within said easement. All entry and subsequent work, if any, on said
14 easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the
15 private property involved.

16 **Sec. 52-48. Authority to disconnect service.**

17 The city reserves the right to terminate water and wastewater disposal services and disconnect a customer
18 from the system when:

19 (1) Acids, grease, oil, or chemicals damaging to the wastewater lines or treatment process are released
20 into the wastewater causing rapid deterioration of these structures or interfering with proper
21 conveyance and treatment of wastewater;

22 (2) A governmental agency informs the city that the effluent from the wastewater treatment plant is no
23 longer of a quality permitted for discharge into a watercourse, and it is found that the customer is
24 delivering wastewater to the city's system that cannot be sufficiently treated or requires treatment
25 that is not provided by the city as normal domestic treatment; or

26 (3) The customer:

27 a. Discharges industrial waste or wastewater that is in violation of the permit issued by the
28 approving authority;

29 b. Discharges wastewater at an uncontrolled, variable rate in sufficient quantity to cause an
30 imbalance in the wastewater treatment systems;

31 c. Fails to pay monthly bills for water and sanitary wastewater services when due; or

32 d. Repeats a discharge of prohibited wastes into the public wastewater system.
33

34 **Sec. 52-49. Meters.**

35 (a) All new connections to the water and reclaimed water system shall be individually metered to include all
36 residential, business, and industrial premises. Master meters (serving more than one residential, business, or
37 industrial premises) may be permitted upon the expressed approval of the city manager.

38 (b) Meters shall be placed just within the property line at the right or left boundary at the nearest point to the
39 tap-in main or as otherwise may be designated in the utilities department manual of standards and
40 specifications or authorized by a utility agreement. The meter and service valve shall always remain
41 accessible to utilities personnel for reading, inspection, testing, and maintenance. Landscape plants and trees
42 shall not hinder visual identification or direct physical access to the meter. Landscape shrubs and

- 1 groundcover shall remain at least 18 inches from the edges of the meter box. Trees shall not be planted
 2 within four feet of the meter. The property owner shall ensure that the meter is accessible.
- 3 (c) If a customer requests a test of the meter to determine accuracy, the city will charge a testing fee as
 4 provided in the utility rate ordinance. Whenever a tested meter is found to register fast, in excess of
 5 tolerance provided in the utilities department manual of standards and specifications, the director shall
 6 return the fee, replace the meter at no cost to the customer, and issue a credit for volume charges for the
 7 amount billed in error for the most recent billing cycle.
- 8 (d) In no event shall a refund or credit for utility service overcharges be granted for a period in excess of six
 9 months preceding.
- 10 (e) The property owner and/or customer shall be responsible for the installation and maintenance of a master
 11 control valve immediately downstream of the meter to isolate the customer's water system.

12 **Sec. 52-50. Rates; security deposits.**

- 13 (a) Rate schedules for water, wastewater, reclaimed water usage, fees, and charges shall be adopted by city
 14 council through a utility rate ordinance. Such ordinance may be amended by the adoption of a resolution by
 15 city council.
- 16 (b) The city reserves the right to establish differential rate structures for customers within the urban service
 17 area, in which case there shall not be imposed an additional surcharge of 25 percent as provided for in F.S.
 18 ch. 180. The city reserves the right to use the same rate structure for all customers within the urban service
 19 area and reserves the right to impose an additional surcharge as provided for in F.S. ch. 180.
- 20 (c) Security deposits. For utility accounts, security deposits are required as follows:

| Meter Size | Deposit Amount |
|-----------------------------------|-------------------------------|
| $\frac{3}{8}$ " x $\frac{3}{4}$ " | \$125.00 |
| $\frac{3}{4}$ " | 150.00 |
| 1" | 200.00 |
| 1 $\frac{1}{2}$ " | 300.00 |
| 2" | 450.00 |
| 3" and larger | As determined by the director |

- 21
- 22 (1) For accounts in which the name of the account is the same as the owner, the deposit may, at the
 23 discretion of the city, be waived upon presentation by the customer of a statement from a previous
 24 utility verifying a history of timely payments by the customer.
- 25 (2) For accounts in which the name of the account is the same as the owner, and who make a deposit prior
 26 to receiving service, the deposit may be refunded after 12 months without a delinquent payment.
- 27 (3) Whenever service is discontinued, said deposit shall be returned to the customer after first deducting
 28 all outstanding charges for service. Where any outstanding charges exceed the amount of the deposit
 29 the customer is liable for settlement of said charges under all applicable codes, statutes, laws, and
 30 ordinances, and payment of all costs incident to the enforcement thereof.
- 31 (4) At the discretion of the director, the city may require a deposit or increase the deposit for any
 32 customer who is delinquent three or more times.
- 33 (5) All deposits shall accrue interest as required by Florida Statutes.
- 34 (d) Water rate structure. The rate structure for water service as set forth in the utility rate ordinance is
 35 comprised of two distinct elements. Those elements and their definitions are:

- 1 (1) *Monthly base charge.* This is the cost of having the system in place and prepared to serve the
2 customer. This charge is designed to recover all those capital expenses that are not recovered from
3 separate charges and the debt service to pay the bond issues.
- 4 (2) *Monthly consumption charges.* This is the cost of providing the water, such as chemicals, electricity,
5 labor and other related costs. This cost is variable and depends on consumption.
- 6 (e) Wastewater rate structure. The rate structure for wastewater service is comprised of two distinct elements.
7 Those elements and their definitions are:
- 8 (1) *Monthly base charge.* This is the cost of having the system in place and prepared to serve the
9 customer. This charge is designed to recover all those capital expenses that are not recovered from
10 separate charges and the debt service to pay the bond issues.
- 11 (2) *Monthly consumption charge.* This is the cost of providing for the collection and treatment of sewage
12 such as chemicals, electricity, labor and other related expenses. This charge is variable and depends on
13 consumption.
- 14 (3) *Fees.* The city may adopt charges and fees which may include:
- 15 a. Fees for reimbursement of costs of setting up and operating the city's pretreatment program;
16 b. Fees for monitoring, inspection, and surveillance procedures;
17 c. Fees for reviewing accidental discharge procedures and construction;
18 d. Fees for permit applications;
19 e. Fees for filing appeals;
20 f. Fees for consistent removal (by the city) of pollutants otherwise subject to federal pretreatment
21 standards; and
22 g. Other fees as the city may deem necessary to carry out the requirements contained herein.
- 23 (4) *Surcharge for abnormal strength waste discharge.* Abnormal strength wastes are those that do not
24 meet the limitations set forth in this article.
- 25 a. Computation. The surcharge in dollars shall be computed by multiplying the total milligrams per
26 liter (mg/L) of biochemical oxygen demand (BOD) and suspended solids above 500 mg/L times
27 the metered water used during the billing period in millions of gallons times a treatment
28 surcharge factor. The surcharge factor shall be derived annually from the following formula:
29
$$\text{Surcharge factor} = \text{Cost of treatment per million gallons} \times 500.$$
- 30 Where cost of treatment per million gallons equals operational costs of the city sewage
31 treatment plant(s) for the preceding fiscal year (including pro rata administrative costs) divided
32 by the total sewage flow through all plants in millions of gallons. Five hundred equals maximum
33 normal BOD plus suspended solids content expressed in milligrams per liter. The surcharge in
34 dollars for fats, waxes, grease, oil and solvent-soluble substances shall be computed by
35 multiplying the total fats, waxes, grease, oil, and solvent-soluble substances above the legal
36 limits as set forth in this section times the metered water used during the billing period in
37 millions of gallons times the treatment surcharge factor.
- 38 b. These fees relate solely to the matters covered by these regulations and are separate from all
39 other fees chargeable by the city.
- 40 (f) Customer charge. The rate structure as set forth in the utility rate ordinance is comprised of one element
41 with the following definition:
- 42 Monthly customer charge base fee. This monthly base charge recovers the costs associated with meter
43 readings, billings, postage and related expenses and is charged on every bill issued by the city.

- 1 For accounts in which both metered water service and wastewater service is obtained directly from the city,
2 and at the discretion of the director, this customer charge base fee may be reduced upon verification that
3 the same name is used on both the water service and wastewater service accounts and that both services
4 are issued on the same billing statement created and sent by the city.
- 5 (g) Reclaimed water rate structure. The rates for use of the city's reclaimed water system shall be based on a
6 charge per 1,000 gallons as provided in the utility rate ordinance.
- 7 (h) Bulk or wholesale water, wastewater, or reclaimed water agreements and rate structure. Agreements and/or
8 rate structures may provide for the provision or receipt of bulk or wholesale water, wastewater, or reclaimed
9 water services to or from private utilities, governments, or private entities.

10 **Sec. 52-51. Billing for water, wastewater, and reclaimed water service.**

- 11 (a) Billing shall begin upon installation of the water meter, reclaimed water meter, connection to the
12 wastewater system, or 90 days following notification of the availability of wastewater or reclaimed water
13 service, whichever occurs first.
- 14 (b) All accounts shall be billed on a monthly basis. Bills are due when rendered and delinquent 21 days
15 thereafter. Bills unpaid after 30 days of being rendered shall be assessed a delinquent fee equal to five
16 percent of the unpaid balance. Service may be discontinued when delinquent for nonpayment of bills. The
17 city reserves the right to place liens on property due to nonpayment of bills.
- 18 (c) Errors in billing or meter reading should be reported promptly to the customer service office, so as to
19 facilitate the immediate correction of such bill.
- 20 (d) When water, wastewater, and/or reclaimed water services are provided or made available, payment of the
21 services shall be made concurrently. In the event partial payment is received, such partial payment shall be
22 applied first to penalty, interest and miscellaneous fees component of the total amount due (if any), next to
23 the wastewater component of the total amount due, next to the reclaimed water component (if any), and
24 lastly to the water component. The city may discontinue service for nonpayment of any portion of the
25 service bill.
- 26 (e) Whether occupied or unoccupied, all existing structures, at the earlier of connection to the city's water,
27 wastewater, and/or reclaimed water system or 90 days following notification of the availability of
28 wastewater service, shall incur a monthly base charge unless such building is destroyed, condemned, or
29 demolished.
- 30 (f) Whenever a customer discontinues service or vacates a dwelling or structure, the account will automatically
31 revert to property owner of record and billing will resume.

32 **Sec. 52-52. Reinstatement following discontinued service.**

- 33 (a) When service has been discontinued for nonpayment of bills, service will be restored upon payment of
34 unpaid bills, plus a service fee as set forth in the rate ordinance. Said service fees shall also be payable in the
35 event the city attempts to restore service but is unable to do so due to meter obstruction.
- 36 (b) The service line gate valve or curb stop valve may be locked in the off position or the meter removed from
37 the premises. The monthly base facility charges shall continue. Should an applicant at a later time request
38 renewal of service to said premises, service will be restored upon full payment of all bills due for service to
39 the premises at the time of discontinuance and a reinstatement charge.
- 40 (c) Where service has been disconnected for a violation of an ordinance or regulation, such service shall not be
41 reconnected until the city manager, or his designee, receives adequate assurances and guarantees that such
42 a violation will not recur.

43 **Secs. 52-53—52-63. Reserved.**

1 *DIVISION 2. WATER*

2 **Subdivision A. In General**

3 **Sec. 52-64. Water service.**

- 4 (a) *Private water systems.* It shall be unlawful for any person to connect directly or indirectly any private water
5 supply or system of pipes or connections thereof, with any part or pipes or other connection to the city
6 water system which will permit directly or indirectly any intermingling of water from any other source with
7 that of the city water system.
- 8 (b) *Public water system connection required.* Any lot within 200 feet of the city water system and within the
9 city's urban service area shall be required to connect to the city water system.

10 **Sec. 52-65. Materials for water transmission and distribution.**

11 The materials and construction of water transmission and distribution systems shall be in accordance with
12 the established design criteria and procedures, required material specifications, and construction procedures as
13 described in the utilities department manual of standards and specifications.

14 **Subdivision B. Conservation Landscape Irrigation Regulations**

15 **Sec. 52-66. Water conservation and shortages—Definitions.**

16 For purposes of this subdivision, the following terms, phrases, words and their derivations shall have the
17 meanings given herein. [These definitions are supplemental to the definitions in sections 52-41 and 1-2 of this](#)
18 [code.](#)

19 *District* means the South Florida Water Management District (SFWMD).

20 ~~*Enforcement officer* means any authorized agent or employee of the city whose duty it is to enforce the city's~~
21 ~~codes and state statutes.~~

22 *Impervious surfaces* means any surfaces that do not allow penetration of water, including, but not limited to,
23 paved or concrete roads, paved or concrete sidewalks, paved or concrete driveways, paved or concrete parking
24 lots, or highly compacted areas including shell or clay.

25 *Irrigation* means the application of water by means other than natural precipitation.

26 *Irrigation systems* means equipment and/or devices which deliver water to landscaping being irrigated,
27 including, but not limited to, pumping stations and controls, control structures, ditches, public or private wells,
28 piping, hoses, valves, fittings, and emitters.

29 ~~*Landscape* (see definition in section 522-41) means all residential, commercial, institutional, industrial, and~~
30 ~~governmental areas which are considered as lawns or ornamentally planted, including, but not limited to, sod,~~
31 ~~grasses, turf, ground covers, flowers, shrubs, trees, mulch, hedges, and other similar plant materials.~~

1 *Low volume hand-watering* means watering by one hose attended by one person, fitted with a self-canceling
2 or automatic shutoff nozzle.

3 *Low volume irrigation systems* means the use of equipment and devices specifically designed to deliver a
4 volume of water consistent with the water requirement of the plant being irrigated and which delivers the water
5 with a high degree of efficiency directly to the root zone of the plant.

6 *Low volume mobile equipment washing* means the washing of mobile equipment with a bucket and sponge,
7 a single hose with a self-canceling or automatic shutoff nozzle, low volume pressure cleaning equipment, or any
8 combination of the preceding methods of washing.

9 *Low volume pressure cleaning* means pressure cleaning by means of equipment that is specifically designed
10 to reduce the inflow volume as accepted by industry standards.

11 *Pervious surface* means every improved or unimproved surface that allows water to readily soak into or
12 recharge the water aquifer under such surface.

13 *Water resource* means any and all water on or beneath the surface of the ground, including without
14 limitation natural or artificial watercourses, lakes, ponds, or diffused surface water; and water percolating,
15 standing or flowing beneath the surface of the ground.

16 *Water shortage* occurs when sufficient water is not available to meet present or anticipated needs, or when
17 conditions are such as to require temporary reduction in total water usage within a particular area.

18 *Water shortage emergency* means that situation when the powers which can be exercised under F.A.C. ch.
19 40E-21 pt. II are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish or
20 aquatic life, or a public water supply, or commercial, industrial, agricultural, recreational or other reasonable uses.

21 **Sec. 52-67. Same—Applicability.**

22 This section shall be in full force and effect throughout the city urban service area. The provisions of this
23 section shall apply to all persons using the water resource, whether from public or privately owned water utility
24 systems, private wells, or private connections with surface water bodies. This section shall not apply to persons
25 using treated effluent or salt water. This section shall apply to all such persons using the water resource within the
26 geographical areas subject to the water shortage or water shortage emergency as determined by the district.

27 **Sec. 52-68. Chapter 40E-21, Florida Administrative Code, adopted by reference.**

28 F.A.C. ch. 40E-21, as amended from time to time, is incorporated herein by reference as a part of this section.

29 **Sec. 52-69. Declaration of water shortage; water shortage emergency.**

- 30 (a) The declaration of a water shortage or water shortage emergency within all or any part of the city by the city
31 manager or the executive director of the South Florida Water Management District shall invoke the
32 provisions of this section. The district shall determine the appropriate phase of water shortage or water
33 shortage emergency and the duration of the water shortage or water shortage emergency. Upon such
34 declaration, all water use restrictions or other measures contained in F.A.C. ch. 40E-21, which chapter
35 constitutes the water shortage plan, shall be subject to enforcement action pursuant to the enforcement and
36 penalties set forth in this [subdivision article](#). Any violation of the provisions of F.A.C. ch. 40E-21, ~~as may be~~
37 ~~amended from time to time~~, or any order issued pursuant thereto, shall be a violation of this section.
- 38 (b) F.A.C. ch. 40E-21 establishes four phases of water shortage as a function of the estimated percent reduction
39 in overall demand required to reduce estimated present and anticipated demand to estimated present and
40 anticipated available water supply. The water shortage phase determines the type of water use restrictions
41 which will be ordered in a declared water shortage. The following are the four phases as established by the
42 district:

- 1 (1) Moderate;
- 2 (2) Severe;
- 3 (3) Extreme;
- 4 (4) Critical.
- 5 (c) The district may, from time to time, issue a "warning" which is an alert that water restrictions are imminent if
- 6 existing conditions do not change. When a warning is issued, the city manager may implement specific
- 7 restrictions governing the use of potable water from the city's water system for lawn and landscape
- 8 irrigation.
- 9 (d) Specific restrictions. Upon declaration of a water shortage or water shortage emergency it shall be
- 10 prohibited to use water in a manner inconsistent with the restrictions specified in F.A.C. ch. 40E-21, pts. II
- 11 and V. The restrictions shall apply based on the level of phase declared by the district and described in ch.
- 12 40E-21, pt. V.

13 **Sec. 52-70. Mechanical failure; inadequate facilities.**

- 14 (a) The following rules and regulations are hereby established governing the use of potable water from the city's
- 15 water system in the event of mechanical failure or inadequate facilities. The city manager may implement
- 16 water restrictions when a mechanical failure exists or facilities are inadequate to meet demands, which
- 17 necessitates the implementation of said rules and regulations. Said implementation shall be predicated upon
- 18 a finding by the city manager that said mechanical failure or inadequate facilities may affect the health,
- 19 safety, welfare or comfort of the customers of the city water system.
- 20 (b) The city manager will evaluate each incident of mechanical failure or inadequate facilities to determine the
- 21 specific restrictions to be implemented. To assure equitable distribution of available water resources among
- 22 all city water customers during the affected period F.A.C. ch 40E-21, pt. V, will be used as a guideline to
- 23 establish specific restrictions. Upon such declaration, all water use restrictions or other measures shall be
- 24 subject to enforcement action pursuant to [\[this\] article subdivision.](#)

25 **Sec. 52-71. Year-round landscape irrigation restrictions.**

- 26 (a) *Purpose and applicability.*
- 27 (1) The primary purpose of this section is to provide the regulatory framework to assist in conservation of
- 28 water resources through consistent and uniform application of restrictions on use of water for
- 29 irrigation in the city.
- 30 (2) This section shall be applicable notwithstanding any other city ordinance.
- 31 (b) *Irrigation; operational requirements.*
- 32 (1) All water irrigation activities within the city, which are not exempted by section 52-71(c), shall be
- 33 restricted to the days and hours specified as follows:

| City of Marco Island Water Irrigation Restrictions | |
|---|---|
| Landscaping Irrigation—Established | |
| Odd numbered addresses | 3 days each week; Monday, Wednesday, Saturday; 12:01 a.m. to 8:00 a.m. for irrigation systems |
| Even numbered addresses | 3 days each week; Tuesday, Thursday, Sunday, 12:01 a.m. to 8:00 a.m. for irrigation systems |
| Landscaping Irrigation—New (in place less than 90 days) | |
| All addresses | First 30 days every day, except Friday, 12:01 a.m. to 8:00 a.m. for irrigation systems; In place between 31 to 90 days, Monday, |

| | |
|---|--|
| | Wednesday, Thursday, and Saturday, 12:01 a.m. to 8:00 a.m. for irrigation systems |
| Irrigation System Maintenance | |
| Existing systems | 10 minutes per zone per week; person must be present in zone and working on the system during each such operation |
| New systems | 30 minutes per zone, one time only; person must be present in zone and working on the system during such operation |
| Pesticide, Fungicide, Herbicide, Fertilizer Application | |
| All addresses | Application shall be coordinated with the scheduled day/time for landscaping irrigation; if applied outside of the allowed hours, and "watering in" is specified by the manufacturer of the applied material, a licensed application technician must be on the premises |
| Other Outdoor Water Uses | |
| All other outdoor water uses | Other outdoor water uses, including low volume hand watering, car, truck, and boat washing and the washing of exterior home surfaces and roofs, shall be allowed anytime with the use of low volume pressure cleaning equipment, low volume mobile equipment washing and/or water hose equipped with an automatic self-canceling or automatic shutoff nozzle; in all cases, the water used must drain to a pervious surface or to a water recycling/reuse system |

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(2) All wasteful and unnecessary water use, as defined in section 52-41, shall be prohibited. All water irrigation activities must and shall be operated in an efficient manner so as to not allow water to be applied to travel lanes on adjacent roadways, parking lots, sidewalks and other paved surfaces.

3

4

(3) All water irrigation systems shall be equipped with a properly installed rain sensor switch.

5

a. A rain sensor switch shall be required on all new installations of irrigation systems.

6

b. A rain sensor switch shall be retrofitted on existing systems, installed after May 1, 1991, within one year of the effective date of the ordinance from which this section derives.

7

8

c. The rain sensor switch shall be maintained in fully-operational condition at all times by the owner/operator of the irrigation system.

9

10

(c) *Exemptions; variances.*

11

(1) The following are exempt from all provisions of this section:

12

a. Landscaping irrigation from which the source of the water is 100 percent reclaimed water.

13

b. Landscaping irrigation from which the source of the water is 100 percent saltwater.

14

c. Irrigation wholly from a low volume irrigation system.

15

d. Use of low volume mobile equipment washing, provided all unused water drains into only a pervious ground surface.

16

17

(2) A variance from specific day or days identified in subsection (b)(1) may be granted if strict application of the restrictions would lead to unreasonable or unfair result in particular instances, provided that the applicant demonstrates with particularity that compliance with the schedule will result in substantial economic, health, or other hardship on the applicant requiring a variance or those served by the applicant. Where a contiguous property is divided into different zones a variance may be granted hereunder so that each zone may be irrigated on days different than other zones of the property. However, no single zone may be irrigated more than three days per week.

18

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24

- 1 a. The city manager, ~~or designee~~, shall be the only individual(s) authorized to grant or deny
2 variances pursuant to this subsection. A decision to grant or deny the variance should be made
3 within ten days after actual receipt of a complete application for the variance.
- 4 b. Any individual or entity aggrieved by the denial of a variance from this section shall have the right
5 of appeal to the city council ~~in accordance with section 1-15 of this code. Such appeal shall be~~
6 ~~taken by filing with the city manager, within 14 days after notice of the denial of the variance has~~
7 ~~been delivered to such person or entity's last known address, a written statement setting forth~~
8 ~~fully the grounds for the appeal. The city manager shall set a hearing on such appeal for the next~~
9 ~~available city council meeting. Notice of such hearing shall be given to the appellant at least ten~~
10 ~~days before the date of said hearing. The decision and order of the city council on such appeal~~
11 ~~shall be final.~~
- 12 c. An application for variance and/or the granting of a variance shall operate prospectively and shall
13 not affect any then pending enforcement action pursuant to this ~~section~~ subdivision or
14 otherwise.
- 15 d. The city hereby recognizes any and all variances issued by the South Florida Water Management
16 District to those users who operate and maintain smart irrigation systems which meet the
17 requirements of F.S. § 373.62(7).
- 18 (d) *Penalties.* ~~Violation of this article is punishable according to the penalties and procedures set forth in chapter~~
19 ~~14 of this code. Violators of the landscape irrigation requirements of this section, including requirements as~~
20 ~~authorized under subsection (b)(1), shall be issued a verbal or written warning, or a "notice of violation" with~~
21 ~~a special period to correct violation. Persons who violate this section after receiving a warning or notice, or~~
22 ~~refuse to comply with such warning or notice, shall be issued a citation and fine of \$75.00. Persons who~~
23 ~~commit repeat violations may also be punished pursuant to F.S. § 162.21, as a civil infraction with a~~
24 ~~maximum civil penalty not to exceed \$500.00. Any person who violates any provision of this section shall also~~
25 ~~be subject to the city's remedies as authorized the city's Code of Ordinances, or as otherwise then allowed by~~
26 ~~law. The applicable penalties shall be determined by the forum selected to enforce the violation.~~
27 ~~Each day, or part thereof commencing at noon of the respective day, that a violation of this section occurs by the~~
28 ~~same individual or entity may be deemed by the finder of fact to constitute a separate violation.~~

29 **Subdivision C. Cross Connection Control**

30 **Sec. 52-72. Cross connections.**

31 Cross connections shall be governed by the utilities department manual of standards and specifications.

32 **Secs. 52-73—52-83. Reserved.**

33 *DIVISION 3. WASTEWATER*

34 **Sec. 52-84. Wastewater collection in general.**

35 The part of a wastewater sewage system that receives and transports sewage is referred to as a wastewater
36 collection system.

1 **Sec. 52-85. Owner's responsibility for wastewater lines.**

- 2 (a) All sanitary sewer lines from the wastewater collection main to the building are the property and
3 responsibility of the property owner.
- 4 (b) All stoppage in the sanitary sewer line from the wastewater collection main to the building are the
5 responsibility of the property owner.
- 6 (c) No stoppage complaint will be accepted for investigation by the department, unless all sanitary sewer lines
7 between the gravity main and the building have been examined by a licensed plumber.

8 **Sec. 52-86. Use of public wastewater system required.**

- 9 (a) All premises shall be provided, by the owner thereof, with at least one toilet. All toilets shall be kept clean
10 and in a sanitary working condition.
- 11 (b) No person shall dispose of human excrement except in a toilet.
- 12 (c) It shall be unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of
13 said city, any wastewater or other polluted waters, except where suitable treatment has been provided in
14 accordance with subsequent provision of these regulations.
- 15 (d) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic
16 tank, cesspool, or other facility intended or used for the disposal of wastewater.
- 17 (e) All structures used for human occupancy, and all sinks, dish washing machines, lavatories, basins, shower
18 baths, bathtubs, laundry tubs, washing machines, and similar plumbing fixtures or appliances shall be
19 connected to a public or private wastewater system.

20 **Sec. 52-87. Public wastewater system.**

21 At such time as a public wastewater becomes available to a property served by a private wastewater disposal
22 system, a direct connection shall be made to the public wastewater within 365 days after notice. Any septic tanks,
23 cesspools, and similar private wastewater disposal facilities shall then be cleaned of sludge and filled with suitable
24 materials, according to the closure procedures described in Rule 64E-6.001, F.A.C., or latest revision thereof, of the
25 department of health.

- 26 (1) Wastewater system shall be considered available to an existing single-family dwelling when the
27 dwelling can be connected to a sanitary sewer line in any public right-of-way or easement which passes
28 the property at any point.
- 29 (2) Wastewater system shall be considered available to any new single-family dwelling when the dwelling
30 can be connected by the installation of 200 linear feet of gravity flow sanitary sewer line from the
31 nearest point of the property.
- 32 (3) The monthly base charge component of the wastewater rate structure shall be in effect 90 days
33 following notification of the availability of wastewater service.
- 34 (4) Notwithstanding the foregoing, after proper connection to the city central sewer system, a septic tank
35 serving a single-family residence may be converted to a cistern consistent with the requirements of
36 Rule 64E-6.011, part (4), effective June 25, 2009. Homeowners opting to convert the septic tank to
37 cistern shall acquire the proper city and county health department permits prior to initiating the sewer
38 connection and any septic tank conversion activities.
- 39 (5) Any property owner who, prior to October 20, 2005, was permitted to connect to the city's wastewater
40 collection system by means of an on-site wastewater pump station (grinder system) shall have the
41 option to continue to send domestic sewage to the city's wastewater system through that grinder

1 system or to convert to a gravity system connection. If such conversion is opted, the property owner
2 shall pay to the city the per ERC construction cost (the "Neighborhood Construction Cost") for the
3 installation of its respective district septic tank replacement program ("STRP") collection system, but
4 shall not be required to pay an additional wastewater impact fee. The property owner shall acquire the
5 proper city and county health department permits prior to initiating the conversion. No new private
6 grinder systems will be permitted to connect to the wastewater system.

7 Any owner of a private grinder system who opts to continue the use of that system shall be responsible for
8 the maintenance of the system both on its property and in the city's right-of-way through the connection to the
9 city's wastewater collection system. Such owner shall be responsible for relocating the system if it comes in
10 conflict with other city utilities located, now or in the future, in the right-of-way. Such owner shall also be
11 responsible for the cost of any cleanup resulting from the failure of the system in the city's right-of-way.

12 **Sec. 52-88. Private wastewater disposal.**

- 13 (a) Where a public sanitary sewer is not available under the provisions of this subsection, the building sewerage
14 shall be connected to a private wastewater disposal system complying with the provisions of this subsection.
15 No person shall construct a septic tank or other wastewater disposal facility without prior approval from the
16 director and city manager.
- 17 (b) Septic tanks shall be constructed, repaired, altered, enlarged, and maintained in accordance with F.A.C. ch.
18 10D-6 and plans and specifications approved by the state health department.
- 19 (c) No person shall construct, repair, alter, or enlarge any septic tank unless he receives approval by the director
20 or designee and shall hold a valid permit for such work issued by the state health department.
- 21 (d) The type, capacities, location, and layout of a private wastewater disposal system shall comply with all
22 regulations of the state department of environmental protection (FDEP) and the State of Florida. No septic
23 tank shall be permitted to discharge to any natural resource.
- 24 (e) No septic tank or other subsurface disposal facility shall be installed where a public wastewater is accessible
25 to the premises involved.
- 26 (f) The owner(s) shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all
27 times, at no expense to the city.
- 28 (g) No pit privy shall be installed.
- 29 (h) Discharge of septic tanks into wastewater system:
- 30 (1) *Restricted.* It shall be unlawful to empty, dump, throw or otherwise discharge, into any manhole, catch
31 basin or other opening, into the city wastewater system, or any system connected with and discharging
32 into the wastewater system, the contents of any septic tank, sludge, sewage or other similar matter or
33 material, except as provided in the paragraph below.
- 34 (2) *Permits.* The director is hereby authorized to grant permits to discharge the contents of septic tanks
35 (from domestic sources only) at locations specified by him and under his supervision. Such permits may
36 be revoked at any time if, in the opinion of the director, continued dumping of such matter into the
37 sewers will be injurious to the wastewater system or treatment or treatment processes.
- 38 (3) *Charges.* A charge shall be made for the privilege of dumping contents of septic tanks, as provided in
39 separate rules. A record shall be kept of such dumping and statements shall be payable within ten days
40 after rendition. Failure to pay the amounts due within such ten-day period shall be cause for revoking
41 the permit and employing all penalties, as described in this article.
- 42 (i) Any premises that has a septic tank, privy or any other sewage, industrial waste or liquid waste disposal
43 system, located thereon that does not function in a sanitary manner shall be corrected within 30 days from
44 the receipt of written notification from the state health department that said system is not functioning in a
45 sanitary manner, and order that said system be corrected.

- 1 (j) Premises with private water systems shall not be connected to the public wastewater system unless
2 approved by the city manager or designee.
- 3 (k) No statement contained in this article shall be construed to interfere with any additional requirements that
4 may be imposed by the state health department.

5 **Sec. 52-89. Building sewers and connections.**

6 No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any
7 public wastewater or appurtenance thereof without first obtaining a written permit from the utilities permit
8 coordinator as provided in the utilities department manual of standards and specifications.

9 **Sec. 52-90. Restricted use of public sanitary sewers.**

10 No person shall discharge or cause to be discharged any unpolluted waters such as stormwater,
11 groundwater, roof runoff, subsurface drainage, swimming pool drains and filter discharge, or cooling water to any
12 sanitary sewer unless otherwise provided in the utilities department manual of standards and specifications.

13 **Sec. 52-91. Malicious damage.**

14 No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with
15 any structure, appurtenance, or equipment which is a part of the wastewater facilities. Any person violating this
16 provision shall be subject to immediate arrest under charge of disorderly conduct and shall be responsible for any
17 loss of revenue or monetary expenditures needed for repairs brought about by their actions.

18 **Sec. 52-92. Pretreatment of industrial wastewater.**

19 There shall be pretreatment of wastewater by industrial users discharging into the city wastewater collection
20 and treatment systems and enables the city to comply with all applicable state and federal laws required by the
21 Clean Water Act of 1977 and the General Pretreatment Regulations (40 CFR, Part 403) and shall be regulated by
22 the utilities department manual of standards and specifications.

23 **Sec. 52-93. Compliance with regulatory requirements.**

24 The provisions of these regulations shall not be deemed as alleviating compliance with applicable state and
25 federal regulations. Specific user charge and industrial cost recovery requirements, promulgated pursuant to
26 Public Law 92-500, shall be considered as a part of these regulations upon official adoption. All nonresidential
27 users will be required to comply with pretreatment standards as outlined in Title 40 of the Code of Federal
28 Regulations, Part 403, as provided in the utilities department manual of standards and specifications.

29 **Sec. 52-94. Violations.**

- 30 (a) Violation of [this division is punishable according to the penalties and procedures set forth in chapter 14 of](#)
31 [this code in addition to the other actions authorized in this section . ~~these regulations shall be a~~](#)
32 [misdemeanor punishable under the laws of the state.](#)
- 33 (b) The director may suspend the wastewater treatment service and/or a wastewater contribution permit when
34 such suspension is necessary, in the opinion of the director, in order to stop an actual or threatened
35 discharge which presents or may present an imminent or substantial endangerment to the health or welfare
36 of persons, to the environment, causes interference to the wastewater system or causes the city to violate
37 any federal, state or local laws.
- 38 (c) Any person notified of a suspension of the wastewater treatment service and/or the wastewater
39 contribution permit shall immediately stop or eliminate the contribution. In the event of a failure of the

1 person to comply voluntarily with the suspension order, the director shall take such steps as deemed
2 necessary including initiation of legal action by the city attorney and immediate severance of the wastewater
3 connection, to prevent or minimize damage to the wastewater system or endangerment to any individuals.
4 The director shall reinstate the wastewater contribution permit and/or the wastewater treatment service
5 upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the
6 user describing the causes of the harmful contribution and the measures taken to prevent any future
7 occurrence shall be submitted to the utility director or designee within 15 calendar days of the date of
8 occurrence.

9 (d) Any user who violates the following conditions of these regulations, or applicable state and federal
10 regulations, is subject to having his permit revoked in accordance with the procedures of this subsection:

- 11 (1) Failure of a user to report factually the wastewater constituents and characteristics of his discharge.
- 12 (2) Failure of the user to report significant changes in operations, or wastewater constituents and
13 characteristics.
- 14 (3) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring.
- 15 (4) Violation of conditions of the permit.

16 ~~(e) Whenever the department finds that any user has violated or is violating these regulations, wastewater
17 contribution permit, or any prohibition, limitation or requirements contained herein, the department may
18 serve upon such person a written notice stating the nature of the violation. Within 30 days of the date of the
19 notice, a plan for satisfactory correction thereof shall be submitted to the department by the user.~~

20 ~~(f) In the event of violation of these regulations, the authorized employees may verbally instruct the owner as
21 to the necessary corrective action. If the owner fails to carry out verbal instructions in a timely manner or if a
22 serious violation or hazard to public health exists, the director may issue to the owner a written order stating
23 the nature of the violation, the corrective action, and the time limit for completing the corrective action. This
24 time limit will be not less than 24 hours nor more than 120 days depending upon the type and severity of the
25 violation. The offender shall, within the period of time stated in such notice, permanently cease all violations.
26 The record of the mailing of said notice or order shall be prima facie evidence thereof and failure of said
27 owner or owners to receive same shall in no way affect the validity of any proceedings conducted pursuant
28 to these regulations.~~

29 ~~(g) If any person discharges sewage, industrial wastes or other wastes into the city's wastewater disposal system
30 contrary to the provisions of these regulations, federal or state pretreatment requirements, or any order of
31 the city, the city's attorney may commence an action for appropriate legal and/or equitable relief in the
32 appropriate court.~~

33 ~~(eh)~~ A person violating any provisions of this section authorizing the aforementioned action by the designated
34 employee shall be charged the normal and usual charges for discontinuance and disconnection of said water
35 and wastewater services and the usual charges for recommencing said water and wastewater services.

36 **Sec. 52-95. Compliance by dischargers.**

37 It shall be unlawful to discharge without a city permit to the wastewater system any wastewater except as
38 authorized by the director in accordance with the provisions of these regulations.

39 **Sec. 52-96. Wastewater contribution permits.**

40 (a) All significant industrial users proposing to connect to or to contribute to the wastewater system shall obtain
41 a wastewater discharge permit before connecting to or contributing to the utility system.

42 (b) All existing significant industrial users connected to or contributing to the wastewater system shall obtain a
43 wastewater contribution permit within 180 days after the effective date of these regulations.

1 **Sec. 52-97. Materials.**

2 The materials and construction of wastewater collection and treatment systems shall be in accordance with
3 the established design criteria and procedures, required material specifications, and construction procedures as
4 described in the utilities department manual of standards and specifications.

5 **Secs. 52-98—52-108. Reserved.**

6 **DIVISION 4. RECLAIMED WATER**

7 **Sec. 52-109. Generally.**

8 (a) *Generally.* When an application is received for connection to the city's water and/or wastewater systems and
9 where the city offers to extend a reclaimed water transmission line to the applicant's parcel for purposes of
10 irrigation, the applicant shall be required to connect to the reclaimed water system as a condition of
11 connection to either the city's potable water or wastewater system. Reclaimed water service charges shall
12 become effective and begin to accrue once the meter is installed.

13 (b) *Cross connections.* No cross connection between the reclaimed water system and any potable water system
14 shall be permitted. Cross connections between the reclaimed water system and other sources of irrigation
15 water, including but not limited to, surface water and wells, shall be subject to approval by the director after
16 review of the construction plans for such connection.

17 (c) *Materials for reclaimed water system.* The materials and construction of reclaimed water systems shall be in
18 accordance with the established design criteria and procedures, required material specifications, and
19 construction procedures as described in the utilities department manual of standards and specifications.

20 (d) *[Availability.]* At such time as public reclaimed water becomes available to a multifamily or hotel/timeshare
21 property, a direct connection shall be made to the reclaimed water line within 90 days following notice of
22 availability, and reclaimed water shall be used for the purpose of irrigation. Following connection to the
23 reclaimed water system, the rate structure applicable to potable water may be charged for the use of
24 reclaimed water for the time required to allow the difference between the potable water rate and the
25 reclaimed water rate to pay the capital investment required to install the reclaimed water system.

26 **Sec. 52-110. Discontinuance of service.**

27 The city may suspend or discontinue reclaimed water service to any customer who violates the provisions of
28 this article, including delinquency of any amounts owed the city.

29 **Secs. 52-111—52-121. Reserved.**

30 **DIVISION 5. GREASE DAMAGE PREVENTION REGULATIONS**

31 **Sec. 52-122. Definitions.**

32 When used in this division, the following terms shall have the following meanings, unless the context clearly
33 indicates otherwise. [These definitions are supplemental to the definitions in section 1-2 of this code. The](#)
34 [definitions in this section shall prevail in case of conflict.](#)

35 *CMD* shall mean the city manager's designee.

- 1 *FSF* shall mean a food service facility.
- 2 *GDP* shall mean a grease discharge permit.
- 3 *GHR* shall mean a grease hauler registration.
- 4 *GMP* shall mean a grease management program.
- 5 *Mg/L* shall mean milligrams per liter.
- 6 *NONC* shall mean a notice of non-compliance.
- 7 *PDI* shall mean a plumbing and drainage institute.
- 8 *RWPF* shall mean the city's reclaimed water production facility.

9 **Sec. 52-123. Purpose and applicability.**

- 10 (a) *Purpose.* This division establishes uniform permitting, maintenance and monitoring requirements for
11 controlling the discharge of grease from a FSF discharging into the city's wastewater collection system and
12 for regulation of commercial grease haulers operating within the city limits. The objectives of this ordinance
13 are:
 - 14 (1) To prevent the introduction of excessive amounts of grease into the city's wastewater collection
15 system.
 - 16 (2) To prevent clogging or blocking of the city's sewer lines due to grease build-up causing backup and
17 flooding of streets, residences and commercial buildings and surrounding waters, resulting in potential
18 liability to the city.
 - 19 (3) To implement a procedure to recover the costs incurred in cleaning and maintaining sewer lines and
20 disposing of grease blockages.
 - 21 (4) To implement a procedure to recover costs for any liability incurred by the city for damage caused by
22 grease blockages resulting in the flooding of streets, residences or commercial buildings.
 - 23 (5) To issue "grease discharge permits" (GDP) to FSF required to install a grease trap or interceptor
24 pursuant to the Florida Building Code, Fla. Admin. Code R. 64E-6 and Marco Island Utilities Manual of
25 Standards requiring maintenance, monitoring, compliance and enforcement activities.
 - 26 (6) To establish administrative review procedures and reporting requirements.
 - 27 (7) To establish fees for the recovery of costs resulting from the program established herein.
 - 28 (8) To register "grease haulers" operating within the city's boundaries.
 - 29 (9) To establish enforcement procedures for violations of any part or requirement of this division.
 - 30 (10) To prevent maintenance and odor problems in the city's sewage collection and treatment system.
- 31 (b) *Applicability.* The provisions of this division shall apply to all FSFs located within the sewer service areas of
32 the city. The provisions of this division shall also apply to all grease haulers providing service to any FSF
33 located within the city sewer service areas.

34 **Sec. 52-124. Grease traps and interceptors.**

- 35 (a) *Requirements.* All FSFs are required to have a grease trap or grease interceptor properly installed in
36 accordance with any and all applicable requirements of the Florida Building Code and this division and shall
37 be in a location that is readily and easily accessible for cleaning and inspection.
 - 38 (1) *New facilities.* FSFs which are newly proposed or constructed, or existing facilities which will be
39 expanded or renovated to include a FSF, where such facility did not previously exist, shall be required

1 to install a grease interceptor or grease trap(s) according to the requirements of the Florida Building
2 Code/Marco Island Utilities Department Manual of Standards and Specifications and to operate and
3 maintain the grease trap(s) or interceptor according to the requirements contained in this division.

- 4 (2) *Existing facilities.* FSFs shall be permitted to operate and maintain existing grease interceptors or
5 grease traps provided their grease interceptors or grease traps are in efficient operating condition. A
6 FSF that applies for any type of permit shall conform to current code requirements.

7 Existing FSFs without a grease interceptor or trap shall install a new grease interceptor or trap that
8 complies with the requirements of the Florida Building Code/Marco Island Utilities Manual of
9 Standards and Specifications or to modify or repair any noncompliant plumbing or existing interceptor
10 or trap. This requirement must be met within two years of the adoption of the ordinance from which
11 this section is derived.

- 12 (b) *Plumbing connections.* Grease interceptors or traps shall be installed in accordance with the Florida Building
13 Code. The city manager or his designee (CMD) will make the final decision when conflicts between rules
14 occur.

- 15 (c) *Grease traps.* Grease traps shall be installed in accordance with the Florida Building Code, PDI-G101
16 procedures, Fla. Admin. Code R. 64E-6, and Marco Island Utilities Manual of Standards.

- 17 (1) *Inspection, cleaning and maintenance.* Each FSF shall be solely responsible for the cost of trap
18 installation, inspection, cleaning and maintenance. Each FSF may contract with a registered grease
19 hauler, who has been permitted by the city for cleaning services and maintenance procedures.
20 Cleaning and maintenance must be performed when the total volume of captured grease and solid
21 material displaces more than 25 percent of the total volume of the trap. Grease Traps are required by
22 the FSF owner, business owner or designee to be inspected weekly and be cleaned at a minimum of
23 once every 30 days or as often as needed not to exceed 25 percent of the total volume. Disposal of
24 FOG must be according to Collier County's solid waste requirements.

- 25 (2) If a FSF determines that the supplemental interceptor pumping frequency is unnecessary to remain in
26 compliance, the facility may submit a written request for an interim inspection at a fee of \$75.00 to
27 verify that all conditions of this division are in compliance.

- 28 (3) *Inspection.* Grease traps shall be inspected by the CMD, as necessary to assure compliance with the
29 GMP and to assure proper cleaning and maintenance schedules are being adhered to.

- 30 (4) *Repairs and replacement.* The FSF shall be responsible for the cost and scheduling of all repairs or
31 replacement to its grease trap(s). Permits for repairs or replacement required by the CMD shall be
32 completed within 30 calendar days after the date of written notice of required repairs or replacement.
33 The city may authorize an extension of time to achieve compliance for an additional 30 days. If
34 additional time is necessary to come into compliance, the FSF may enter into an administrative order
35 establishing a schedule for bringing the FSF into compliance within 120 days from the date of the
36 original notice.

- 37 (5) *Disposal.* Grease and solid materials removed from a grease trap shall be disposed of in the solid waste
38 disposal system.

- 39 (6) *Recordkeeping.* The FSF shall maintain records of all interceptor maintenance. These records will
40 include: inspection/pump outs, details of maintenance, repairs, repair completion date(s) and any
41 other records pertaining to the interceptor. These records shall be maintained in an organized system
42 by month and made available for review upon request by the GMP official at all times.

- 43 (d) *Grease interceptors.* Grease interceptors shall be designed and installed in accordance with the Fla. Admin.
44 Code R. 64E-6 and the City of Marco Island Utilities Department Manual of Standards.

- 45 (1) *Inspection, pumping and maintenance.* Each FSF shall be responsible for the costs of installing,
46 inspecting, pumping, cleaning and maintaining its grease interceptor. All FSFs that have grease
47 interceptors shall utilize a registered grease hauler, who has been registered by the city for pumping

1 services. Pumping services shall include the initial complete removal of all contents, including floating
2 materials, wastewater, bottom sludge and solids from the interceptor.

3 Grease interceptor cleaning shall include scraping excessive solids from the walls, floors, baffles and all
4 pipe work. It shall be the responsibility of each FSF to inspect its grease interceptor during the pumping
5 procedure to ensure that the interceptor is properly cleaned out and that all fittings and fixtures inside
6 the interceptor are in working condition and functioning properly.

7 (2) *Required interceptor pumping frequency.* Each FSF shall have its grease interceptor(s) pumped a
8 minimum of four times per year during the months as outlined below:

- 9 1. February/March.
- 10 2. May/June.
- 11 3. August/September.
- 12 4. November/December.

13 If a FSF determines that the required interceptor pumping frequency is unnecessary in order to remain
14 in compliance with the criteria in subsection (2) above, the facility may submit a written request for an
15 interim inspection at a fee of \$75.00 to verify that all conditions of this division are in compliance.

16 (3) *Supplemental interceptor pumping frequency.* In addition to required quarterly pumping, each FSF with
17 100 or more total seats shall pump monthly in January, February, March and April during season. Those
18 facilities may choose to opt out; however, if the FSF is inspected during this time period and is found to
19 be in violation, an automatic fee of \$250.00 will be assessed. Immediate cleaning/pumping of the
20 grease interceptor is also required and a follow up inspection will occur within three days. If the
21 violation(s) are not corrected additional fees will be assessed for noncompliance. Each additional fee
22 will be doubled with each failed inspection. Additional grease interceptor pumping is required
23 according to the following criteria:

- 24 a. When the floatable grease layer exceeds six inches in depth as measured by an approved dipping
25 method;
- 26 b. When the settled solids layer exceeds eight inches in depth as measured by an approved dipping
27 method;
- 28 c. When the total volume of captured grease and solid material displaces more than 25 percent of
29 the capacity of the interceptor as calculated using an approved dipping method; or
- 30 d. When the interceptor is not retaining/capturing oils and greases.
- 31 e. If a FSF determines that the supplemental interceptor pumping frequency is unnecessary in order
32 to remain in compliance with the criteria in subsection (3) above, the facility as an option may
33 submit a written request for an interim inspection at a fee of \$75.00 to verify that all conditions
34 of this division are in compliance.

35 (4) *Inspection.* Grease interceptors shall be inspected by the CMD as necessary to assure compliance with
36 the GMP and to determine if proper cleaning and maintenance schedules are being adhered to. If,
37 upon inspection, an interceptor is found to have six inches or more of grease or eight inches or more of
38 solids, the FSF shall be required to have the interceptor pumped out within 48 hours of the inspection
39 date. Failure to pump-out the interceptor shall constitute a violation of this division.

40 (5) *Repairs and replacement.* Each FSF shall be responsible for the cost and scheduling of all repairs to or
41 replacement of its grease interceptor(s). Permits for repairs or replacement required by the CMD shall
42 be completed within 30 calendar days after the date of written notice of required repairs or
43 replacement. The city may authorize an extension of time to achieve compliance for an additional 30
44 days. If additional time is necessary to come into compliance, the FSF may enter into an administrative

1 order establishing a schedule for bringing the FSF into compliance within 120 days from the date of the
2 original notice.

3 (6) *Disposal.* Wastes removed from each grease interceptor shall be disposed of at a facility permitted to
4 receive such wastes in accordance with applicable federal, state, local laws or regulations. Neither
5 grease nor solid materials removed from interceptors shall be returned to any grease interceptor,
6 private sewer line, the city's wastewater collection system or water reclamation facilities.

7 (7) *Recordkeeping.* Each FSF shall maintain records of all interceptor maintenance. These records will
8 include: inspection/pump outs, details of maintenance, repairs, repair completion date(s) and any
9 other records pertaining to the interceptor. These records shall be maintained in an organized system
10 by month and made available for review upon request by the GMP official at all times.

11 Each FSF shall also maintain a file on-site which contains the following information:

12 a. The (as-built) drawings of the plumbing system, if available. If as-built drawings are not available,
13 other drawings of sufficient detail to depict the plumbing layout of the FSF.

14 b. A copy of the current grease disposal permit.

15 c. Receipts from grease pumpers, plumbers, parts suppliers, etc.

16 d. Log of pumping or cleaning activities.

17 e. Log of maintenance activities.

18 f. Completed disposal manifest.

19 g. Seating charts depicting the number of indoor and outdoor seating and identify which seats are
20 bar seats and which seats are dining.

21 h. Hauler information.

22 The file shall be available at all times for inspection and review by the CMD. The failure to maintain
23 complete records or to provide such records to the CMD upon request constitutes a violation of this
24 division.

25 (e) *Additives.* The use of biological degreasers, enzymes, or chemicals to prevent build up in a property
26 owner's wastewater system is prohibited.

27 (f) *Alternative grease removal devices and methods.* Alternative devices and methods, such as automatic
28 grease removal systems shall be subject to written approval by the building official and the CMD.

29 (g) *FSF located outside city limits.* All FSFs not within the city limits and connected to the city's wastewater
30 and sewer collection system shall abide by the requirements of the GMP as set forth in this division.

31
32 **Sec. 52-125. FSF permitting program.**

33 (a) *Permitting requirements for FSF.* All FSFs shall be required to obtain a "grease discharge permit" (GDP), from
34 the city starting August 1 through November 1. This permit will be valid for a one-year period. The city shall
35 approve, deny, or approve with special conditions all applications for GDPs in accordance with the policies
36 and regulations established in this division. The GDP shall be in addition to any other permits, registrations,
37 or occupational licenses which may be required by federal, state, or local law. It shall be a violation of this
38 division for any FSF identified by the city to discharge wastewater containing fats, oils, grease and solids to
39 the city's wastewater collection system without a current GDP.

40 (b) *Application form.* The city shall provide an application form for a GDP. The appropriate form shall be issued
41 to all FSF owners identified by the city. Each application form shall include the following information:

- 1 (1) Name, address, telephone number and location, (if different from the mailing address) of applicant,
2 owner of the premises (if different from the tenant when property is leased) from which fats, oils and
3 grease are discharged, and the name of a representative duly authorized to act on behalf of the FSF.
- 4 (2) A drawing in sufficient detail to show the location of all kitchen equipment that produces wastewater,
5 and all sewers, floor drains, sewer connections, grease interceptors and appurtenances in the user's
6 premises if known or it may be readily ascertained.
- 7 (3) Maximum hours of operations in one day and maximum meals produced per day.
- 8 (4) Individual's name or business name on utility water bill.
- 9 (5) Details of all grease interceptor or grease trap maintenance within the past year.
- 10 (6) A signed statement from the FSF owner that the information provided is accurate, and that the
11 applicant agrees to abide by the regulations contained in this division, as well as any other applicable
12 federal, state or local regulations governing the FSF.
- 13 (7) Any other information determined by the CMD to be necessary in order to evaluate the GDP
14 application.
- 15 (8) A current seating chart of the facility depicting the number of indoor and outdoor seats.
- 16 (c) *Facilities with shared interceptor.* In addition, the owner of the shared interceptor used by multiple FSF shall
17 be issued a separate permit requiring compliance with this division and the Florida Administrative Code.
- 18 (d) *Pre-permit inspection procedure.*
 - 19 (1) *Individual FSF.* Once a completed application form has been reviewed by the CMD, the FSF will be
20 inspected prior to the issuance of the GDP beginning August 1 through November 1 every year. During
21 the pre-permit inspection, the information contained in the application form will be verified and the
22 grease interceptor or trap will be inspected during a scheduled cleaning when the trap or interceptor is
23 empty and owner or designee present. If all information is verified and the grease interceptor or trap is
24 in proper working condition, a GDP will be issued. If the grease interceptor or trap requires any
25 maintenance/repairs or incorrect information has been given, the GMP official shall provide a written
26 notice of noncompliance to correct any deficiencies, including a required time schedule for repairs to
27 be corrected prior to a second pre-permit inspection. Second pre-permit inspections shall be
28 performed after a minimum of ten calendar days have elapsed to allow for corrective action by the FSF
29 to occur. If the facility is not in compliance at the second pre-permit inspection, a noncompliance fee
30 will be levied. An application for a permit shall be granted with conditions or denied within 30 days
31 after the date of the last pre-permit inspection.
- 32 (e) *Grease discharge permit.* The following criteria apply to all GDPs:
 - 33 (1) Each GDP shall be effective for a one-year period and shall have an effective and an expiration date.
34 GDPs will be issued from August 1 through November 1 every year.
 - 35 (2) The GDP must be displayed in a conspicuous place where it can be seen by the staff of the FSF and a
36 copy of the GDP must be kept in the records file.
 - 37 (3) The GDP shall be issued to a specific user for a specific operation. GDPs will vary in content and
38 requirements depending on the class of the FSF and the type of grease removal devices(s) installed. A
39 GDP shall not be transferred or sold to a new owner under any circumstances. A new owner is required
40 to apply for a new GDP at the time of zoning permit application. The new GDP will be issued on a
41 prorated basis and will expire at the end of the current permit period.
 - 42 (4) Issuance of GDP will be 60 days prior to the expiration date of the existing GDP.
 - 43 (5) The terms and conditions of the GDP are subject to modification by the City during the term of the
44 permit, if limitations or requirements in this program are modified. The user shall be informed of any

1 proposed changes in the issued permit at least 60 days prior to the effective date of the change(s). Any
2 changes or new conditions in the GDP shall include a reasonable schedule for achieving compliance.

3 (f) *Entry.* Each FSF shall allow the CMD at all reasonable hours to all parts of the premises for the purpose of
4 inspection, observation, records examination, measurement, sampling and testing in accordance with the
5 provisions of this division. The refusal of any FSF to allow the CMD entry to or upon the facility's premises for
6 purposes of inspection, sampling effluents, inspecting and copying records or performing such other duties
7 as shall be required by this division shall constitute a violation of this division. The CMD may seek a warrant
8 or use such other legal procedures as may be advisable and reasonably necessary to discharge his duties
9 pursuant to this division.

10 (g) *Inspection.* All FSFs shall be inspected as follows:

11 (1) *Pre-permit inspections.* Pre-permit inspections shall be conducted by GMP officials as outlined in
12 section 52-125(d).

13 (2) *Inspections.* The GMP official shall inspect FSFs on both an unscheduled and unannounced basis or on a
14 scheduled basis after a GDP has been issued to verify continued compliance with the requirements of
15 this division. The GMP official shall also determine if the practices contained in the "Fats, Oil and
16 Grease Best Management Practices Manual" issued to the facility have been implemented. All FSFs
17 with current GDPs shall be inspected. Inspections shall include all equipment, food processing and
18 storage areas and shall include a review of the processes that produce wastewater discharged from the
19 facility through the grease interceptor/trap. The GMP official shall also inspect the interceptor/trap
20 maintenance logbook and file, other pertinent data, the grease interceptor/trap and may check the
21 level of the interceptor/trap contents and/or take samples as necessary. The GMP official shall record
22 all observations in a written report. Any deficiencies shall be noted, including but not be limited to:

23 a. Failure to properly maintain the grease interceptor or trap in accordance with the provisions of
24 the grease discharge permit and this chapter.

25 b. Failure to report changes in operations, or wastewater constituents and characteristics.

26 c. Failure to report pumping activities or keep copies of manifest forms or receipts.

27 d. Failure to maintain logs, files, records or access for inspection or monitoring activities.

28 e. Failure to obtain or renew the oil and grease discharge permit in a timely manner.

29 f. Any other inconsistency with the program that requires correction by the FSF concerned.

30 g. Inability of existing grease interceptor or grease traps to prevent discharge of grease into sewer
31 system as evidence by build-up of grease downstream of the grease interceptor or trap. If any
32 deficiencies are recorded by the GMP during an inspection, the GMP official shall provide the FSF
33 a written notice to correct the deficiency within ten calendar days, and a tentative date for a first
34 reinspection.

35 h. Addition of indoor or outdoor seating that exceeds the operating permit.

36 i. Any significant changes to menu from last permit period. This does not include daily specials;
37 however it does include hours of operations, addition of breakfast, lunch and/or dinner menus.

38 (3) *Reinspections.* The CMD shall reinspect food service facilities which received noncompliance notice(s)
39 after the original inspection. The CMD shall inspect any repairs or other deficiencies and shall provide
40 written notice of noncompliance. In the event that the FSF has returned to compliance with all of the
41 deficiencies, there shall be no fees for the reinspection.

42 In the event of continuing noncompliance, successive reinspections will be scheduled and appropriate
43 fees shall be charged to the FSF concerned for the first and all successive reinspections. A first
44 reinspection shall be performed after a minimum of ten calendar days have elapsed to allow for
45 corrective action by the FSF to be completed.

- 1 (h) *Administrative order.* Upon written request of a FSF, the city may enter into consent agreements, compliance
2 agreements, assurances of voluntary compliance or other similar documents (each referred to as
3 "administrative order") establishing an agreement with any person responsible for noncompliance. Such
4 documents will include specific actions to be taken by the person to correct the noncompliance within a time
5 period not to exceed 24 months, as specified by the document. Such administrative order shall be judicially
6 enforceable. Failure to comply with the provisions of an administrative order shall constitute a violation of
7 the city code. An administrative order may include, but shall not be limited to, the following items:
- 8 (1) Required corrective actions, including, but not limited to, submittal of records for interceptor
9 maintenance, immediate pump-out of the grease interceptor, or establishment of an ongoing contract
10 with a permitted grease hauler.
 - 11 (2) Requirements for submittal of plans for installation or upgrade of grease interceptors, including time
12 frames for preparation of plans, acquisition of necessary equipment, initiation of construction
13 (including time for permit approval, where required), completion of construction, and a date for
14 achievement of final compliance with the provisions of the administrative order and of this division.

15 **Sec. 52-126. Grease hauler regulation program.**

- 16 (a) *Administration and permitting of grease haulers.* Any person or business desirous of collecting, pumping or
17 hauling grease interceptor wastes from businesses located within the municipal limits of the city utilities
18 service territories shall be required to register with the city. The CMD shall approve, deny or approve with
19 special conditions all applications for GHRs in accordance with the policies and regulations established in this
20 division.

21 It shall be unlawful for any identified grease hauler to clean or pump out grease interceptors within the city
22 limits without either a current GHR or a Collier County pollution control "grease waste hauler permit."

- 23 (b) *Application form.* To obtain a GHR, a grease hauler shall submit a completed GHR application form together
24 with a ~~\$25.00~~ fee ~~established by resolution~~ ~~to~~ of the city council. The grease hauler shall be issued with a GHR
25 within 30 working days of the city's receipt of the completed application form and appropriate fees. The
26 grease hauler shall obtain the GHR prior to providing grease hauling services within the city's wastewater
27 collection system service area.

28 Each application shall include the following information:

- 29 (1) Name of applicant. If the applicant is a partnership, corporation or other business entity, the name of
30 an individual who legally is able to act on behalf of the organization must be provided.
- 31 (2) Applicant address and phone number, including information for person(s) to contact at times other
32 than regular business hours.
- 33 (3) The type, license, tag number, and capacity of each vehicle which will be used to pump or haul liquid
34 wastes from grease interceptors. New or replacement tanker truck(s) acquired subsequent to the
35 application shall be reported to the city prior to use.
- 36 (4) Financial assurance in the amount of \$10,000.00 in a form acceptable to the city. Such assurance shall
37 remain in effect for the life of the permit. This assurance shall be used to guarantee disposal costs,
38 fines and the costs of any damages that may result from a grease hauler discharging in violation of this
39 division.
- 40 (5) A list of the disposal facilities that the applicant intends to use.
- 41 (6) A signed statement that the information provided is accurate and that the applicant agrees to abide by
42 the regulations contained in this division, as well as any other applicable federal, state or local
43 regulations governing their activities.
- 44 (7) Any other information determined by the GMP to be necessary to evaluate the GHR application.

- 1 (c) *Grease hauler registration (GHR)*. Each GHR approved by the city shall be effective for a period of three
2 years, and may include special conditions as required by the city. The GHR required by the city shall be in
3 addition to any other permits, registrations, or occupational licenses which may be required by federal, state,
4 and local agencies having lawful jurisdiction. The GHR is not transferable.
- 5 (1) *Permit contents*. All approved GHRs shall include a statement of the duration of the permit, including
6 the effective and expiration dates; identification of all approved vehicles and the liquid wastes which
7 may be hauled by each; standard conditions relating to permit renewal and permit revision; a list of
8 definitions; reporting requirements, spill procedures, and any other applicable special conditions.
9 Special conditions may include, but are not limited to:
- 10 a. A statement that: all grease interceptors shall initially be pumped completely empty. Excessive
11 solids shall be scraped from the walls and baffles, and inlet, outlet and baffle ports shall be
12 cleared. No grease or solids may be reintroduced into the interceptor.
- 13 b. A statement indicating that no grease or gray water will be accepted at any city-owned facility
14 and that the registrant should contract with other private or public facilities to properly dispose
15 of the grease and food solids.
- 16 c. A statement that the grease hauler is required to comply with all federal, state and local
17 regulations concerning the pumping of grease interceptors and the hauling and disposal of their
18 contents.
- 19 d. Any other statement or requirement that the city believes to be necessary to meet the intent of
20 this division.
- 21 (2) *Registration renewal*. An application for GHR renewal shall be submitted on the appropriate renewal
22 form together with the renewal fee at least 60 days prior to the expiration date of the existing GHR by
23 each applicant wishing to provide grease hauling services to a permitted FSF located in the city's
24 wastewater collection service area.
- 25 (d) *Collier County pollution control "grease waste hauler permit."* All grease haulers holding and maintaining a
26 valid "grease waste hauler permit" issued by Collier County shall be required to obtain a GHR from the city.
27 The city shall issue a GHR to provide grease hauling and interceptor pumping services within the city
28 wastewater collection system service area to grease haulers holding Collier County permits. Grease haulers
29 shall renew the Collier County permit if they wish to continue to operate in the city.
- 30 (e) Grease haulers holding a permit from another county must have a current county permit from that county
31 prior to obtaining a city GHR.
- 32 (f) *Spill reporting*. Any accident, spill, or other discharge of grease or gray water which occurs within the city
33 shall be reported to the city at 239-389-5000 or 239-394-3168 by the grease hauler immediately. A written
34 report shall be required from the hauler within 48 hours to the collections and distribution manager of
35 Marco Island Utilities. The grease hauler shall comply with all procedures contained in federal, state and local
36 regulations. The grease hauler shall be responsible for all cleanup procedures and costs.
- 37 (g) *Recordkeeping*. Grease haulers shall retain and make available for inspection and copying, all records related
38 to grease interceptor pumping and grease disposal from businesses located in the city wastewater collection
39 service area. These records shall remain available for a period of at least three years. The failure to provide
40 information to the city within ten days of a written request is a violation of this ordinance and may result in
41 revocation of a permit. The city may require additional recordkeeping and reporting, as necessary, to ensure
42 compliance with the terms of this division.
- 43 (h) *Vehicle inspection*. Grease haulers shall permit the city to inspect grease hauler's registered vehicles to verify
44 the displayed name and telephone number of the hauler, the Collier County pollution control permit number
45 and the vehicle registration and tag number.
- 46 (i) *Disposal*. The grease disposal haulers will be accountable for the proper disposal of the waste removed from
47 the grease interceptor. The grease hauler is responsible to maintain a hauling manifest. The city will provide

1 and make forms available to all registered grease haulers. All waste removed from each grease interceptor
2 shall be disposed of at a facility permitted to receive such waste. Neither grease nor solid materials removed
3 from interceptors shall be returned to any grease interceptor, private sewer line, or to any portion of the
4 city's wastewater collection system or water reclamation facilities. A violation of this section shall result in an
5 immediate revocation of the GHR in addition to any other enforcement action taken.

- 6 (j) *Removal from registered hauler list.* Repeated failure of a registered hauler to submit reports in a timely
7 manner or the repeated submission of incomplete reports will result in the removal of that hauler from the
8 registered hauler list.

9 **Sec. 525-127. Fees.**

- 10 (a) *Fees and billing.* The city council shall establish fees provided for in this for the following, by resolution
11 division are separate and distinct from all other fees chargeable by the city. All fees shall become
12 immediately due and owing to the city upon receipt of invoice(s) for rendition of services or expenditure by
13 the city and shall become delinquent if not fully paid within 30 days after receipt. Any delinquent amount
14 shall be subject to a late charge of 15 percent.

- 15 (b) Fees applicable to this division are as follows:

16 (1) *Pre-permit inspection fees.* ~~There is no charge for the initial pre-permit inspection and the second~~
17 ~~inspection if in compliance. A fee of \$250.00 shall be charged to a FSF if a third pre-permit inspection is~~
18 ~~required due to the FSF's failure to correct deficiencies. If a fourth or more inspections are required, a~~
19 ~~fee of \$500.00 per inspection shall be charged to the FSF for noncompliance.~~ Fees will be added to the
20 customer's water and sewer billing account. Such fee shall be in addition to any enforcement actions.

21 (2) *Inspection and noncompliance fees.* ~~There shall be no charge for periodic inspections conducted by~~
22 ~~GMP officials on FSFs with current GDPs. If a grease interceptor or trap has to be reinspected because~~
23 ~~of deficiencies found during the previous inspection by the GMP official, and all of the deficiencies have~~
24 ~~been corrected, there shall be no charge for the reinspection. If all of the deficiencies have not been~~
25 ~~corrected, a first noncompliance fee of \$150.00 shall be charged to the FSF. If a second reinspection is~~
26 ~~required a second noncompliance fee of \$250.00 shall be charged to the FSF if all of the deficiencies~~
27 ~~have not been corrected. If a third or more reinspection is required a noncompliance fee of \$500.00 for~~
28 ~~each successive reinspection shall be charged.~~ All noncompliant fees shall be added to the FSF's water
29 and sewer billing account. Other enforcement actions shall be pursued if all of the deficiencies have
30 not been corrected.

31 (3) *Demand monitoring fees.* Fees for any demand monitoring, sampling, and analysis of wastewater
32 discharges deemed necessary for the protection of the RWPF shall be charged to the FSF at current
33 Florida state registered laboratory fees and city administrative fees. All fees will be added to the water
34 and sewer billing account.

35 (4) *Grease hauler registration fee.* ~~Each GHR application filed pursuant to this division shall be~~
36 ~~accompanied by an application fee of \$25.00.~~

37 (5) Fees, if any, for the GDP ~~may be established by resolution.~~

38 **Sec. 52-128. Appeal of permit denial or revocation.**

39 Any permit denial or revocation of a permit pursuant to this division may be appealed in accordance with
40 section 1-15 of this code to the special magistrate of the city. ~~The permit applicant or FSF owner shall have 30 days~~
41 ~~from the date of notification of the permit denial or revocation to submit a written request for a hearing.~~ Failure to
42 file an appeal constitutes acceptance of the decision to approve or deny the permit and any conditions thereof.
43 ~~The magistrate shall conduct a public hearing and decide within 60 days from the receipt of the appeal, whether or~~
44 ~~not to grant the permit. The decision of the magistrate shall be final. The magistrate shall follow the same~~
45 ~~guidelines as established in this Code with respect to permit issuance, and may impose reasonable conditions on~~

1 ~~any order granting the permit. In conducting a public hearing, the magistrate may receive new evidence and shall~~
2 ~~not be bound by the technical rules of evidence.~~

3 **Sec. 52-129. Legal proceedings.**

4 (a) *Search warrant.* The CMD, through the city attorney, may seek to obtain a search warrant from the
5 appropriate authority to gain access to a FSF for the purposes of inspection and monitoring if such lawful
6 entry under section 52-125(f) of this division has previously been denied by the FSF.

7 ~~(b) *Citation to County Court.* Notwithstanding any of the above, the city manager or designee may cite any user~~
8 ~~with a notice to appear in county court for violation of any provision of this division under F.S. ch. 162, part~~
9 ~~II. A violation of any condition or requirement of a FSF or grease hauler permit, or failure to obtain such a~~
10 ~~permit shall be deemed to be a violation of this division.~~

11 ~~(c) *Injunctive and other relief.* The city council, through the city attorney, may file a petition in the name of the~~
12 ~~city in the circuit court of the county or such other courts as may have jurisdiction seeking the issuance of an~~
13 ~~injunction, damages, or other appropriate relief to enforce the provisions of this division or other applicable~~
14 ~~law or regulation. Suit may be brought to recover any and all damages suffered by the city as a result of any~~
15 ~~action or inaction of any person who causes or suffers damage to occur to the city's wastewater collection~~
16 ~~system, or for any other expense, loss or damage of any kind or nature suffered by the city.~~

17 ~~(be) *Criminal mischief.* No person shall maliciously, willfully or deliberately break, damage, destroy, uncover,~~
18 ~~deface or tamper with any structure, appurtenance or equipment which is a part of the city sewer system or~~
19 ~~water and sewer department. Any person violating this provision shall be subject to arrest under charge of~~
20 ~~destruction of public property in accordance with F.S. § 806.13.~~

21 ~~(e) *Remedies nonexclusive.* The remedies provided for in this division are not mutually exclusive. The city~~
22 ~~manager or designee may take any, all, or any combination of these actions against a noncompliant~~
23 ~~business/person.~~

24 **Sec. 52-130. Violations and Penalties.**

25 (a) *Violations.* Violation of any provision in this division is punishable according to the penalties and procedures
26 set forth in chapter 14 of this code and as otherwise provided in this section. ~~Any person who is found to~~
27 ~~have violated any provision of this division or any condition of a permit issued pursuant to this division, shall~~
28 ~~be, upon conviction, subject to a penalty in an amount not to exceed \$500.00 or by imprisonment for not~~
29 ~~more than 60 days, or by both, for each offense as provided for in F.S. § 162.22. Each separate violation shall~~
30 ~~constitute a separate offense, and upon conviction of a specified ordinance violation, each day of violation~~
31 ~~shall constitute a separate violation. In addition to the penalties provided herein, the city may recover~~
32 ~~reasonable attorney's fees, court costs, court reporter's fees and other expenses of litigation by appropriate~~
33 ~~suit at law against the person found to have violated this division or the orders, rules, regulations and~~
34 ~~permits issued hereunder.~~

35 (b) *Falsifying information.* It is a violation of this division for anyAny person who to knowingly makes any false
36 statements, representation or certification in any application, record, report, plan or other document filed or
37 required to be maintained pursuant to this division, or who to falsifiesfalsify, tampers with or knowingly
38 renders inaccurate any monitoring device or method required under this division, ~~shall, upon conviction, be~~
39 ~~subject to a penalty in an amount not to exceed \$500.00 or by imprisonment for not more than 60 days, or~~
40 ~~by both. Each day on which a violation shall occur or continue shall be deemed a separate and distinct~~
41 ~~offense.~~

42 ~~**Sec. 52-131. Administrative enforcement and abatement.**~~

43 ~~(ca) *FSF enforcement.* Enforcement actions against FSFs in violation of this division shall be as follows:~~

1 (1) ~~Notice of noncompliance. A notice of noncompliance shall be issued to a FSF for any one or more of the~~
2 ~~following reasons.~~ The following are violations of this division:

- 3 a. Failure to properly maintain the oil and grease interceptor or trap in accordance with the
4 provisions of the oil/grease discharge certificate and this division.
- 5 b. Failure to report significant changes in operations, or wastewater constituents and
6 characteristics.
- 7 c. Failure to maintain a file of records on-site at all times.
- 8 d. Failure to maintain a record of pumping activities.
- 9 e. Failure to provide logs, files, records, or access for inspection or monitoring activities.
- 10 f. Failing to obtain or renew a GDP in a timely manner.
- 11 g. Any other failure to comply with the requirements of this division or conditions of a permit, or
12 failure to obtain a GDP as required by this division.

13 (2) ~~Notice of noncompliance response. Any FSF issued an notice of noncompliance shall respond to the city~~
14 ~~in writing within ten calendar days of receipt of the notice of noncompliance describing how the~~
15 ~~noncompliance will be corrected and what steps will be taken to prevent the reoccurrence of the~~
16 ~~noncompliance. Escalating enforcement procedures, demand monitoring and other penalties will be~~
17 ~~applied.~~ In addition to the penalties in this section, when continuing noncompliance is detected,
18 including, but not limited to, revocation of the GDP, citation or notice to appear in county court or
19 before the special magistrate for violations of this division. If a FSF violates or continues to violate the
20 provisions set forth in this division or fails to initiate/complete corrective action in response to a notice
21 of noncompliance, then the city may pursue one or more of the following options:

- 22 a. Contract with a permitted grease hauler to pump the grease interceptor and bill the appropriate
23 charge plus administrative fees to the FSF concerned.
- 24 b. Enter into an administrative order.
- 25 c. Revoke the GDP.
- 26 ~~d. Citation or notice to appear in county court.~~
- 27 ~~e. Special magistrate hearing.~~
- 28 df. Termination of water and/or sewer service.

29 (3) *Permit revocation.* Any GDP issued under the provisions of this division is subject to be modified,
30 suspended or revoked in whole or in part during its term for cause shown including, but not limited to,
31 any one of the following:

- 32 a. Falsification of any information submitted as part of the application for the GDP.
- 33 b. Failure to comply with any requirements or regulations concerning discharges to the city's
34 wastewater collection system.
- 35 c. Failure to comply with any requirements or regulations concerning grease interceptors as
36 provided for in sections 52-122 through 52-130 (or any amendments thereto), of this division.
- 37 d. Failure to pay required fees, or any assessed surcharges in a timely manner.
- 38 e. Failure to attend required BMP training courses as itemized in subsection (3) above.
- 39 f. When necessary to protect the public health, safety and welfare in accordance with the terms set
40 forth in chapter 1 of this Code.

41 (d)b) *Grease hauler enforcement.* Failure of any grease hauler to comply with the requirements of this division or
42 with the provisions of any permit or approval granted or authorized under this division shall constitute a

1 violation of this division. ~~In addition to the penalties in this section, violations of the provisions~~ violation of
2 this division shall be subject to, ~~but not limited to, the permit revocation, as follows~~ following procedures:

3 ~~(1) Citation or notice to appear in county court. A citation or notice to appear in county court will be issued~~
4 ~~to any grease hauler which is found to be in noncompliance with the regulations and requirements of~~
5 ~~this division.~~

6 ~~(12) Permit revocation.~~ Any GHR or notice of permission issued pursuant to the provisions of this program
7 may be modified, suspended or revoked in whole or in part during its term for cause shown including,
8 but not limited to, any one of the following:

- 9 a. Falsification of any information submitted as part of the application for the GHR.
- 10 b. Falsifying information regarding collection and disposal of wastewater.
- 11 c. Discharging any grease, liquid, or solid waste into a nonauthorized location.
- 12 d. Failure to maintain financial assurance as required by section 52-126(b)(5) of this division.
- 13 e. Failure to comply with any other permit conditions.

14 ~~(2e) Recovery of costs.~~ When a discharge of waste causes an obstruction, damage or any other impairment
15 to the city facilities, or any expense of whatever character or nature to the city, the CMD shall assess
16 the expenses incurred by the city to clear the obstruction, repair damage to the facility, and any other
17 expenses or damage of any kind or nature suffered by the city. The CMD shall file a claim with the user
18 or any other person or entity causing such damages seeking reimbursement for any and all expenses or
19 damages suffered by the city. If the claim is ignored or denied, the CMD shall notify the city attorney to
20 take such measures as shall be appropriate to recover any expense or to correct other damages
21 suffered by the city.

22 ~~(d) Remedies nonexclusive. The remedies provided for in this division are not exclusive. The city may take~~
23 ~~any, all, or any combination of these actions against a person violating this division. Enforcement of~~
24 ~~violations will generally be in accordance with section 52-129 of this division; however, the city may~~
25 ~~take other action against any person when the circumstances warrant. Further, the city is empowered~~
26 ~~to take more than one enforcement action against any person in violation of this division.~~

27 **Sec. 52-~~131~~ -132. Reserved.**

28 *DIVISION 6. IMPACT FEES*

29 **Sec. ~~00+~~**

30 **~~52-133. Findings.~~**

31 It is hereby ascertained, determined and declared:

- 32 (1) The Florida Legislature has adopted growth management legislation which requires local governments
33 to plan for and provide for capital infrastructure facilities and services.
- 34 (2) Development necessitates additional water and wastewater facilities and such development must
35 contribute its fair share toward the costs of funding improvements and additions to such facilities.
- 36 (3) Implementation of an impact fee to require future development to contribute its fair share of the cost
37 of improvements and additions to the water and wastewater facilities is an integral and vital element
38 of the regulatory plan of growth management by the city.

- 1 (4) The level of service standards for the water and wastewater facilities as adopted in the City of Marco
2 Island Comprehensive Plan and Utility Master Plans, as may hereafter be adopted and amended from
3 time to time, are controlling upon this division and are incorporated throughout this division.
- 4 (5) Capital planning is an evolving process and the level of service standards for the water and wastewater
5 facilities constitutes a projection of anticipated need for water and wastewater facilities, based upon
6 present knowledge and judgment. Therefore, in recognition of changing growth patterns and the
7 dynamic nature of population growth, it is the intent of the city that the level of service standards,
8 system capacity, and required capacity expansions for the water and wastewater facilities and the
9 impact fee imposed should be reviewed and adjusted periodically to try to ensure that the impact fees
10 are imposed equitably and lawfully and are based upon actual and anticipated growth at the time of
11 their imposition.
- 12 (6) The imposition of the impact fee is to provide a source of revenue to fund the construction or
13 improvement of the water and wastewater facilities necessitated by growth.
- 14 (7) The city council finds that water and wastewater facilities benefit all residents of the urban service area
15 and, therefore, the impact fee shall be imposed in all areas of the urban service area.
- 16 (8) This division is not intended to, and shall not be construed to, permit the collection of impact fees from
17 development in excess of the amount reasonably anticipated to offset the reasonably allocated
18 demand on each of the water and wastewater facilities generated by the respective development.
- 19 (9) The revenue derived from the impact fee shall be utilized only for capital improvements and additions
20 to the water and wastewater facilities which are reasonably determined to be caused by the impacts of
21 new development.

22 **Sec. 52-134. Purpose.**

23 It is the purpose of this division to:

- 24 (1) Plan for the necessary capacity expansion of the water and wastewater facilities;
- 25 (2) Provide for the health, safety, welfare and economic well-being of the residents and visitors of the city;
- 26 (3) Implement and be consistent with the City of Marco Island Comprehensive Plan and the Florida Local
27 Government Comprehensive Planning and Land Development Regulation Act, F.S. § 163.3161 et seq.;
- 28 (4) Require all development that places additional demand on the water and wastewater facilities to
29 contribute its proportionate share of the funds, land or water and wastewater facilities to
30 accommodate any impacts having a rational nexus to the proposed development and for which the
31 need is reasonably attributable to the proposed development; and
- 32 (5) Ensure that no funds, land or water and wastewater facilities are collected from new development in
33 excess of the actual amount reasonably determined necessary to offset the demand on the water and
34 wastewater facilities generated by new development.

35 This division is intended to be consistent with the principles applied to allocate a fair share of the cost of new
36 water and wastewater facilities to new users and new development as established in Florida Statutes or applicable
37 judicial decisions, or both.

38 **Sec. 52-135. Adoption of impact fee studies.**

39 The city council hereby adopts and incorporates by reference the following studies with regard to the
40 respective water and wastewater facilities:

- 41 (1) "City of Marco Island Comprehensive Plan," as amended; "Water and Wastewater Capital Facilities
42 Fees Study" prepared by Public Resources Management Group (September 28, 2006).

1 (2) The foregoing studies are hereby adopted in their entirety, as well as any updates or supplements
2 thereto, including the assumptions, conclusions, and findings in such studies and their amendments.

3 **Sec. 52-136. General definitions.**

4 When used in this division, the following terms shall have the following meanings, unless the context clearly
5 indicates otherwise. These definitions are supplemental to the definitions in section 1-2 of this code. The
6 definitions in this section shall prevail in case of conflict with section 1-2. Terms contained in the rate schedules
7 supersede these general definitions to the extent of any conflict(s).

8 *Accessory building or structure* means a detached, subordinate structure, the use of which is clearly indicated
9 and related to the use of the principal building or use of the land and which is located on the same lot as the
10 principal building. Plumbing in the accessory building or structure may render same to be subject to water and
11 wastewater impact fees.

12 *Alteration* means any change in size, shape, occupancy, character, or use of a building or structure.

13 *Alternative impact fee* means any modification in impact fee approved by the city council pursuant to section
14 52-~~64~~141.

15 *Applicant* means the person who applies for a building permit, development order, development permit, or
16 other approval, permission or authorization for development.

17 *Appraisal* means a real estate appraisal prepared in accordance with the "Uniform Standards of Professional
18 Appraisal Practice" (published by the Appraisal Standards Board of The Appraisal Foundation) by an MAI-certified
19 appraiser authorized to practice in the State of Florida.

20 *Bedroom* means any room in a single-family residence, which is other than a kitchen, bathroom, living room,
21 or great room (Florida room) which may be used for sleeping quarters.

22 *Building* means any tangible thing, with or without walls, constructed on the site, installed on the site, or
23 placed on the site, to support, shelter or enclose persons and/or support, shelter or enclose tangible property, and
24 the use of the "building" is deemed to create demand upon, or increase demand upon, one or more of the water
25 and wastewater facilities. "Building" includes parking lots and other foundations, permanent and semi permanent
26 tents, sheds, trailers, mobile homes, and vehicles that shall in any way function as a building. "Building" includes
27 additions to a building, such as adding a new room, or enlargement of a then existing room. "Building" excludes
28 tents erected for less than approximately 60 days for the temporary selling of seasonal items.

29 *Building permit* means an official document issued by the city or county which authorizes placing a building
30 on the site, including, but not limited to, by construction or installation occurring on the site and including, but not
31 limited to, an item that is complete or substantially complete prior to its being placed on the site, such as a
32 manufactured home or a communications tower that was substantially constructed elsewhere. For purposes of
33 this division, "building permit" shall include tie-down permits for buildings, such as for a mobile home, or other
34 approvals that do not require any other type of permit before the respective item may lawfully be occupied, used,
35 or operated. "Building permit" when used in the context of the use of land (or water) and in situations where a
36 typical, conventional permit is not issued by the city or county for the respective improvement or use means
37 whatever is the last written approval or permission issued by the city or county to authorize the respective
38 improvement.

39 *Capital recovery fee or impact fee* means the fee imposed by the city pursuant to section 52-137 or, if
40 applicable, the alternative impact fee.

41 *City* means the City of Marco Island, a political subdivision of the State of Florida, and shall include the Marco
42 Island city Utilities Department of the City, the utilities department director, and the city manager.

43 *City attorney* means the individual appointed by the city council to serve as its counsel, or the designee of
44 such attorney.

1 ~~City manager means the chief administrative officer of the city, appointed by the city council, or the designee~~
2 ~~of such officer.~~

3 *Commercial development* means a development where commercial activity occurs. A commercial
4 development may include one or more "building"(s) and may or may not include any "residential" units.

5 ~~Comprehensive plan means the comprehensive plan of the city adopted and amended pursuant to the Local~~
6 ~~Government Comprehensive Planning and Land Development Act as contained in F.S. ch. 163, pt. II, or its~~
7 ~~successor in function.~~

8 ~~Condominium means a single family or time sharing ownership unit that has at least one other similar unit~~
9 ~~within the same building structure. The term condominium includes all fee simple or title multiunit structures,~~
10 ~~including townhouses and duplexes.~~

11 *Contribution* means the actual construction, installation, or improvement of a water or wastewater facility or
12 portion thereof or addition thereto for the benefit of the city.

13 ~~Council means the City Council of the City of Marco Island.~~

14 ~~County means Collier County, a political subdivision of the State of Florida.~~

15 *Date of value* means, for purposes of determining a developer contribution credit, the market value of the
16 contribution as of the date of the contribution; date of commencement of construction; date of land dedication;
17 or, for dedications, the day before the development order approval (zoning amendment, site plan approval, PUD
18 approval, or other development order approval) wherein the contribution, construction or land dedication was
19 proffered or required; whichever occurs first.

20 *Dedication* means the conveyance or donation of an interest in land or water and wastewater facilities to the
21 city.

22 *Development* means any installation, siting, construction, use of land, or other activity or improvement, or
23 any additional square footage (area) of a then existing building or use, or any net increase in the size or use of a
24 then existing building or land, in a manner that is deemed to increase the demand for, or impact upon, any water
25 and wastewater facility.

26 ~~Dwelling unit has the meaning ascribed to in in section 30-10 of this code. means a building or portion of a~~
27 ~~building designated for or whose primary purpose is for residential occupancy, and which consists of one or more~~
28 ~~rooms which are arranged, designed or used as living quarters for one or more persons. A dwelling unit must~~
29 ~~contain, as an integral part therein, sleeping quarters, toilet/bathing facilities, and a primary kitchen.~~

30 *Equivalent residential connection* or *ERC* generally represents the equivalent usage requirements of a single-
31 family residential customer. The term "equivalent residential unit" or "ERU", often used instead of ERC, and has
32 the same definition as an ERC. One ERC is deemed to be equal to a flow of 440 gallons per day (GPD) for water;
33 and one ERC is deemed to be equal to a flow of 220 gallons per day (GPD) for wastewater. The assumed ERC
34 gallonage has been based on statistical data establishing an average residential use, and it is recognized that the
35 uses for some types of residential units may be greater or smaller than the average assumed for this calculation.

36 *Equivalent residential unit* or *ERU* generally represents the equivalent usage requirements of a single-family
37 residential customer. For the purpose of this division, an ERU will have an assigned value of 1.0. One ERU is
38 deemed to be equal to a flow of 440 gallons per day (GPD) for water; and one ERU is deemed to be equal to a flow
39 of 220 gallons per day (GPD) for wastewater. The assumed ERU gallonage has been based on statistical data
40 establishing an average residential use, and it is recognized that the uses for some types of residential units may be
41 greater or smaller than the average assumed for this calculation.

42 ~~Guesthouse or cottage has the meaning ascribed to it in section 30-10 of this code means a dwelling unit as~~
43 ~~defined in the city's land development code.~~ For the purpose of assessing water and wastewater impact fees,
44 guesthouses or cottages shall be considered as additional square footage to the primary residential building.

45 *Impact fee* or *capital recovery fee* means the fee imposed by the city pursuant to section 52-137 or, if
46 applicable, the alternative impact fee.

1 *Impact fee rate* means the formula or calculation that when applied to the respective development
2 determines the applicable impact fee that results because of the impacts deemed by this division to be applicable
3 to the respective water and wastewater facility caused by particular development.

4 *Impact fee study* means a report of the findings of research and analysis conducted to develop fees assessed
5 on new development that represent the fair share cost of the expansion of the water and wastewater facility
6 infrastructure made necessary by that new development. The report describes the methodology used to develop
7 the fees and presents the formulas, variables, and data used as the basis of the fees.

8 *Living area* means actual square footage, which could be air-conditioned or heated spaces contained under
9 roof, or areas under roof, except garages, that are normally protected against exterior elements. When calculating
10 the required impact fee on a square foot criteria, the calculation shall be based on the living area.

11 ~~*Local Government Comprehensive Planning and Land Development Regulation Act* means the provisions of
12 F.S. ch. 163, pt. II, as amended or supplemented, or its successor in function.~~

13 *Market value* means the most probable price for which a given property would sell, given adequate exposure
14 in an open and competitive market, where both buyer and seller were knowledgeable, prudent and acting in their
15 own self-interests, with neither party being under undue stimulus to act, nor having an affiliation with one
16 another, where payment is made in terms of cash in United States dollars (or in terms of financial arrangements
17 comparable thereto), and where the price is unaffected by special or creative financing or sales concessions
18 granted by any party associated with the sale.

19 ~~*Marco Island Utilities* means the city department responsible for the management and operation of the
20 Marco Island water and wastewater and reuse water utility system.~~

21 *Marco Island utilities director or utilities director* means the individual appointed by the city manager to
22 manage and operate the Marco Island utility system, including the systems within the urban service area, which
23 now or in the future assess any water and wastewater impact fee.

24 *Meter size* means the water meter size as determined pursuant to any city ordinance, resolution, or policy.

25 *Mixed use development* means a development in which more than one impact fee land use category is
26 contemplated with each category constituting a separate and identifiable enterprise not subordinate to, or
27 dependent on, other enterprises within the development.

28 *Mobile home* means a detached dwelling unit with all of the following characteristics:

- 29 (1) Designed for occupancy and containing sleeping accommodations, a flush toilet, a tub or shower and
30 kitchen facilities with plumbing and electrical connections provided for attachment to outside systems;
31 (2) Designed for transportation after fabrication on streets or highways on its own wheels; and
32 (3) Arriving at the site where it is to be occupied as a dwelling complete, including major appliances and
33 furniture, and ready for occupancy except for minor and incidental unpacking and assembly
34 operations, location on jacks or other temporary or permanent foundations, connection to utilities and
35 the like.

36 Although a travel trailer, recreational vehicle, or park model is not generally considered a mobile home, the
37 applicable impact fee in some instances may be the same as for a mobile home. For the purposes of computing the
38 impact fee, a mobile home on a single-family lot (i.e., not located in a mobile home or similar park) shall be
39 considered a single-family detached house.

40 *Multiple-family dwelling units* means a group of two or more dwelling units within a single conventional
41 building, attached side by side or one above the other, or both, and wherein each dwelling unit may be individually
42 owned or leased mutually on land which is under common or single ownership. For purposes of determining
43 whether a lot is in multiple-family uses, the following considerations shall apply:

- 1 (1) Multiple-family dwelling uses may involve dwelling units intended to be rented and maintained under
2 central ownership and management, or cooperative apartments. It may include the fee ownership of
3 land beneath each dwelling unit following development from a common base of ownership.
- 4 (2) Any multiple-family dwelling in which dwelling units are available for rental for periods of less than one
5 week shall be considered a tourist home, a motel, motor hotel, or hotel, as the case may be.

6 *Off-site improvements* means improvements located outside of the boundaries of a development, except for
7 those water and wastewater facilities that are located within the boundaries of the development that are owned
8 and maintained by the city, which may be required by the city.

9 ~~Owner means the person(s) who, or that, owns legal title to the real property upon which development is~~
10 ~~proposed to occur. Owner includes every co-owner, such as property owned in tenancy by the entirety, joint-~~
11 ~~tenancy, tenants in common, or by more than one trustee.~~

12 *Professional engineer* means one who is licensed by the State of Florida as a professional engineer.

13 *Reuse system* means the reuse or reclaimed water system directly connected to treatment facilities operated
14 by the city.

15 *Residential* means ~~any dwelling unit~~apartments, condominiums, duplex dwellings, garden apartment
16 ~~dwellings, modular home dwellings, multiple family dwellings, townhouse dwellings, mobile homes, single family~~
17 ~~attached houses, single family detached houses, including~~ adult congregate living facilities (ACLF), ~~or and~~ assisted
18 living facilities (ALF) as that term is defined in F.S. § 400.402, ~~unless treated otherwise by the adopted rate~~
19 ~~schedules.~~

20 *Single-family detached house* means a ~~home dwelling unit located on an individual its own exclusive~~ lot or
21 parcel of land ~~that is not attached to any other dwelling unit. intended, designed, used and/or occupied by no~~
22 ~~more than one family.~~

23 *Square footage* means the gross area measured in feet from the exterior faces or exterior walls or other
24 exterior boundaries of the building. For the calculation of the impact fees, square footage shall be the square foot
25 measurement of the "living area" and excludes areas within the interior of the building which are utilized for
26 parking.

27 *Urban service area* ~~has the meaning ascribed to it in section 52-41~~means the boundaries of the area lying
28 ~~within the city and certain areas lying in unincorporated Collier County for which water and/or wastewater~~
29 ~~services are provided by the city, pursuant to Ordinance No. 2003-13, as amended by ordinance or interlocal~~
30 ~~agreement.~~

31 *Wastewater or sewer systems* means the wastewater or sewer and reuse (reclaimed) utility system, including
32 collection, treatment, and distribution facilities directly connected to treatment facilities operated by the city.

33 *Water system* means the potable water utility system directly connected to treatment facilities operated by
34 the city.

35 **Sec. 52-137. Imposition of impact fees.**

- 36 (a) *General requirements.* All development within the city and the urban service area shall pay all assessed
37 impact fees unless such impact fees, in whole or in part, have been exempted, waived, or deferred pursuant
38 to this division. The impact fee shall be assessed based on a calculation of the impact of the proposed
39 development on the water and wastewater facilities.
- 40 (b) *Impact fee rates.* The city council hereby adopts the impact fee rates as set forth in appendix A ~~to Ordinance~~
41 ~~No. 04-06, appended hereto~~, which shall be imposed upon all development occurring within the city and the
42 urban service area. These rates may be changed from time-to-time by resolution of the city council.
- 43 (c) *Change of size or use.* Impact fees shall be imposed and calculated for net increase, alteration, expansion, or
44 replacement of a use or a commercial development, or a building, or part of a building (including dwelling

1 unit), and each accessory or non-accessory building, provided such net increase, alteration, expansion, or
2 replacement of the use, building, or part thereof or therein, by applying this [chapter-division](#), results in: a net
3 increase in the number of dwelling units; a net increase in the size or square footage of a commercial
4 development or building; a net increase in the size of the use; or intensification of the use so as to constitute
5 an expansion of the same use category or result in a change to a higher impact fee land use category; or
6 otherwise create additional demand or additional impacts on the water and wastewater facilities. The impact
7 fee imposed under the applicable impact fee rate shall be calculated as follows:

8 (1) In the event only the square footage of a use or building is increased, the impact fee shall be calculated
9 only for the net increased square footage.

10 (2) The impact fee imposed for any accessory buildings shall be that applicable under the impact fee rate
11 for the land use for the primary building unless the accessory building has its own impact fee rate.

12 (3) In the event that a change in use creates additional demand or impacts on the water and wastewater
13 facilities, the impact fee imposed shall be the impact fee due for the new use minus the impact fee that
14 would be paid at the current impact fee rate for the most recent lawful use that exists or existed on the
15 commercial development unless previously unused credits can be documented and used. The
16 commercial development may consist of a single parcel or adjacent parcels with one or more buildings.
17 It is the responsibility of the current owner of the commercial development to provide the
18 documentation that impact fees were paid for the number of ERCs for the facility before the change in
19 use. If no documentation is provided to the city for previous ERCs then no credit will be given for those
20 ERCs. There shall be no adjustment, off-set or credit for subsequent change of building or use that
21 result in lower net impacts upon the water and wastewater facilities.

22 (4) A building that has been condemned, demolished, deemed unsafe, or abandoned more than two years
23 before the date that the respective building permit application is first submitted to the city for approval
24 shall not be entitled to any impact fee credit for any impact fee previously paid to the city.

25 (d) *Exemptions.* The following development or change in use shall be exempted from paying additional impact
26 fees:

27 (1) New building(s) or addition to a building(s) or an accessory building that will not create additional net
28 demand upon on the water and wastewater facility for which the exemption is sought over and above
29 the then existing development impacts deemed to be created by the then lawfully existing building(s)
30 or use(s).

31 (2) Lots, pads, sites, foundations or spaces for a single mobile home, recreational vehicle, travel trailer, or
32 park model, when evidence is provided that the applicable impact fee has been previously paid.

33 (3) Development for which the respective impact fee is then expressly prohibited by Florida law, rule, or
34 regulation, or by federal law, rule, or regulation.

35 (e) Impact fee reductions. Development within the service area of another utility provider that is connected to
36 the Marco Island Utilities may be eligible for a reduction from the impact fee rate if such reduction is
37 provided in a written agreement between the other utility provider and the city.

38 **Sec. 52-138. Payment.**

39 (a) Unless deferred or waived by a written agreement with the city as a party thereto, or unless exempted, the
40 impact fee shall be:

41 (1) Paid in full prior to the issuance of a building permit for the development or any other authorization to
42 use the land included in the development;

43 (2) Whenever any building or use, which has not previously paid the applicable impact fees under this
44 division is issued a permit to connect to the water and wastewater system;

- 1 (3) Whenever a person is issued a building permit to alter an existing building, use or applicable
2 improvement then connected to the water and wastewater system, if such alterations increase the
3 demand or the potential demand on the water and wastewater system.
- 4 (b) If the issuance of a conventional building permit for the development is not required (e.g., golf course, park,
5 change of use, etc.), then an applicant shall pay the impact fee prior to the occurrence of any one of the
6 following events, whichever occurs first:
- 7 (1) The date when the first building permit has been issued for any building or structure accessory to the
8 principle use or structure of the development;
- 9 (2) The date when the first building permit is issued for the first nonaccessory building or nonaccessory
10 structure to be used by any part of the development;
- 11 (3) The date when a final development order, final development permit or other final authorization is
12 issued for a parking facility for any portion of the development;
- 13 (4) Upon the issuance of a permit to connect to the water or wastewater facility;
- 14 (5) The date when a final development order, final development permit or other final approval is issued
15 for any part of the development in instances where no further building permit is required for that part
16 of the development;
- 17 (6) The date when the development first commences construction;
- 18 (7) The date when any part of the development opens for business or goes into use; or
- 19 (8) Prior to date of execution of FDEP permit application.

20 **Sec. 52-139. Installment payments.**

- 21 (a) Subject to availability of funds, the city may enter into agreements to extend payment (offer installment
22 payments) of impact fees and associated costs with owners of then-existing buildings, structures or
23 applicable improvements which are mandated to connect to the water and wastewater systems. Prior to the
24 city entering into any agreement to extend payments, and from time to time thereafter, the city council shall
25 identify a specific source of funds to be used relative to providing extended payment and the cost of such
26 funds, including all expenses and costs incidental to obtaining or providing same, including interest at the
27 interest rate that the city will employ in offering extended payment with interest, and a reasonable
28 estimation of the administrative costs of expenses associated with administering the extended payment
29 alternative to the respective land(s).
- 30 (1) The city shall only enter into agreements to extend installment payment of the impact fees and
31 associated costs with owners of then-existing buildings, structures or applicable improvements,
32 mandated to connect to the water and wastewater systems.
- 33 (2) The amount of payment, including any title verification expenses and a reasonable estimation of the
34 cost and expense associated with providing an extended payment alternative, shall be paid in equal
35 monthly payments with an annual interest rate as determined by the city. State document stamp and
36 recording fees will be upfront costs borne by the owner and shall be paid in full at the time the
37 extended payment agreement is executed. The interest rate charged shall be representative of the
38 city's cost of funds, including all expenses or costs incidental to obtaining or providing same, if any. The
39 interest charged should be adjusted during January of any calendar year and shall be based on the
40 city's cost of funds for the immediately preceding fiscal year. Failure to make such an adjustment in any
41 given January shall not preclude retroactive adjustments of such interest rates.
- 42 (3) The city council hereby delegates to the city manager the power and authority to enter into, modify,
43 and release such extended payment agreements in conformance with the provisions of this division.

- 1 (4) Upon satisfactory payment of all principal, interest, and associated costs under an extended payment
2 agreement, the city shall execute a satisfaction of lien and record same in the official records of Collier
3 County.
- 4 (b) In the event a building permit issued for a development expires prior to commencement of any part of the
5 development for which the building permit was issued, the applicant may, within 90 days of the expiration of
6 the building permit, apply for a refund of the entire impact fee. Failure to timely apply for a refund of the
7 impact fee shall result in the waiver of any right to a refund.
- 8 (c) The obligation for payment of the impact fee shall run with the land. Assignment of impact fee credits from
9 one parcel of land to another parcel of land shall not be permitted except in accordance with the
10 requirements of section 52-62 142
- 11 (1) The application for refund shall be filed with the city manager and shall include: the name and address
12 of the applicant; the location of the property; the date the impact fee was paid; a copy of the receipt of
13 payment for the impact fee; and the date the building permit was issued and the date of expiration.
- 14 (2) After verifying that the building permit has expired before the development had commenced, the city
15 manager shall refund the impact fee.
- 16 (3) If a building permit is subsequently issued for a development on the same property, which was the
17 subject of a refund, the impact fee in effect at the time the building permit is issued must be paid.
- 18 (d) In the event the city issues separate building permits for a commercial development or building or part of a
19 building within a development which by design contemplates phased (delayed) occupancy, the city and the
20 applicant may enter into an agreement for the phased (installment) payment of the impact fee applicable to
21 that portion of the development represented by such unoccupied units or space; provided, however, that all
22 impact fees due shall be paid in full prior to issuance of a certificate of occupancy for occupancy of any
23 delayed occupancy portion of the building.
- 24 (e) The impact fee shall be paid in addition to all other fees, charges, and assessments due for the issuance of a
25 building permit.

26 **Sec. 52-140. Use of funds.**

- 27 (a) The city council hereby establishes or reaffirms the establishment of two separate accounts, one entitled
28 "water impact fee account" for water and a second entitled "wastewater impact fee account" for
29 wastewater.
- 30 (b) The funds deposited into each impact fee account shall be used solely for the purpose of providing growth
31 necessitated improvements and additions to the water and wastewater facility for which the impact fee was
32 assessed including, but not limited to the following:
- 33 (1) Design and construction plan preparation;
- 34 (2) Permitting and fees;
- 35 (3) Design, construction, management, and inspection of water and wastewater facilities;
- 36 (4) Land and materials acquisition, surveying, soil samples, material testing, including costs of acquisition
37 and condemnation;
- 38 (5) Aquifer storage facilities;
- 39 (6) Right-of-way acquisition, including costs of acquisition and condemnation;
- 40 (7) Development of raw water sources;
- 41 (8) Acquisition of capital equipment and apparatus;
- 42 (9) Debt service;

- 1 (10) Update to impact fee studies;
- 2 (11) Any other expenses as then allowed by law.
- 3 (c) The moneys deposited into the impact fee account shall be used solely to finance water and wastewater
- 4 facilities required by growth as projected in the impact fee studies, the comprehensive plan, or in the city's
- 5 then current utility master plan and/or capital improvement program.
- 6 (d) The impact fee collected pursuant to this division shall be returned to the then current owner of the property
- 7 for which such fee was paid if such fees have not been expended or encumbered prior to the end of the fiscal
- 8 year immediately following the sixth anniversary of the date when the respective impact fee was paid.
- 9 Refunds shall be made only in accordance with the following procedure:
 - 10 (1) The then current owner shall petition the city manager for the refund prior to the end of the fiscal year
 - 11 immediately following the sixth anniversary of the date of the payment of the respective impact fee.
 - 12 (2) Submittal to the city manager, and shall contain:
 - 13 a. A notarized sworn statement that the petitioner is the then current owner of the property for
 - 14 which the impact fee was paid;
 - 15 b. A copy of the dated receipt issued for payment of such fee or such other record as would clearly
 - 16 indicate payment of such fee;
 - 17 c. A certified copy of the latest recorded deed; and
 - 18 d. A copy of the most recent ad valorem tax bill.
 - 19 (3) Within 90 days from the date of receipt of a complete petition for refund, the city manager will advise
 - 20 the owner of the status of the impact fee requested for refund, and if such impact fee has not been
 - 21 expended or encumbered within its applicable time period, then it shall be returned to the then
 - 22 current owner. For the purposes of this section, fees collected shall be deemed to be spent or
 - 23 encumbered on the basis of the first fee in shall be the first fee out. Such funds may be encumbered by
 - 24 contract, bond, resolution, ordinance, or otherwise.
 - 25 (4) Impact fee moneys refunded by the city manager in accordance with this paragraph (d) shall be paid
 - 26 with interest accrued to the principal being refunded but not to exceed the rate of five percent simple
 - 27 interest.
- 28 (e) Failure to file a timely petition for a refund upon becoming eligible to do so shall be deemed to have waived
- 29 any claim for a refund, and the city shall be entitled to retain and apply the impact fee for growth
- 30 necessitated capital improvements and additions to the respective public facilities.

31 **Sec. 52-141. Alternative fee calculation.**

- 32 (a) The impact fee may be determined by an alternative fee calculation of the fiscal impact of the development
- 33 on the water and wastewater facilities if:
 - 34 (1) Any person commencing a development which increases demand on the water and wastewater facility
 - 35 chooses to have the impact fee determined by the alternative fee calculation; pays to the city in full the
 - 36 impact fee calculated pursuant to the applicable impact fee rate schedule; pays a nonrefundable
 - 37 alternative fee calculation review fee of \$2,500.00 initially, and the actual cost upon completed review
 - 38 if in excess of \$2,500.00; or any other review fee amount then established by the city council by
 - 39 ordinance or resolution; and
 - 40 (2) The applicant believes that the nature, timing or location of the proposed development makes it likely
 - 41 to generate impacts costing less than the amount of the impact fee rate calculations in appendix "A",
 - 42 as applicable for the water and wastewater facilities at issue; and

- 1 (3) The applicant commences the alternative fee calculation process by requesting in writing to the city
2 manager, and attends a pre-application meeting within 180 days of the issuance of the building permit
3 for the development.
- 4 (b) The alternative fee calculation shall be undertaken through the submission of an impact analysis for the
5 water and wastewater facilities, which shall be based on data, information, methodology and assumptions
6 contained in this division and/or the impact fee studies incorporated herein, or an independent source,
7 including local studies for alternative impact fee calculations performed by others within the immediately
8 preceding three years, provided that the independent source is a local study supported by a data base
9 adequate for the conclusions contained in such study performed pursuant to a methodology generally
10 accepted by professionals in the field of expertise for the water and wastewater facilities and based upon
11 standard sources of information relating to facilities planning, cost analysis and demographics and generally
12 accepted by professionals in the field of expertise for the water and wastewater facilities. Technical details of
13 approach, methodology, procedures, and other matters relating to the alternative fee calculation may be
14 addressed in an administrative procedures manual.
- 15 (c) The alternative fee calculation shall be submitted by the applicant for the proposed development and shall
16 be prepared and certified as accurate by persons accepted by the city as qualified professionals in the field of
17 expertise for the water and wastewater facilities, and shall be submitted to the city manager.
- 18 (d) If the city manager determines that the alternative fee calculation is acceptable, and the city's cost to
19 accommodate the proposed development is substantially different than the impact fee established pursuant
20 to section 52-137, the amount of the impact fee shall be reduced to a dollar amount consistent with the
21 amount determined by the alternative fee calculation and presented to city council for review and approval.
- 22 (e) In the event the applicant disagrees with a decision of the city manager that effectively results in a denial of
23 the alternative fee calculation, the applicant may file a written appeal petition with the city council not later
24 than 30 days after receipt of notice of such a decision by the city manager. In reviewing the decision, the city
25 council shall use the standards established herein. The appeal petition must advise the city council of all
26 issues and shall explain the precise basis the applicant asserts that the decision(s) of the city manager is/are
27 alleged to be incorrect.

28 **Sec. 52-142. Developer contribution credit.**

- 29 (a) A person may apply for a credit against any impact fee owed, pursuant to section 52-137, for a water and
30 wastewater facility for any contribution, construction, or land dedication conveyed to, accepted, and
31 received by the city for the water and wastewater facility. The city may grant a credit against the impact fee
32 imposed against a development for the construction, installation or contribution of water and wastewater
33 facilities, or improvements and additions thereto, or land dedication related thereto, required pursuant to a
34 development order for the development, or not required by such development order. Such construction,
35 contribution or land dedication shall be subject to the approval of the city council as described herein and
36 shall be an integral part of, and a necessary accommodation to, existing or contemplated water and
37 wastewater facilities.
- 38 (b) A credit granted against the impact fee for certain dedications of land, contributions of construction or
39 installation of water and/or wastewater systems, buildings, facilities and/or improvements and/or additions
40 thereto, made to the water and wastewater systems, whether required to be made pursuant to a
41 development order by the city or not, shall be subject to the following standards:
- 42 (1) The dedicated land shall be an integral part of, and a necessary accommodation to, contemplated off-
43 site improvements to the water and wastewater system needs, whether on site or off site.
- 44 (2) The credit for a dedication of land shall not exceed the fair market value of the land dedication as
45 based upon a written appraisal by a qualified and professional appraiser acceptable to the city, based
46 upon comparable sales of similar property between unrelated parties in a bargaining transaction as of
47 the date of the contribution; the date of the commencement of the construction; the date of the land

1 dedication; or for dedications, the day before the date of the issuance of the development order
2 approval (zoning amendment, site plan approval, PUD approval, or other development order approval)
3 wherein the contribution, construction or land dedication was proffered or required; whichever occurs
4 first.

5 (3) In the case of contributions of construction or installation of improvements, the value of the proposed
6 contribution shall be adjusted upon completion of the construction to reflect the actual costs of
7 construction or installation of improvements contributed by the developer. The actual cost of
8 construction for the contribution shall be based upon costs certified by a professional engineer or
9 architect, as appropriate. However, in no event shall any upward adjustment in the credit amount as
10 set forth in the developer contribution agreement between the owner and the city exceed 15 percent
11 above the initial certified estimate of costs for contributions as provided by the professional engineer
12 or architect, as appropriate. Upon adjustment of the value of the developer's contribution, the
13 contribution credit shall be adjusted accordingly.

14 (4) Until the contribution credit is finally adjusted upon completion of construction, no more than 75
15 percent of the initial estimate of costs for contributions to the water and wastewater systems
16 identified in the contribution agreement shall be actually applied or used in the calculations of
17 available credit against water and wastewater systems impact fees.

18 (5) No credit whatsoever for lands, easements, construction or infrastructure otherwise required to be
19 built or transferred to the city shall be considered or included in the determination of any value of any
20 developer's contribution.

21 (6) All construction cost estimates shall be based upon, and all construction plans, specifications, and
22 conveyances shall be in conformity with, the construction standards and procedures of the city. All
23 plans, specifications, or designs must be approved by the city manager prior to commencement of
24 construction.

25 (7) No credit for a water and wastewater facility shall exceed the impact fee imposed by this division,
26 unless a credit (developer's) agreement has been completed pursuant to the requirements of this
27 section.

28 (8) No credit shall be issued when such plan, viewed in conjunction with other existing or proposed plans,
29 will adversely impact the cash flow or liquidity of the impact fee account in such a way as to frustrate
30 or interfere with other planned or ongoing growth necessitated capital improvements and additions to
31 such waster and wastewater systems; and the proposed time schedule for completion of the plan is
32 consistent with the then most recently adopted five-year capital improvement program for the water
33 and wastewater facility.

34 (9) Except as provided in this section, no other dedications of land, contributions of off-site improvements,
35 contributions of construction or installation of improvements shall be entitled to developer
36 contribution credit from the impact fee.

37 (c) An applicant who desires to make a dedication of land or contribution for impact fee credits shall, prior to
38 issuance of a building permit, submit to the city a proposed plan for the dedication of land or for the
39 contribution.

40 (d) Upon approval of a proposed plan of dedication or contribution, the city manager shall determine the
41 amount of developer credit and shall approve the timetable for completion of construction.

42 (e) Upon approval of a plan for the dedication or contribution, a developer contribution agreement shall be
43 entered into between the city and the owner. A nonrefundable processing, review and audit fee of \$2,500.00
44 shall be due once the voluntary plan has been approved and prior to the preparation of a contribution
45 agreement by the city.

46 (f) Impact fee credits shall not be assigned or otherwise transferred from one commercial development to
47 another commercial development except by written agreement executed by the city, and then, shall only be

1 transferable from one commercial development to another commercial development owned by the same
2 developer. No such assignment or transfer of impact fee credits shall be allowed until the original
3 commercial development has been completed. Impact fee credits will be accomplished only through the
4 operation of a credit agreement. Should an assignment of credit be approved by the city through execution
5 of such an agreement, the assignee shall take the agreement as is and shall be bound by all of the terms and
6 conditions of the agreement as originally executed by the assignor and other parties. No assignee (or
7 transferee) of any such agreement shall have the right to any review procedure under this chapter except to
8 the extent expressly granted in the agreement. The provisions of this paragraph shall apply to subsequent
9 purchasers or successors in title to the owner.

- 10 (g) Any applicant who submits a proposed credit agreement pursuant to this division and desires the immediate
11 issuance of a building permit shall pay the impact fee prior to or at the time of the application for the
12 building permit. Said payment shall be deemed paid "under protest" and shall not be construed as a waiver
13 of any review rights. Any difference between the amount paid and the amount due, as determined by the
14 city manager, shall be refunded to the applicant or owner.
- 15 (h) In the event the amount of impact fee credit, pursuant to an approved contribution or dedication, exceeds
16 the total amount of impact fee imposed upon the development, the contribution agreement may provide for
17 the future reimbursement to the owner of the excess of such contribution credit from future receipts by the
18 city of impact fees. However, no reimbursement shall be paid until such time as all development at the
19 location that was subject to the credit has been completed. Such reimbursement shall be made over a period
20 of five years from the date of completion of the development as determined by the city.

21 **Sec. 52-143. Collection of impact fees in default.**

22 Whenever the city determines that an impact fee was not paid prior to the issuance of a building permit for
23 the affected development, or connection to the water or wastewater system, the city shall proceed to collect the
24 impact fee as follows:

- 25 (1) The city shall serve a "notice of impact fee statement" upon the applicant at the address set forth in
26 the application for building permit, and the owner at the address appearing on the most recent records
27 maintained by the property appraiser of the county. The city shall also attach a copy of the "notice of
28 impact fee statement" to the building permit posted at the affected development site if the building is
29 under construction. Service shall be deemed effective on the date the return receipt indicates the
30 notice was received by either the applicant or the owner or the date said notice was attached to the
31 building permit, whichever occurs first, or by any other evidence of the date that the "notice" was
32 received by the addressee. The "notice of impact fee statement" shall contain a description of the
33 property and shall advise the applicant and the owner as follows:
- 34 a. The amounts due, the date that the impact fee became delinquent, and that as of that date the
35 unpaid impact fee became subject to the delinquency fee, and that interest began to accrue on
36 that date, and that such interest will continue to accrue thereafter until all amounts due are paid
37 in full; that in the event the impact fee and the delinquency fee are paid in full within 30 days
38 after receipt of the "notice," all interest that would have otherwise accrued will be waived; that
39 in the event the impact fee is not paid in full within 30 days after receipt of the "notice", a lien
40 against the property for which the building permit was secured may be recorded in the official
41 records book of the county for all amounts then due after approval by the city manager.
- 42 (2) Upon becoming delinquent, a delinquency fee equal to ten percent of the total impact fee imposed
43 shall be assessed. Once delinquent, the total impact fee, plus delinquency fee, shall bear interest at the
44 then applicable statutory rate for final judgments calculated on a calendar day basis, until paid in full.
- 45 (3) Should the impact fee not be paid promptly, the city shall serve a "notice of lien" upon the delinquent
46 applicant, if the building is under construction at the address indicated in the application for the
47 building permit, and upon the delinquent owner at the address appearing on the most recent records
48 maintained by the property appraiser of the county. The notice of lien shall notify the delinquent

1 applicant and delinquent owner that due to their failure to pay the impact fee, the city may file a claim
2 of lien with the clerk of the circuit court.

3 (4) The collection and enforcement procedures set forth in this section shall be cumulative with,
4 supplemental to and in addition to, all other applicable procedures provided in any other ordinances or
5 administrative regulations of the city or any applicable law or administrative regulation of the State of
6 Florida. Failure of the city to follow the procedure set forth in this section shall not constitute a waiver
7 of its rights to proceed under any other ordinances or administrative regulations of the city or any
8 applicable law or administrative regulation of the State of Florida.

9 (5) If the total impact fees have not been received by the city within 30 days of the posting of the notice of
10 claim of lien (or receipt of the notice by the owner or trustee), the city manager may then, regardless
11 of the filing of any appeal petition, file a claim of lien with the clerk of the circuit court and record same
12 in the Official Records of Collier County. The recorded claim of lien shall contain the legal description of
13 the property, the amount of the delinquent impact fee, plus the delinquency fee and interest, and the
14 date the impact fee became due. Once recorded, the claim of lien shall constitute a lien against the
15 property described therein. The city manager may proceed expeditiously to collect, foreclose, or
16 otherwise enforce said lien.

17 (6) After the expiration of 30 days from the date of recording of the claim of lien, as provided herein, a suit
18 may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted, conducted and
19 enforced in conformity with the procedures for the foreclosure of municipal special assessment liens,
20 as set forth in F.S. ch. 173, as then amended, which provisions are hereby incorporated herein in their
21 entirety to the same extent as if such provisions were set forth herein verbatim.

22 (7) The liens for delinquent impact fees imposed hereunder shall remain liens, coequal with the lien of all
23 state, county, district and municipal taxes, superior in dignity to all other filed liens and claims, until
24 paid as provided herein.

25 (8) The foregoing paragraphs of this section notwithstanding, all impact fees not paid to the city in full
26 when due shall automatically become "delinquent." Moreover, when any impact fees become
27 delinquent anywhere throughout the unified whole of the respective development, the city is
28 authorized to withhold every then unissued development order(s) and permits applied for by, or on
29 behalf of, the landowner or the developer, and in addition apply any and all of the civil penalties and
30 remedies set forth in the land development code until all such delinquent impact fees have been paid
31 to the city in full.

32 **Sec. 52-144. Update requirement.**

33 (a) This division and the impact fee studies shall be reviewed by the city council initially in connection with its
34 approval of the capital improvements element of its comprehensive plan as then, and to the extent, required
35 by F.S. § 163.3177. This division and the impact fee studies should be reviewed at least every five years. All
36 reviews shall consider new estimates of population and other socioeconomic data; changes in construction,
37 land acquisition and related costs and adjustments to the assumptions, conclusions or findings set forth in
38 the studies adopted by section 52-135. The purpose of this review is to evaluate and revise impact fees to
39 assure that they do not exceed the reasonably anticipated costs associated with the improvements and
40 additions necessary to offset the demand on the water and wastewater facilities generated by development.
41 In the event the review of this division alters or changes the assumptions, conclusions and findings of the
42 studies adopted by reference in section 52-135, revises or changes the water and wastewater facilities, or
43 alters or changes the amount of impact fees, the studies adopted by reference in section 52-135 shall be
44 amended and updated to reflect the assumptions, conclusions and findings of such reviews.

45 (b) Simultaneous with the review of the impact fee studies required in subsection (a), the city council shall
46 review the capital improvements element to determine the availability and adequacy of revenue sources to
47 construct improvements and additions to the water and wastewater facilities determined in the impact fee
48 study to be required to accommodate existing development.

1 **Sec. 52-145. Incorporation of administrative procedures manual.**

2 The currently existing administrative procedures manual(s) for the Marco Island Utilities Department are
3 incorporated and referenced herein except to the extent that it conflicts or varies the terms of this division.

4 **ARTICLE III. RESERVED**

5 **Chapter 54 WATERWAYS AND BEACHES**

6 **ARTICLE I. IN GENERAL**

7 **Secs. 54-1—54-30. Reserved.**

8 **ARTICLE II. BEACH MANAGEMENT AND VESSEL CONTROL**

9 **Sec. 54-31. Title of article.**

10 This article shall be known and be cited as the "Marco Island Beach Management and Vessel Control
11 Ordinance."

12 **Sec. 54-32. Definitions.**

13 The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them
14 in this section, except where the context clearly indicates a different meaning. [These definitions are supplemental](#)
15 [to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.:](#)

- 16 (a) *Aircraft* means any motor vehicle or contrivance now known or hereinafter invented, which is used or
17 designed for navigation of or flight in the air, except a parachute or other contrivance designed for such
18 navigation but used primarily as safety equipment. The term "aircraft" shall include ultra-light aircraft and
19 seaplanes.
- 20 (b) *Bather* means any person who is in the same water as a vessel, whether said person is swimming, wading or
21 engaged in any other activity in the water.
- 22 (c) *Bathing area* means any area of the waters adjoining the beach in which bathers are located or may be
23 located, whether or not designated by signs or other form of notification.
- 24 (d) ~~*Beach* means the sand portion of land lying seaward of a seawall or line of permanent vegetation and~~
25 ~~landward of the mean high water line.~~
- 26 (e) *Beach permit* means a vendor permit required by the city to comply with this article.
- 27 (f) *Blood baiting* means the use of blood or bloody fish parts to attract sharks.
- 28 (g) *Camping* means the erection of shelter or similar structures for the purpose of sleeping overnight or lying
29 upon the beach.
- 30 (h) *Chumming* means the throwing of bait or fish parts into the water to attract fish.
- 31 (i) *Decibel (dB)* means a unit for measuring the volume of sound; it is a logarithmic (dimensionless) unit of
32 measure used in describing the amplitude of sound. Decibel is denoted as dB.

- 1 (j) *Dune* means the mounds or mound of sand piled up by wind or other natural events or created by a legally
2 permitted activity such as a beach renourishment project, sources on the backshore of the beach, landward
3 of the high tide line.
- 4 (k) *Dune vegetation* means the coastal plants that help to hold the sand in dunes. Examples of plants, but not
5 limited to this list include: Sea oats, beach morning-glory, railroad vine, evening primrose, Indian paintbrush,
6 and coastal sand bur.
- 7 (l) *Gulf* means the Gulf of Mexico from Caxambas Pass to Capri Pass Inlet.
- 8 (m) *Idle speed* means the lowest speed at which a vessel or sailcraft can operate and maintain steering control;
9 the vessel shall not create a bow or stern wake.
- 10 (n) *License or licensed* means a valid business receipts tax recognized by the city.
- 11 (o) *Operate* means to be in charge of or in command of or in actual physical control of a vessel or aircraft, or to
12 exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway,
13 or to control or steer a vessel being towed by another vessel within the city's incorporated limits.
- 14 (p) *Personal watercraft* means a vessel less than 16 feet in length which uses an inboard motor powering a
15 water jet pump as its primary source of motor power and which is designed to be operated by a person
16 sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing
17 inside the vessel.
- 18 (q) *Rafts, floats, and flotation devices* means any device, whether of canvas, vinyl, rubber, Styrofoam, or other
19 substance, intended or capable of assisting in the flotation of a person on or within the city. The term shall
20 not include vessels or sailcraft, but shall include body boards unless the context clearly indicates otherwise.
- 21 (r) *Sailcraft* means a wind-propelled vehicle used or capable of being used as a means of transportation on or in
22 the water, including sailboats, sailboards and wind-surfboards.
- 23 (s) *Seaplane* means any aircraft as defined herein that is capable of landing and/or lifting off from a water
24 surface.
- 25 (t) *Skier, water skier, water skiing* means anyone being towed with a line or rope behind a vessel and using
26 water skis, a ski board, inflatable device or aqua plane.
- 27 (u) *Slow speed/minimum wake* means the speed at which a vessel is neither planning nor moving with an
28 elevated bow. A vessel that is operating on a plane or is in the process of coming off plane and settling into
29 the water is not considered operating at a slow speed/minimum wake.
- 30 (v) *Solicit or canvass* means any act, delivery, or exchange not initiated by the prospective customer or which
31 directs attention to any business, mercantile or commercial establishment, or any other commercial activity,
32 for the purpose of directly or indirectly promoting commercial interests through sales, rentals, or any
33 exchange of value.
- 34 (w) *Surfing* means the riding or paddling of a surfboard within city waters adjacent to the beach.
- 35 (x) *Ultra-light aircraft or ultra-light* means any heavier-than-air, motorized aircraft that meets the criteria for
36 maximum weight, fuel capacity or airspeed established for such aircraft by the Federal Aviation
37 Administration under Part 103 of the Federal Aviation Regulations.
- 38 (y) *Vessel* means any human, motor, wind, non-powered or motor propelled or artificially propelled water
39 conveyance and every other description of boat, watercraft, barge, and airboat other than a seaplane on the
40 water, used or capable of being used as a means of transportation on or in the water.
- 41 (z) *Wildlife* means any living animal species, including mammal, bird, fish, reptile, amphibian, invertebrate
42 and/or plant species, especially living in a natural, undomesticated state.

1 **Sec. 54-33. Penalties; Suspension or Revocation of Beach Permit.**

2 ~~(a) Pursuant to chapter 162.22, Florida Statutes, a person found to be in violation of this section may be charged~~
3 ~~a fine, not to exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60~~
4 ~~days.~~

5 ~~(ab) Violations of this article are punishable according to the penalties and procedures in chapter 14 of this~~
6 ~~section may also be prosecuted before a code enforcement board established by the City of Marco Island.~~

7 ~~(be) In addition, as a supplemental means of obtaining compliance with local this codes, the code enforcement~~
8 ~~board-special magistrate may suspend a beach permit for violations of this section/article, or for violations of~~
9 ~~other sections of the this Ccode-of Ordinances, including but not limited to chapter 30 (Lland Ddevelopment~~
10 ~~Ccode)-and section 38-1 (comprehensive plan) for a period no greater than 12 months. The hearing before the~~
11 ~~code enforcement board shall not be required to follow the same procedures as a trial before a court, but~~
12 ~~fundamental due process will be observed and govern the proceedings.~~ For purposes of this section, the term
13 "permittee" includes the entity as well as the officers and principals of the entity. Accordingly, if an entity has
14 its beach permit suspended, an officer or principal of the entity shall not be permitted to be an officer or
15 principal in an entity which obtains a beach permit for a period of no greater than 12 months.

16 **Sec. 54-34. Intent and Purpose of Article.**

17 It is the intent and purpose of this ~~section-article~~ to protect and promote the health, safety and welfare of the
18 public at large, including residents and visitors to the ~~cCity-of Marco Island~~, by providing reasonable regulation of
19 the public's use and conduct on the beach and adjoining waters of the ~~Ccity-of Marco Island~~, including the
20 designation of specific areas where concession sales, equipment rentals and other permitted activities and the
21 operation of aircraft, vessels, and personal water craft may be regulated or prohibited. It is further intended that
22 this ~~section-article~~ shall be liberally construed to effect such intent and purpose consistent with the intent and
23 purpose of other ~~sections-articles~~ of ~~the this code~~City of Marco Island Code of Ordinances, including but not limited
24 to chapter 30, ~~containing its L~~and ~~D~~development ~~C~~code, and section 38-1, adopting by reference the City of Marco
25 Island Comprehensive Plan.

26 **Sec. 54-35. Applicability of Article.**

27 This article shall apply to and be enforced within the corporate limits of the City of Marco Island including all
28 beaches, the Gulf of Mexico, and those islands within the defined city limits of the city. Employees of, and vessels
29 operated by, or under the direction of, federal, ~~s~~tate, county or city governments, or their contractors, when
30 authorized by the city, are exempt from these provisions.

31 **Sec. 54-36. Regulation of Use and Conduct on the Beach**

32 Unless otherwise prohibited, the public shall be entitled to engage in activities and use of beach areas. A
33 beach permit is required prior to engaging in certain activities occurring on the beach such as concession sales,
34 rental activities, etc.

35 (a) *Possession of glass containers prohibited.* It shall be unlawful for any person while on the beach or
36 beach access areas to possess or utilize any glass bottle or container.

37 (b) *Restrictions on animals on the beach.* It shall be unlawful for any person owning or having under their
38 control any animal, to permit such animal upon the beach, except service dogs accompanying persons
39 with special needs shall be allowed on the beach at all times.

40 (c) *Storage of equipment on the beach.* It shall be unlawful for any person to store equipment, recreational
41 motorized or non-motorized vehicles, chairs, umbrellas, etc. on the beach or in the dunes. A licensed

holder of a beach permit is authorized to store equipment at the permitted operations office, storage area or headquarters, which shall be located at the dune vegetation line.

- (d) *Wheeled vehicles.* The use of wheeled vehicles other than emergency safety vehicles, turtle nest monitoring, ATVs and similar wheeled vehicles used for vendor operation, baby stroller, or equipment for mobility impaired persons, is prohibited except by a beach permit.
- (e) *Open fires prohibited.* Heated objects to be disposed of properly. It shall be unlawful for any person to have open fires, barbecue grills, including portable type grills, or other incendiary devices on the beach. However, designated areas may be provided for use of stoves or grills as posted by the city solely for this purpose. It shall be unlawful for any person to dispose of any coals, briquettes, ember or other heated object except in city designated receptacles in designated areas.
- (f) *Overnight camping prohibited.* It shall be unlawful to camp overnight on the beach.
- (g) *Fishing.* [Except as provided in F.S. 379.2412, #it](#) shall be unlawful for any person while on the beach or within 1,000 feet from shore to fish for sharks or to fish by those methods commonly known as chumming or blood baiting. Nothing herein shall be construed to create a duty of any sort on the part of any law enforcement officer or city employee to prevent fishing or to warn of the presence or sharks in the Gulf of Mexico.
- (h) *Swimming.* The public may swim at its own risk in the beach area between the two jetties adjacent to the Cape Marco property. Otherwise, no person except a person actually engaged in a rescue attempt shall:
- (1) Swim or bath within 150 feet, measured in any direction, of a pier, jetty or breakwater;
 - (2) Swim or bath in any area posted exclusively for vessel and/or sail craft use.
- (i) ~~*Aircraft on beach prohibited.*~~ Use of aircraft on beach or adjoining water is prohibited. No person, other than emergency, public safety, or mosquito control personnel, shall operate an aircraft, including seaplanes, ultra-lights or helicopters, on or from the beach or the water within 750 feet from the beach.
- (j) ~~*Soliciting, canvassing, advertising, prohibited.*~~ Soliciting, canvassing, advertising, and/or engaging in commercial operations other than permitted beach operations is prohibited. There shall be no solicitation or canvassing for commercial purposes of the public on the beach other than as permitted in this article.
- Permitted beach vendors, who hold valid beach permits, may solicit or canvass for the sale or rental of any merchandise, services, goods or property of any kind or character from within ten feet of their permitted operational area.
- (k) *Removal of Beach sand.* No person shall remove sand from the ~~B~~beach.
- (l) *Litter.* It shall be unlawful for any person to discard or otherwise dispose of or abandon any trash, garbage, bottles, containers, cans, dead fish or part thereof, charcoal briquettes or ashes, or any other litter, except in containers designated for the purpose. It is further unlawful to dispose of any household garbage on the beach.
- (m) ~~*Compliance.*~~ Beach permittees shall comply with all applicable [requirements of this codeCity of Marco Island ordinances.](#)
- (n) *Dune protection.* It shall be unlawful for any person to impact the dune by walking, sitting, storing equipment, throwing litter, trash, or any other article into the dune. It is further unlawful to trim and/or remove any vegetation of otherwise alter existing ground elevations or conditions of any dune without prior obtaining a permit from the [cityCity of Marco Island](#) and/or the Florida Department of Environmental Protection, or other state or federal governmental agency.

- 1 (o) *No live shelling.* It shall be unlawful to collect, take, or possess any live shell on the [Marco Island](#)
2 [Beach](#) without proper permit issued from the Florida Fish and Wildlife Conservation Commission or
3 other state or federal governmental agency. Only shells that do not contain a live organism may be
4 collected or removed from the beach.
- 5 (p) *Wildlife protection.* The disturbance, destruction, or removal of wildlife is prohibited. Fishing from the
6 beach is a permitted activity and includes the legal gathering of bait fish. Crustaceans may not be
7 collected from their natural beach habitat.

8 **Sec. 54-36.1. [Beach Permits Reserved.](#)**

9 ~~A beach permit shall be required prior to engaging in commercial concession operations, equipment rental~~
10 ~~and other activities as provided in section 54-38 on the beach and shall be subject to all conditions, requirements~~
11 ~~and regulations provided in this article and including but not limited to chapter 30 containing the Land~~
12 ~~Development Code, section 38-1, incorporating by reference the City of Marco Island Comprehensive Plan,~~
13 ~~building and licensing codes and in any other applicable section the City of Marco Island Code of Ordinances.~~

14 **Sec. 54-37. Vessel Regulation—Speed Limits and Exemptions**

- 15 (a) *Operation of vessel in excess of idle speed regulated.* The operation of any vessel, in excess of idle speed, as
16 defined herein, in or on all waters of the Gulf of Mexico within 750 feet offshore of all beaches and within
17 300 feet of the beach adjacent to the S.R. 951/Jolley Bridge is hereby prohibited. Said prohibition shall be
18 effective and enforceable regardless of whether or not such area is designated by appropriate sign, buoy or
19 other public notice.
- 20 (b) *Vessel corridors.* Areas of the Gulf adjacent to the beach and closer than 750 feet from the shore may be
21 designated by resolution of the [Marco City Council](#) as being used exclusively for vessel use between dawn
22 and dusk.
- 23 (c) *Beach launch of vessels regulated.* No person except a law enforcement officer, the holder of a beach permit,
24 authorized emergency personnel, or other person actually engaged in a rescue attempt shall traverse the
25 beach adjacent to the Gulf of Mexico with a motorized boat or personal watercraft to launch or retrieve such
26 vessel from the beach from an unauthorized launching area. A licensed beach vendor's location is an
27 authorized launch site for that vendor's equipment.
- 28 (d) *Water skiing.* No person(s) including the skier(s) and the vessel operator(s) shall water-ski closer than 750
29 feet from the edge of the beach.
- 30 (e) *Regulated areas.* No person shall operate a motorized vessel or sailcraft within an area which has been
31 clearly marked by buoys or some other distinguishing device for bathing, swimming or which has been
32 otherwise restricted by the city.

33 **Sec. 54-38. [Beach Permits; Concession Operations, Equipment Rentals and Vendors on the](#)**
34 **[Beach and Adjoining Waters.](#)**

35 All beach permittees shall comply with ~~the this article~~[City of Marco Island Waterway and boating safety](#)
36 [ordinance](#). The safety and welfare of the persons that reside nearby the city's beach areas and of the public that
37 recreate on the beach and adjoining waters makes necessary and appropriate the following regulations:

- 38 (a) *Beach permit requirement.* Any person or business enterprise of any type or kind engaged in the
39 commercial sale of goods, services, rental, leasing, bailment or which otherwise provides recreational
40 equipment for remuneration, including vessel(s) for the use by the public on the beach or adjoining
41 waters of Marco Island, ~~shall be is~~ required to obtain a [city "beach permit"](#) ~~from the City of Marco~~
42 [Island](#). A beach permit shall be issued and maintained upon the applicant paying such application fee
43 established by the city by resolution and the applicant meeting the following requirements:

- 1 (1) The applicant must have a physical location of business, office or headquarters at the beach
2 location where the permitted service will be rendered. If the applicant is providing equipment,
3 boats, or vessels for public use, the applicant must have an operation, or headquarters office
4 located at an upland improved facility immediately adjacent to the area where vessels, goods and
5 services are being offered by a vendor for public use with direct access to the beach areas. For
6 the purposes of this article, the term "immediately adjacent" means the applicant owns a
7 building, leases space within an upland improved facility, or has contractual right to operate on
8 the land adjacent to the water.
- 9 (2) The applicant shall have a written lease or other written agreement executed by all owners of the
10 beachfront property affected at the time application is made for a beach permit, and such
11 agreement shall remain in full force and effect as a condition of the beach permit. The agreement
12 or lease shall include a term requiring compliance with all ~~City of Marco Island Code~~ provisions of
13 this code, including but not limited to zoning regulations, ~~comprehensive planning regulation~~,
14 building codes and licensing.
- 15 (3) The applicant must have and maintain a communications system including a telephone, either
16 land lined or cellular and marine radio at its operation office with the functional capacity to be
17 always alert to the whereabouts of the rental craft equipment, goods and other personal
18 property belonging to the applicant and those that are rented to the customers.
- 19 (4) If the applicant is engaged in the rental of motorized or windblown equipment, or other vessel
20 rentals the applicant must have a motorized rescue vessel with operational marine radio or
21 cellular phone in good working condition that satisfies U.S. Coast Guard safety requirements,
22 kept at the vessel rental site during all hours of applicant's rental operations. Rescue vessel(s)
23 shall pass inspection by either the U.S. Coast Guard Auxiliary or the ~~city~~ City of Marco Island
24 ~~Police Department~~ 30 days prior to issuance of a ~~City of Marco Island B~~ beach vendor permit.
25 A copy of the inspection shall be submitted with the permit application to the city.
- 26 (5) The applicant must have and maintain comprehensive general liability insurance with coverage
27 not less than the amount of \$1,000,000.00 combined single limits, and the City of Marco Island
28 must be named as additional insured. An endorsement certificate must be received by the city
29 from the insuring company indicating such coverage and endorsement.
- 30 (6) The applicant shall provide a list describing and indicating the vessel registration number of each
31 motorized vessel the applicant shall place in service. Any motorized vessel placed in service for
32 public use after a beach permit has been issued shall have a valid state vessel registration
33 number affixed.
- 34 (7) The applicant who proposes to rent recreational equipment, or vessel(s) for the use by the public
35 on the beach or adjoining waters of Marco Island, shall be required to provide and maintain a
36 buoy line of one or more buoys, designating the 750-foot offshore measurement from the area of
37 operation of the beach vendor. The buoy(s) shall be placed 750 feet offshore upon the start of
38 the business operations and pulled in and out of the Gulf waters when business operations ends.
- 39 (8) The applicant shall provide ~~the community development director or designee~~ an equipment
40 removal plan to remove all equipment located along the beachfront in the event of a Category 1
41 or greater storm event, or if a tropical storm warning is declared. The applicant(s) removal plan
42 shall be reviewed annually as part of the beach permit, and the information provided shall
43 indicate which beach access will be necessary to remove equipment, an estimate of the time
44 needed to remove equipment, and where equipment will be stored and/or secured prior to and
45 during the storm event.

46 (b) *Boater safety.*

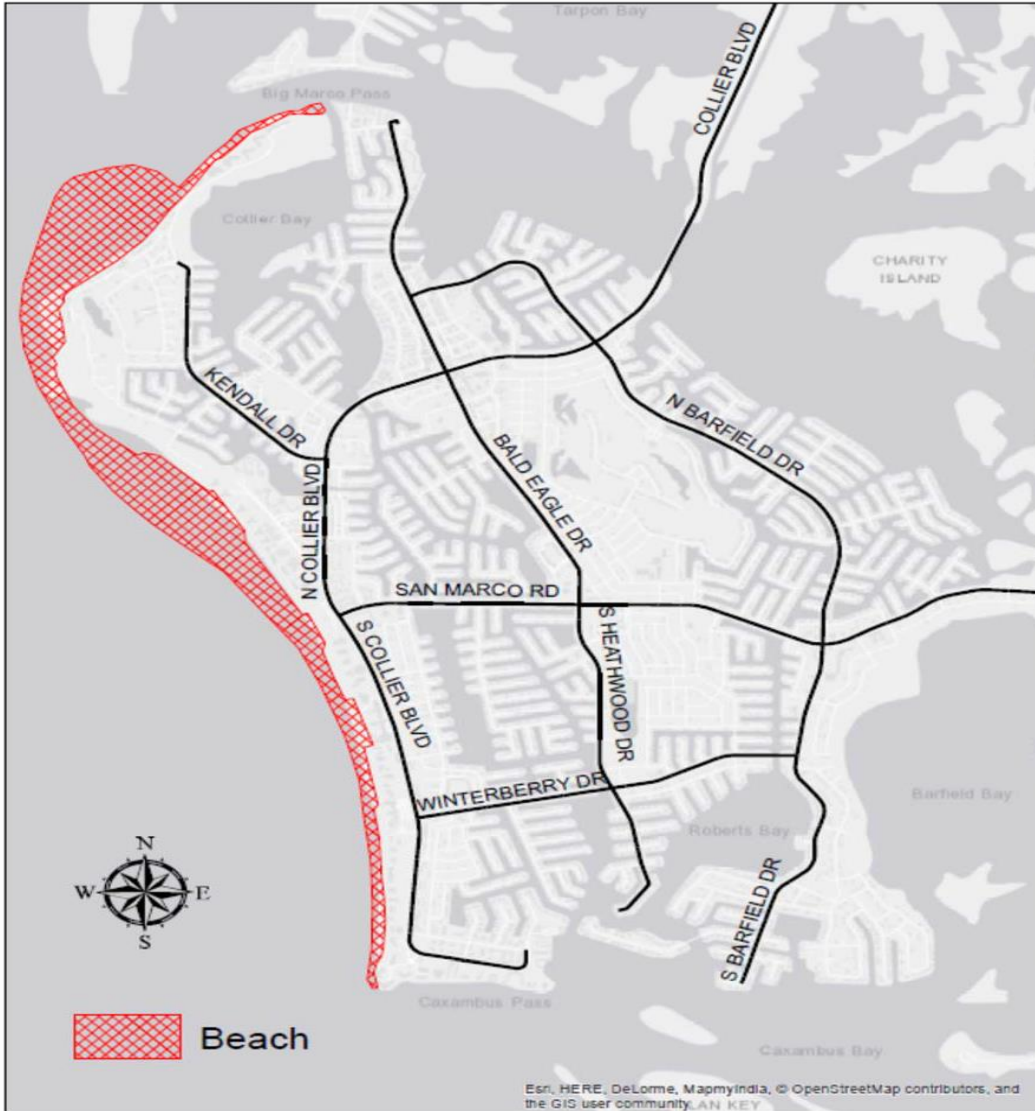
- 47 (1) A livery, beach permittee, or marina may not knowingly lease, hire, or rent a vessel to any
48 person:

- 1 a. When the number of persons intending to use the vessel exceeds the number considered
2 to constitute the maximum safety load for the vessel as specified on the authorized
3 persons capacity plate of the vessel.
- 4 b. When the vessel does not contain the required safety equipment required under this
5 section and chapter 327.50, Florida Statutes.
- 6 (2) When the vessel is equipped with a motor of ten horsepower or greater, the livery, beach permit
7 holder or marina shall provide a comprehensive pre-operation instruction briefing to all
8 operators of rental vessels regardless of age and prior maritime training internal and external to
9 a livery or marina that include, but need not be limited to, all the topics included on the list
10 provided to each livery or marina by the [city Marco Island Police Department](#).
- 11 a. The pre-operation instruction briefing shall be documented on a form approved by the
12 [Marco Island Police Department](#) prior to use;
- 13 b. Any such form shall be retained for a period of six months;
- 14 c. Any such form shall be provided to the [Marco Island Police Department](#) or any city staff,
15 or other law enforcement agency, upon request.
- 16 (3) All renters, users, and passengers of any vessel described in this section shall initial and sign a
17 form attesting that they have completed, understood, and will comply with all conditions set
18 forth in the form. The livery or marina operator(s) who gave the pre-operation safety briefing are
19 also required to co-sign the form attesting that they have provided all operators with the
20 required pre-operation safety briefing.
- 21 (4) Any person delivering the pre-operational safety briefing on behalf of the livery or marina shall
22 have:
- 23 a. Successfully completed a boater safety course approved by the National Association for
24 State Boating Law Administrators (NASBLA) and this state.
- 25 b. A copy of the documentation attesting to the completion of this course must be
26 maintained by the livery or marina during the person's employment, and for six months
27 thereafter.
- 28 c. All liveries, beach permit holders and marinas shall provide any requested documentation
29 relating to an employee's competency to instruct the pre-operational safety briefing to the
30 [Marco Island Police Department](#), city staff, or any other law enforcement agency upon
31 request.
- 32 (5) The livery, beach permit holder or marina shall display boating safety information in a place
33 visible to the renting public. The commission prescribes by rule pursuant to chapter 120, Florida
34 Statutes, the contents and size of the boating safety information to be displayed.
- 35 (6) If a rental vessel is involved in a boating incident or accident, which involves personal injury or
36 significant property damage within the city, the livery or marina shall immediately notify the
37 [Marco Island Police Department](#) upon notice of the accident.
- 38 (c) The vendor shall provide all renters, users, and passengers of any vessel described in this section shall
39 have on board an approved and operational personal flotation device (PFD) for each occupant while
40 using or having such vessel in the water. It is a violation of this [Section](#) for any such person using such
41 [vessel](#) not to have a life vest onboard.
- 42 (d) Each rental personal watercraft must conspicuously display the special speed limit instructions that
43 apply within all the respective distances from the shore. The speed instructions must be easily visible
44 to the operator of the rental personal watercraft when the operator is in the operating position on the
45 person watercraft.

- 1 (e) Each rental personal watercraft must always operate with stock mufflers or with mufflers that are
- 2 quieter than stock mufflers.
- 3 (f) Each rental personal watercraft must display identifying letters and/or numbers that identify the
- 4 specific personal watercraft vendor. Each identification number and/or letter, trademark, logo, and/or
- 5 company name must be at least four inches in height and must contrast with its background color so as
- 6 to be easily visible at a distance of 250 feet by a person with 20/20 vision.
- 7 (g) All personal watercraft must be operated in a reasonable and prudent manner at all times. Maneuvers
- 8 which unreasonably or unnecessarily endanger life, safety, or property are prohibited, including, but
- 9 not limited to:
 - 10 (1) Weaving through congested vessel traffic;
 - 11 (2) Jumping wake of another vessel unreasonably or unnecessarily close to such vessel;
 - 12 (3) Operating when visibility around such other vessel is obstructed;
 - 13 (4) Operating in a manner that requires intentional swerving at the last moment to avoid collision;
 - 14 ~~constitute reckless operation and are in violation of this section and this section.~~

15 **Sec. 54-39. Prohibition on use or service of plastic straws.**

- 16 (a) No business, restaurant, including, but not limited to, cafeteria, including school cafeterias, cafe, bar or other
- 17 establishment at which food or drink is served or purchased, and which is located directly adjacent to city
- 18 beaches as defined and as depicted in the figure below, shall use, serve, or distribute plastic drinking straws
- 19 on or after the effective date of the ordinance from which this section is derived. For purposes of this
- 20 section, ~~the following definitions shall apply:~~
- 21 ~~(1) Beach is the sand portion of land lying seaward of a seawall or line of permanent vegetation and landward of~~
- 22 ~~the mean high water line; and~~
- 23 ~~(2) A straw is defined to mean a tube for transferring a beverage or liquid from a container to the mouth of a~~
- 24 ~~drinker by suction or other means.~~
- 25 (b) Amortization. Any business, restaurant, including, but not limited to, hotels, motels and time-shares,
- 26 cafeteria, cafe, bar; any other establishment at which food or drink is served or purchased, and any school
- 27 cafeteria, which is located directly adjacent to city beaches as defined and as depicted in the figure below,
- 28 and, other than a school cafeteria, that possesses an active county local business tax receipt on the adoption
- 29 date of the ordinance from which this section is derived, shall be permitted to continue to use, serve or
- 30 distribute plastic drinking straws for a period of time not to exceed three months from the date of the
- 31 ordinance creating this section, even if it is not in compliance with this section.
- 32 (c) Exemptions. This section does not apply to:
 - 33 (1) Food grade paper straws.
 - 34 (2) Straws made of compostable plant material.
 - 35 (3) Reusable non-plastic straws.



1

2 **Secs. 54-40—54-60. Reserved.**

3

ARTICLE III. VEHICLES ON BEACH

4

DIVISION 1. GENERALLY

5 **Sec. 54-61. Title of article.**

6 This article shall be known and may be cited as the "City of Marco Island Vehicles on the Beach Regulations."

1 **Sec. 54-62. Penalties.**

2 ~~(a) Pursuant to F.S. § 162.22, a person found to be in violation of this article may be charged a fine, not to~~
3 ~~exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days.~~

4 ~~(b) Violations of this article is punishable according to the penalties and procedures in chapter 14 of this code~~
5 ~~may also be prosecuted before the code enforcement board.~~

6 **Sec. 54-63. Intent and purpose of article.**

7 It is the intent and purpose of this article to protect and promote the health, safety and welfare of the public
8 at large, including residents and visitors to the city, by providing reasonable regulation of vehicles that may be
9 allowed to operate on the beach, including limitations and restrictions during sea turtle nesting season. It is further
10 intended that this article shall be liberally construed to effect such intent and purpose.

11 **Sec. 54-64. ~~Applicability of article~~Reserved.**

12 ~~This article shall apply to and be enforced within the corporate limits of the city.~~

13 **Sec. 54-65. Driving on sand dunes or beach; disturbing sand dunes.**

14 It shall be unlawful to:

- 15 (1) Operate or cause to be operated a hand-, animal- or engine-driven wheeled, tracked or other vehicle
16 on, over or across any part of the sand dunes, hill or ridge nearest the gulf, or the vegetation growing
17 thereon or seaward thereof, or to operate or drive such a vehicle without a permit or authorized
18 exemption, on the ~~area commonly referred to as the "beach" as defined in section 54-32~~within the city.
- 19 (2) Alter or cause to be altered any sand dune or the vegetation growing thereon or seaward, make any
20 excavation, remove any material, trees, grass or other vegetation or otherwise alter existing ground
21 elevations or conditions of such dune without first securing a permit.

22 **Secs. 54-66—54-80. Reserved.**

23 ***DIVISION 2. PERMIT FOR USE OF VEHICLES ON THE BEACH***

24 **Sec. 54-81. Exemptions.**

25 (a) City, sheriff, state and federal public safety vehicles are exempt from permits required by this article and may
26 be operated on the beach as long as they are operated or authorized by officers of these departments under
27 orders in the normal course of their duties. Vehicles used for emergency environmental cleaning and turtle
28 monitoring are also exempt.

29 (b) Baby buggies (perambulators), toy vehicles, toy wagons, wheelchairs or similar devices to aid mobility
30 challenged or nonambulatory persons shall be exempt.

31 **Sec. 54-82. Vehicles requiring permit; display.**

32 Owners or operators of vehicles used on the beach in connection with environmental operations,
33 conservation operations, lawfully permitted beach vendor operations, construction, or property maintenance
34 operations must obtain a permit. ~~The from the community development director or his designee, and the permit~~

1 shall be prominently displayed on the windshield or attached to such vehicle and kept with the vehicle and
2 available for inspection.

3 **Sec. 54-83. Application; issuance; fee.**

4 For all vehicles requiring a permit under this article, ~~such the~~ permit shall be obtained by application to the
5 ~~community development director city on the requisite forms, including a written justification of necessity in~~
6 ~~writing stating the reason why it is necessary~~ for ~~such the~~ vehicle to be operated on the beach, and whether ~~such~~
7 ~~the~~ vehicle needs to be operated during sea turtle nesting season. If so, the application should suggest minimum
8 hours of operation during that period. The ~~community development director city~~ shall issue a permit for such
9 vehicle ~~if it determines if the director is satisfied~~ that a lawful and necessary purpose will be served and all
10 conditions are met. A schedule of permit fees will be established by the city council by resolution, and may be
11 changed or amended by subsequent resolutions.

12 **Sec. 54-84. Conditions.**

13 All vehicles requiring a permit under this article shall have wide, low footprint pressure tires. Except for
14 emergency vehicles, all vehicles will be limited to ten miles per hour.

15 **Sec. 54-85. Temporary permit.**

16 Vehicles which must travel on the beach in conjunction with a special event must first obtain a city
17 temporary use permit ~~from the community development department~~.

18 **Sec. 54-86. Expiration.**

19 All permits to allow operation of vehicles on city beaches, other than temporary permits, shall expire on April
20 30 of each year, to coincide with the beginning of sea turtle nesting season.

21 **Sec. 54-87. Restrictions during sea turtle nesting season.**

22 During sea turtle nesting season, May 1 through October 31 of each year, vehicles which must travel on the
23 beach in connection with environmental operations, conservation operations, lawfully permitted beach vendor
24 operations, construction, and property maintenance operations shall not operate on the beach until (i) after a daily
25 sea turtle monitoring has been conducted by a state-certified sea turtle permit holder, or (ii) 8.00 a.m., whichever
26 occurs first. Operators should additionally consult their permit for other restrictions on normal operations that
27 may apply during sea turtle nesting season. Vendors on the beach will be required to maintain a minimum 25 feet
28 ~~of prudent~~ distance between any marked sea turtle nest and their merchandise and vehicles.

29 **Secs. 54-88—54-99. Reserved.**

30 **ARTICLE IV. BOAT DOCKING FACILITIES**

31 **DIVISION 1. GENERALLY**

32 **Sec. 54-100. Intent and purpose.**

33 It is the intent and purpose of this article to provide for the adequate securing of moored vessels and to
34 provide safe access by users for routine maintenance and use while minimizing the impact on the navigability of

1 the waterway, native marine habitat, manatees, and the use and view of the waterway by surrounding property
2 owners. It is further the intent of this article to provide reasonable access for vessel, seawall, and dock
3 maintenance.

4 It is recognized that specific waterway locations warrant special consideration due to severe access and
5 navigational challenges, and community character and aesthetic impacts. City council may authorize the
6 establishment of overlay districts, with district specific dimensional standards and regulations, to address boat
7 docking facilities within the overlay area(s).

8 **Sec. 54-101. Definitions.**

9 The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them
10 in this section, except where the context clearly indicates a different meaning. [These definitions are supplemental](#)
11 [to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.:](#)

12 *Associated infrastructure* means seawalls, revetments, caps, support piles, whalers, riprap, and like physical
13 improvements which supports a boat dock facility in conjunction with the upland host property.

14 *Boat dock canopy and boat lift canopy* means a permanent aluminum, PVC, galvanized or similar structure
15 which is attached to a dock or boat lift and which structure is covered with canvas, vinyl, or similar soft membrane
16 materials and utilized for protecting a vessel over or contiguous to navigable water. A canopy shall not be
17 considered or qualify as a boathouse and shall not be installed, repaired or reconstructed. A covering, commonly
18 referred to as a mooring cover, which is fixed to the vessel for the purpose of protecting the vessel shall not be
19 considered a boat canopy.

20 *Boat docking facility* means any structure, whether fixed in position or floating, constructed on or over a
21 waterway for the primary purpose of mooring a boat and that provides access to a vessel from the adjacent upland
22 property. This includes docks, walkways, piers, boatlifts, personal watercraft lifts, davits, mooring piles, dolphins,
23 boathouses, nautical garages and associated cut-in boat slips/boat basins from any water body in single-family
24 residential zoning district properties. A walkway immediately adjacent to or as part of a nautical garage in the rear
25 yard setback across the cut-in boat slip/boat basin associated with the nautical garage is permitted as an
26 encroachment into the rear yard setback provided no part of the walkway exceeds 30 inches above grade of the
27 land within the rear yard setback.

28 *Boat dock v-area* means the cut-out area within the dock for mooring the boat.

29 *Boathouse* means a structure with a roof which is constructed of palm fronds, cedar shakes, or the same
30 material and color of the principal structure on the property, accessory use to a residential structure over or
31 contiguous to navigable water, open on all sides and providing covered protection to a boat and accessories
32 customary thereto.

33 *Boatlift* means any mechanical structure, including a davit, capable of lifting or raising a vessel clear of the
34 water.

35 *Director* means the director of the city department having authority over the implementation and
36 administration of the land development code as determined and appointed from time to time by the city manager.

37 *Live-aboard vessel* shall have the same meaning as used in F.S. § 327.02, ~~as may be subsequently modified or~~
38 ~~amended from time to time.~~

39 *Marginal dock* means a dock which protrudes five feet or less into the waterway.

40 *Moored vessel*, for the purposes of this article, shall refer to the overall length of the vessel, including the
41 pulpit, motor, and any other accessories attached to the vessel.

42 *Mooring cover* means a tailored canvas covering which is affixed to the vessel for the purpose of protecting
43 the vessel.

1 *Mooring cover assist system* means a system that supports the full weight of a tailored mooring cover as it is
2 removed or installed on a vessel. The mooring cover assist system's mooring cover is attached directly to the vessel
3 when in the covered position and does not act as a boat canopy when not attached to the vessel.

4 *Multifamily residential zoning district* means any real property located within the ~~following residential~~
5 ~~multiple family zoning districts: 6 (RMF-6,) zoning district as described in section 30-101 et seq. of this Ccode, the~~
6 ~~residential multiple family 12 (RMF-12,) zoning district as described in section 30-121 et seq., the residential~~
7 ~~multiple family 16 (RMF-16,) zoning district as described in section 30-141 et seq., the residential tourist (R-T)~~
8 ~~zoning district as described in section 30-161 et seq., or the any portion of the a planned unit development zoning~~
9 ~~district set forth in section 30-381 et seq., devoted to multiple-family dwellings as defined in section 30-10 of this~~
10 ~~code residential development.~~

11 *Nautical garage* is defined in section 30-10 of this Ccode.

12 *Newspaper of general circulation* is defined in section 30-10 of this Ccode.

13 *Permanent structure* means a structure erected for 180 days or more.

14 *Personal watercraft (PWC)* means a vessel less than 16 feet in length which uses an inboard motor powering
15 a water jet pump as its primary source of power and which is designed to be operated by a person sitting, standing
16 or kneeling on, rather than the conventional manner of sitting or standing inside the vessel.

17 *Personal watercraft (PWC) lift* means any mechanical structure capable of lifting or raising a PWC clear of the
18 water.

19 ~~*Rendered.* See "Rendition."~~

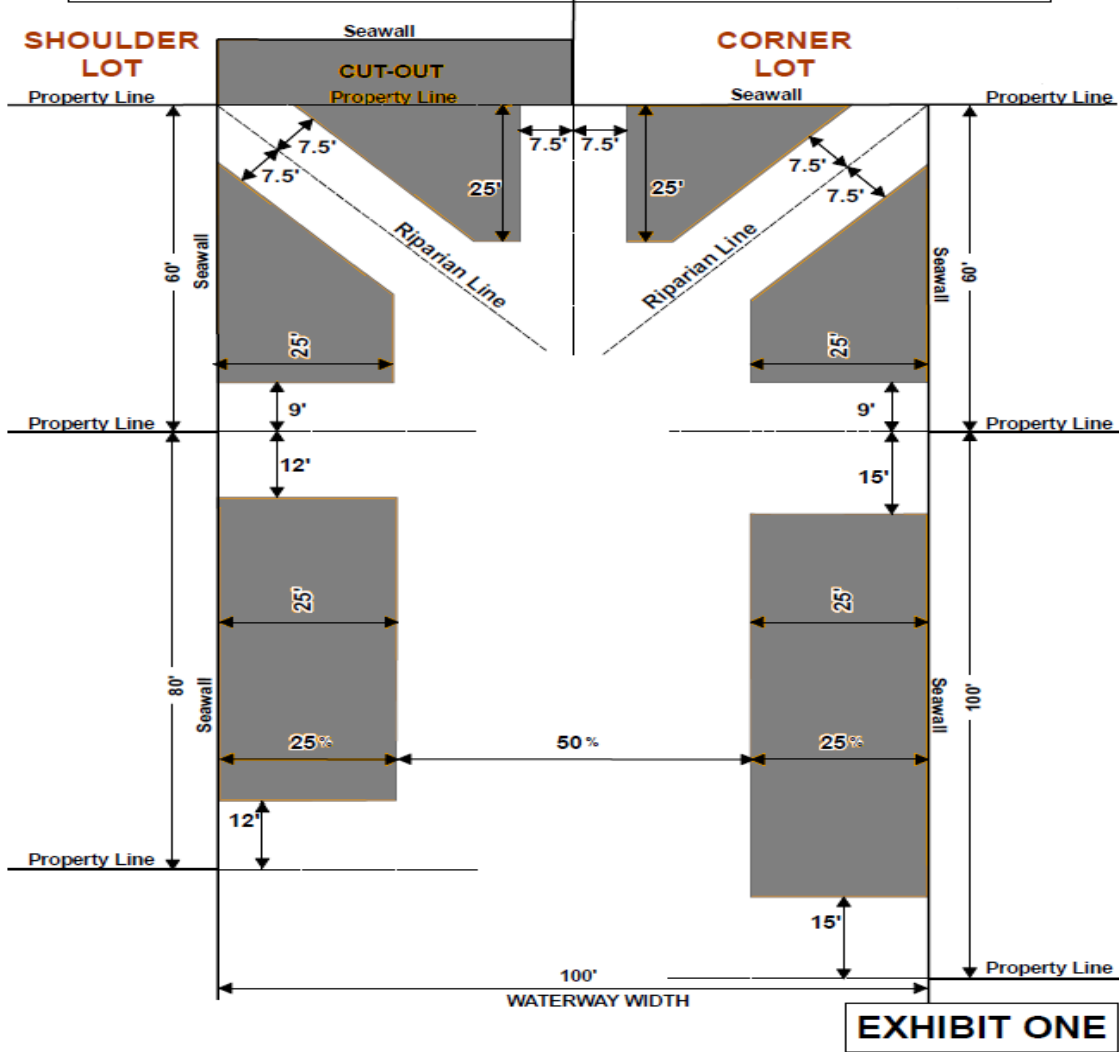
20 ~~*Rendition* means the issuance of a written order, including approval, approval with conditions, or denial of a~~
21 ~~determination by the city council, planning board, director, or other administrative official, effective upon the date~~
22 ~~of signing by the authorized city official of such order or final letter of determination and its filing in the records of~~
23 ~~the city council or planning board, or said director or other administrative official.~~

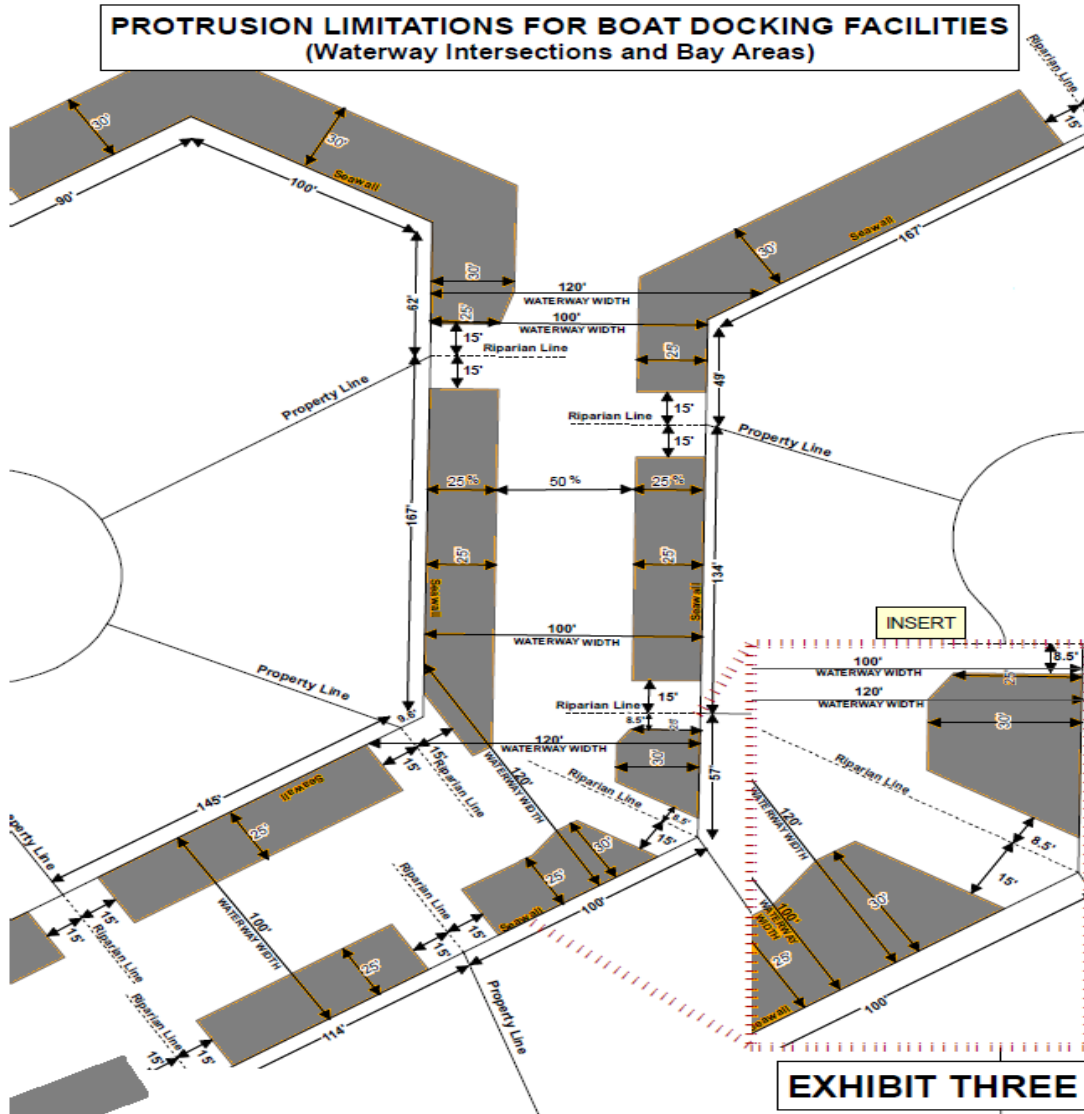
24 *Riparian line* means an imaginary line beginning at the point at which property lines intersect the mean high
25 water line of a waterway and continuing into the waterway indefinitely. The purpose of the riparian line, as
26 employed by this article, is to provide a point of reference from which to measure setbacks for docking facilities.
27 Riparian lines shall be established according to the following unless contradicted or approved by the state board of
28 trustees of the internal improvement trust fund:

- 29 (1) Lots at the end or side end of a waterway with a regular shoreline are established by a line extending
30 from the corner of an end lot and side end lot into the waterway bisecting equidistantly the angle
31 created by the two intersecting lots.
- 32 (2) Riparian lines for all other lots should be established by generally accepted methods, taking into
33 consideration the configuration of the shoreline, and allowing for the equitable apportionment of
34 riparian rights. Included, but not limited to, are lines drawn perpendicular to the shoreline for regular
35 (linear) shorelines, or lines drawn perpendicular to the centerline (thread) of the waterway, or
36 perpendicular to the line of deep water (line of navigability or edge of navigable channel) as
37 appropriate for irregular shorelines. No boat docking facility shall be constructed so as to encroach
38 upon the riparian rights of other property owners.

39 *Riparian rights* shall have the same meaning as used in F.S. § 253.141, ~~as may be subsequently modified or~~
40 ~~amended from time to time. This term is currently defined as follows: Riparian rights are those incidental to land~~
41 ~~bordering upon navigable waters. They are rights of ingress, egress, boating, bathing, and fishing and such others~~
42 ~~as may be or have been defined by law. Such rights are not of a proprietary nature. They are rights inuring to the~~
43 ~~owner of the riparian land but are not owned by him or her. They are appurtenant to and are inseparable from the~~
44 ~~riparian land. The land to which the owner holds title must extend to the ordinary high watermark of the navigable~~
45 ~~water in order that riparian rights may attach. Conveyance of title to or lease of the riparian land entitles the~~
46 ~~grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the upland.~~

PROTRUSION LIMITATIONS FOR BOAT DOCKING FACILITIES
 (Waterway Width 100 Ft and Greater)



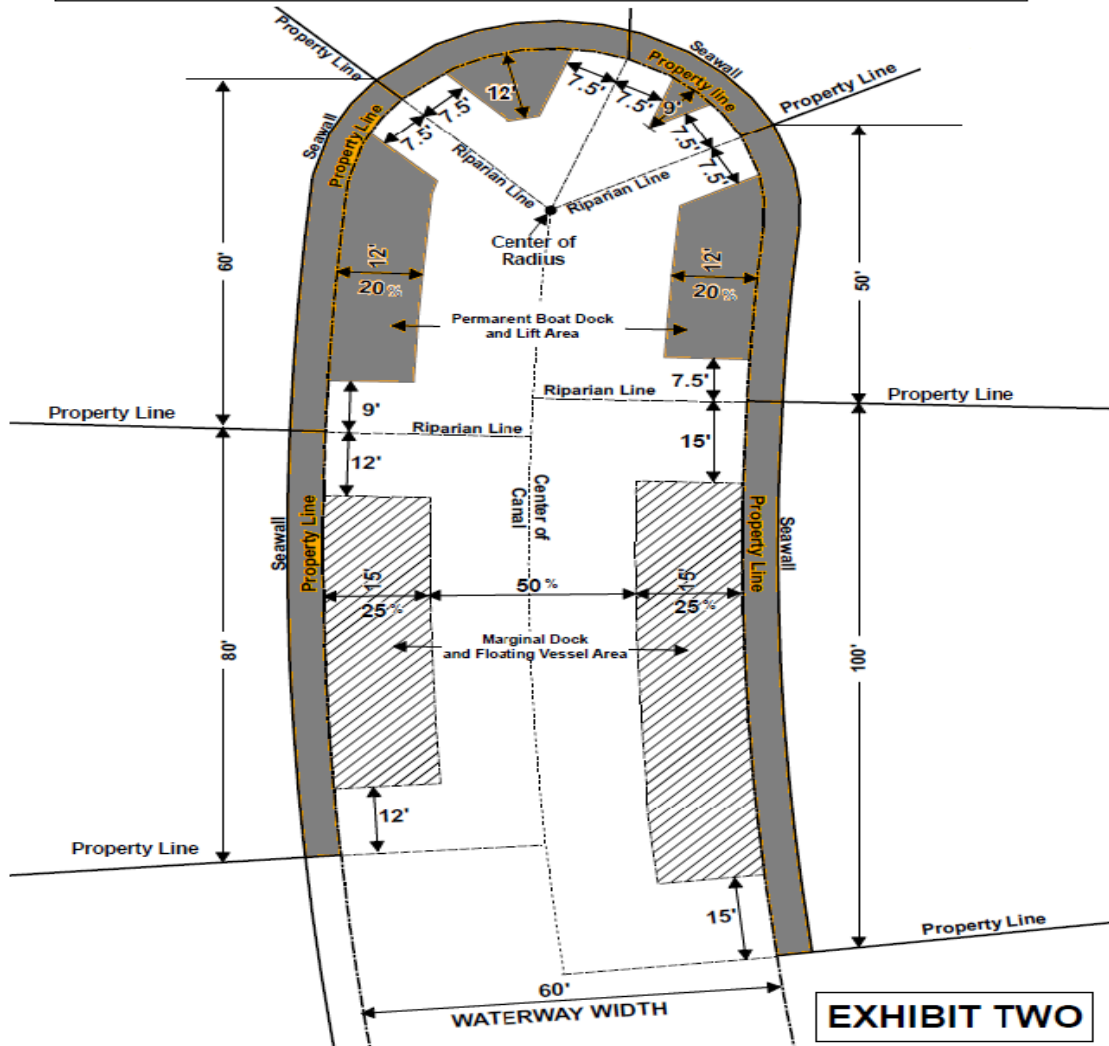


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- (2) On waterfront lots located on waterways which are less than 100 feet in width, the combination of a boat docking facility and moored vessel(s) shall not protrude more than 20 percent of the platted width of the waterway, except that on waterfront lots with a marginal dock as defined in section 54-101, the combination of the dock and moored vessel(s) shall not exceed 25 percent of the platted width of the waterway or 25 feet, whichever is more restrictive. The protrusion of boat docking facilities, which are located at the intersection of two waterways or in areas where the waterway widens, may in cases exceed 20 feet percent but not more than 30 feet into the waterway. Boat docking facilities located at the end of a canal shall not protrude more than 20 percent of the platted width of the waterway. See Exhibits Two (below) and Three (above). In the event of a conflict between the text of this section and Exhibits Two or Three, the exhibits shall prevail.

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**PROTRUSION LIMITATIONS FOR BOAT DOCKING FACILITIES
(Waterway Width Less Than 100 Ft)**

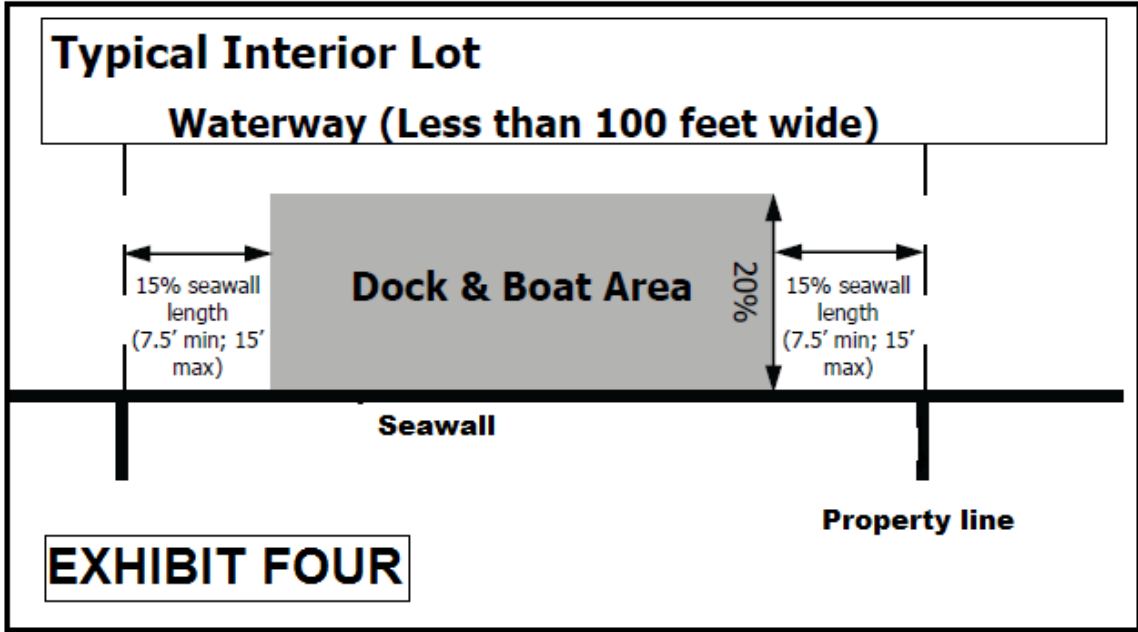


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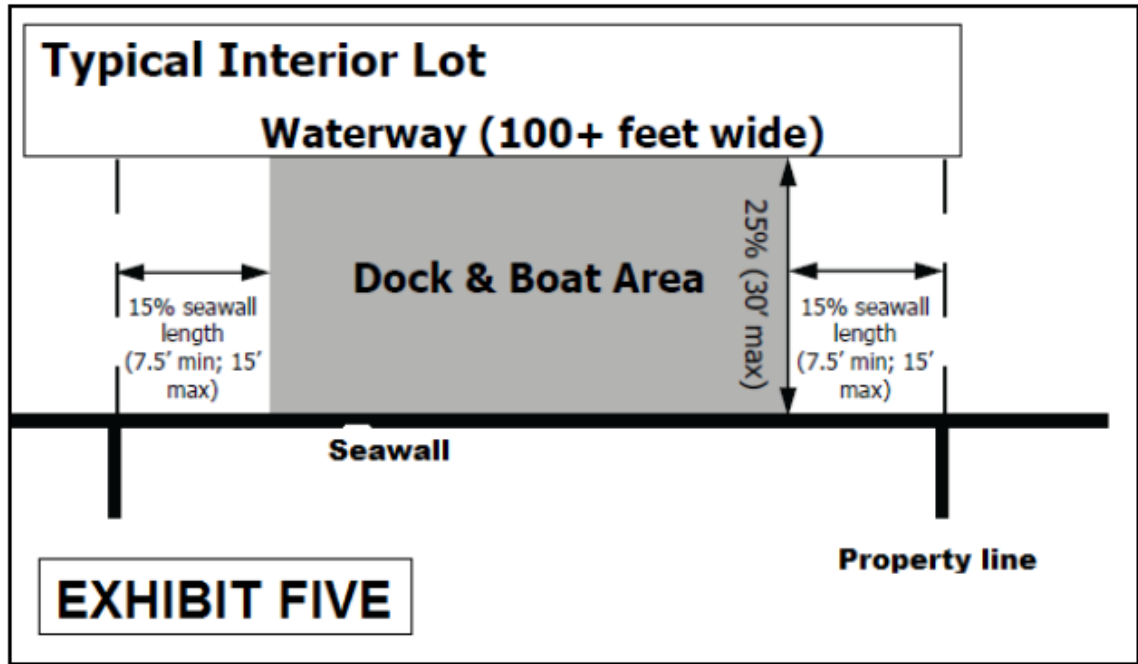
- (3) No piling, boatlift, or other structure necessary to moor a vessel shall be permitted unless that structure meets the protrusion requirements set forth herein or a boat dock extension has been approved.
- (4) Protrusion shall be measured from the face of the seawall. On lots where the property line extends into the water, the protrusion shall be measured from the property line.
- (5) The platted width of the waterway shall be defined by the recorded plat.
- (6) City staff shall determine whether or not the proposed location and design of the boat docking facility and moored vessel(s) in combination is such that it may infringe upon the use of neighboring properties, including any existing boat docking facilities.
- (7) Protrusion measurement into a waterway from a waterfront lot shall include the combination of the boat docking facility, mooring piles, and moored vessel(s). Outboard motor(s), inboard propeller(s), lower unit transmission(s) propeller(s), bow pulpit(s), navigational light(s), ladder(s), and other vessel appurtenances attached to the moored vessel shall also be included in the protrusion measurement.

- 1 (8) Boat dock decking and dock area shall comply with any other applicable local, state, or federal law,
2 rule, regulation or policy.
- 3 (9) Waterfront lots located within multifamily and commercial zoning districts may provide a parallel
4 waterfront walkway along the waterway side of the seawall from lot line to lot line (riparian lines) not
5 to exceed a maximum width of six feet. City staff shall determine whether or not the waterfront
6 walkway interferes with adjacent boat docking facilities.
- 7 (10) Wet slip mooring may be provided in the side yard setback adjacent to side yard property lines/riparian
8 lines in multifamily and commercial zoning districts, provided boat docks, mooring piles, and access
9 piers comply with side yard setbacks set forth herein.
- 10 (11) If the platted width of a waterway is unclear from available information, a waterfront property owner
11 may, at the waterfront property owner's expense, provide a survey, which is dated no earlier than 90
12 days from the date of the waterfront property owner's boat dock extension application, to staff as
13 additional information regarding the actual width of the waterway.
- 14 (b) Side yard setback requirements for boat docking facilities and swivel PWC lifts:
- 15 (1) Boat docking facilities shall have side yard setbacks equivalent to 15 percent of the seawall length, as
16 measured along the waterfront and from each applicable riparian line.
- 17 a. The minimum required setback shall be seven and one-half feet.
- 18 b. The maximum required setback shall be 15 feet.
- 19 c. Waterfront corner lots that have less than 80 feet of water frontage shall have required setbacks
20 of seven and one-half feet from each riparian line. Lots located adjacent to waterfront corner
21 lots, regardless of their waterfront length, shall have a seven and one-half foot setback, but only
22 from the riparian line shared with the waterfront corner lot. A waterfront corner lot is a "lot,
23 corner" on the "waterfront" as defined in section 30-10 and is also known as a "lot, shoulder" as
24 defined in section 30-10.
- 25 D. The setback shall apply to that portion of the boat dock facility and moored vessel waterward of
26 the property line.
- 27 (2) Boat docking facilities which are constructed in an existing cut-in boat slip shall have a minimum side
28 yard setback of ten feet.
- 29 (3) Any decked area which is extended or located past the waterward side of the seawall shall be
30 considered part of the boat docking facility. All height limitations and setback requirements contained
31 herein shall apply to such decked area, terrace or patio extensions.
- 32 (4) Any boat, accessory attached to a boat, or PWC stored on the decking of a boat docking facility must
33 meet the setback requirements set forth in this section.
- 34 (5) Seawall support pilings which are not part of a boat docking facility and meet the height limitations set
35 forth in this article shall not be required to comply with side yard setback requirements.
- 36 (6) Typical setback and protrusion requirements for boat docking facilities and swivel PWC lifts are set
37 forth on six exhibits set forth below. See Exhibits Four, Five, Six, Seven, Eight, and Nine. In the event of
38 a conflict between the text of this section and Exhibits Four, Five, Six, Seven, Eight, and Nine, the
39 exhibits shall prevail.

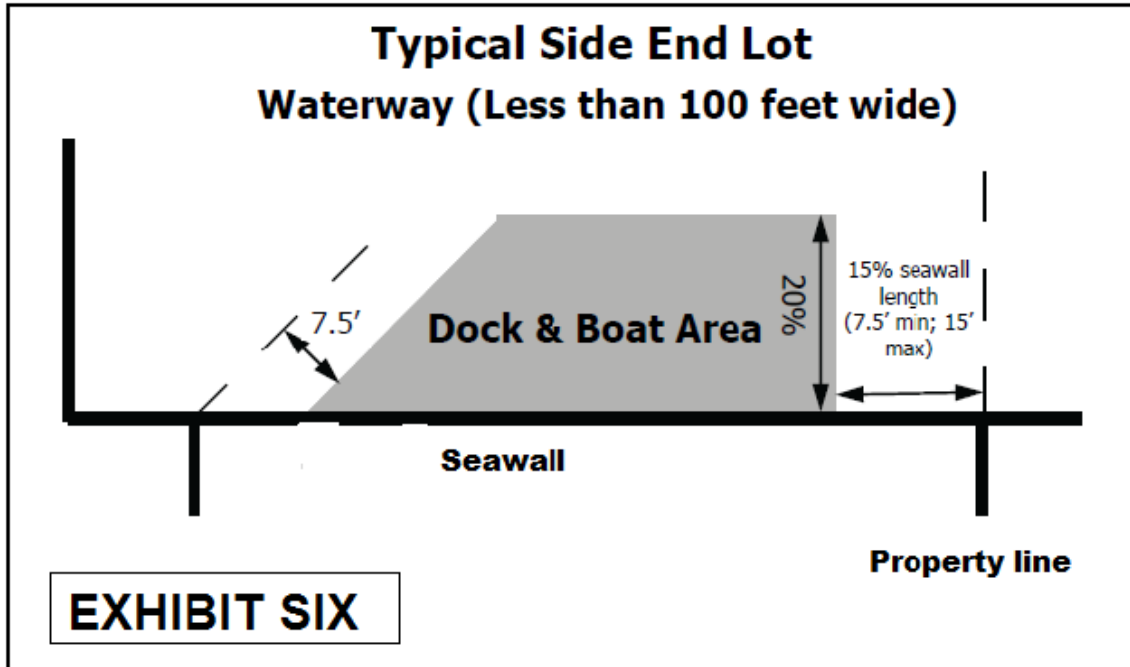
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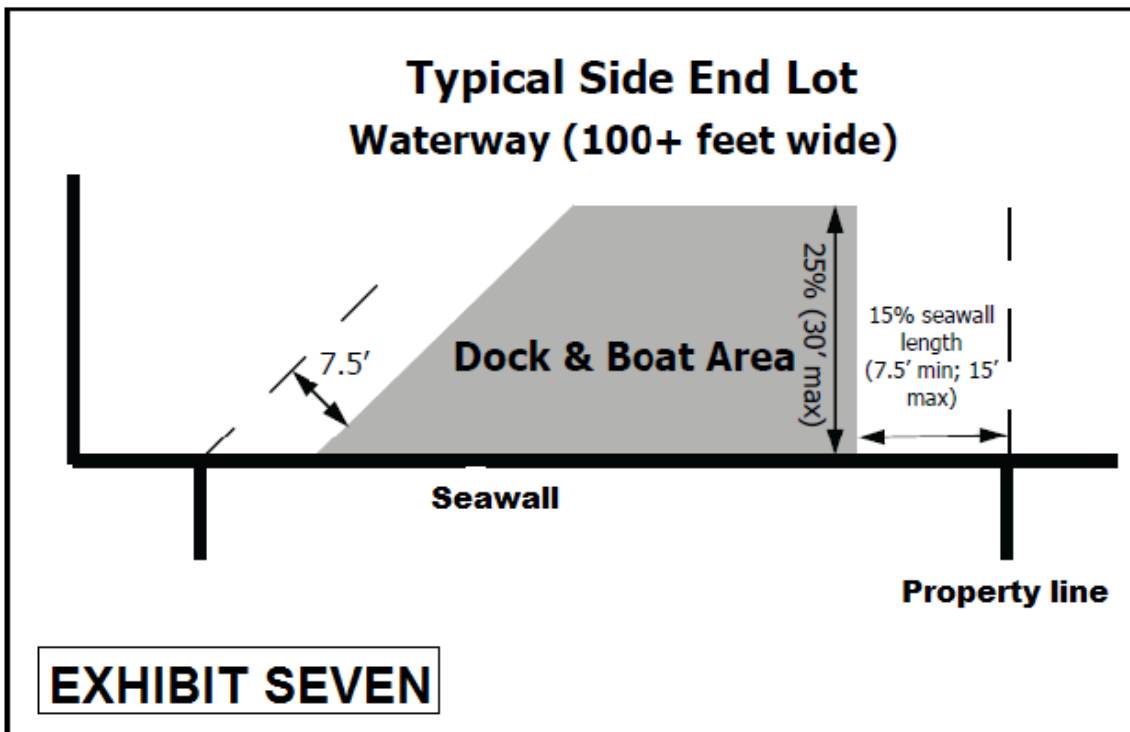
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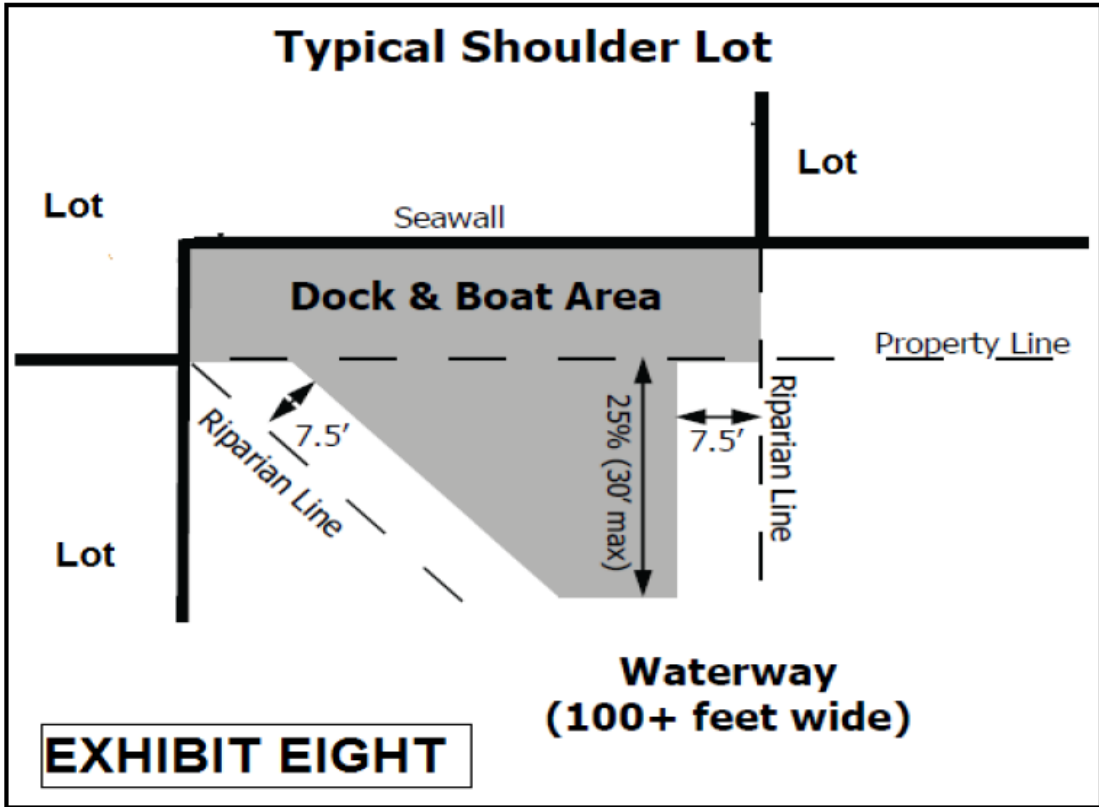
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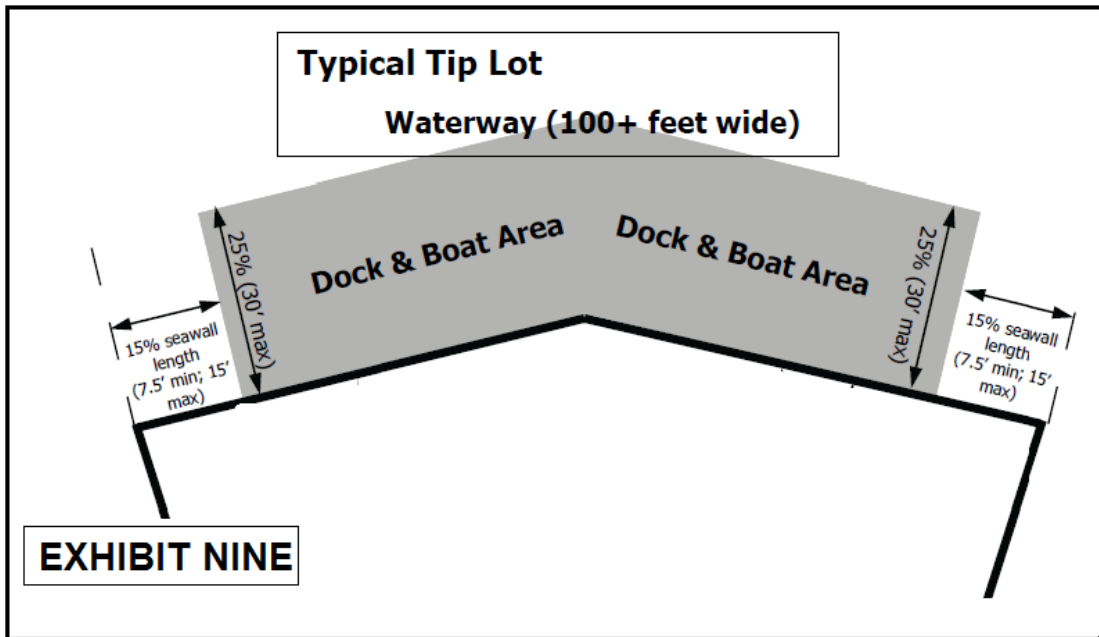
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3 **Sec. 54-112. Additional requirements.**

- 4 (a) All boat docking facilities are subject to, and shall comply with, all federal and state requirements and
 5 permits, including but not limited to the requirements and permits of the state department of environmental
 6 protection, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency.

- 1 (b) Any proposed expansion of or addition to (excluding boatlifts or mooring cover assist systems) an existing
2 nonconforming boat docking facility, whether attached to or detached from an existing boat docking facility,
3 shall require the entire boat docking facility be brought into conformance with the requirements of this
4 article. Any repair or replacement of the structure within the existing footprint shall not require that the
5 facility be brought into compliance with the standards set forth in this article.
- 6 (c) All boat docking facilities, regardless of length or protrusion, shall have blue or white reflectors installed
7 facing the water at the outermost end of the boat docking facility on both sides. Red and green reflectors are
8 prohibited.
- 9 (d) All boat dock facilities, regardless of length or protrusion, shall have house numbers, which are a minimum of
10 four inches in height and a contrasting color from the area of installation, installed facing the water at the
11 outermost end of the boat docking facility on both sides.
- 12 (e) Live-aboard vessels may not anchor or tie up in waters under the jurisdiction of the city except at anchorage
13 sites identified on official National Oceanographic and Atmospheric Administration (NOAA) navigational
14 charts or at facilities located in zoning districts permitting such use and at facilities within such districts
15 designated for such use and meeting city, county, and state health standards for such use.
- 16 (f) Use of boat docking facilities to moor boats for boat rentals, boat repair, boat sales, associated boat supplies
17 storage, or the rental of boat docking facilities in all single and multifamily districts is expressly prohibited.
- 18 (g) Any outside lighting on a boat docking facility shall comply with the lighting regulations set forth in chapter 6,
19 article V of this ~~c~~Code. Further, the use of red or green lights or lights that emit red or green light due to a
20 lens or other method are prohibited.
- 21 (h) No owner shall allow the boat docking facility and/or associated infrastructure located at the owner's lot to
22 become dilapidated, deteriorated, structurally unsound, unsightly or a safety hazard.
- 23 (i) A crane or barge may not sit idle for more than 15 business days. An extension of up to an additional 15
24 business days may be approved administratively if the barge or crane cannot be moved within the initial 15
25 business days due to mechanical problems.
- 26 (j) Seagrass bed protection:
- 27 (1) Where new boat docking facilities or boat dock extensions are proposed, the location and presence of
28 seagrass or seagrass beds within 200 feet of any proposed dock facility shall be identified on an aerial
29 photograph having a scale of one inch = 200 feet when available, or a scale of one inch = 400 feet when
30 such photographs are not available. The location of seagrass beds shall be verified by a site visit by the
31 ~~community development~~ director ~~or his designee~~ prior to the approval of any boat dock extension or
32 the issuance of any building permit.
- 33 (2) All proposed boat docking facilities shall be located and aligned to stay at least ten feet from any
34 existing seagrass beds, except where a continuous bed of seagrasses exists off the shore of the
35 property and adjacent to the property, and shall minimize negative impacts to seagrasses and other
36 native shoreline, emergent and submerged vegetation and hard bottom communities.
- 37 (3) Where a continuous bed of seagrasses exists off the shore of the property and adjacent to the
38 property, the applicant shall be allowed to build a boat docking facility across the seagrasses or within
39 ten feet of seagrasses. Such boat docking facilities shall comply with the following conditions:
- 40 a. The dock shall be at a height of at least 3.5 feet N.G.V.D.
- 41 b. The terminal platform of the dock shall not exceed 160 square feet.
- 42 c. The access dock shall not exceed a width of four feet.
- 43 d. The boat docking facility shall be sited to impact the smallest area of seagrasses possible.

1 (4) The applicant or petitioner shall be required to demonstrate how negative impacts to seagrasses and
2 other native shoreline vegetation and hard bottom communities have been minimized prior to the
3 approval of any boat dock extension or the issuance of any building permit.

4 (k) Mooring cover assist systems shall be allowed.

5 **Sec. 54-113. Permit and construction requirements.**

6 (a) A city building permit must be obtained prior to the construction, installation, modification or replacement
7 of a boat docking facility.

8 (b) Applications for a building permit must include the following:

9 (1) Drawing of currently existing conditions at the proposed site including the property lines, length of the
10 seawall, waterway width, location of seagrasses within 200 feet of the subject site (if applicable)
11 mangrove prop root line (if applicable), and location of navigation channels (if applicable).

12 (2) Plans showing the height, width, length and distance from the property lines of all existing and
13 proposed structures to include pilings, boatlifts, decking, detail and construction specifications and all
14 other information deemed necessary by the ~~community development~~ director ~~or his designee~~.

15 (3) The ~~community development~~ director ~~or his designee~~ may require this information to be furnished on
16 a certified survey if information is conflicting.

17 (4) If state or federal permission is required for the construction, installation, modification or replacement
18 of any boat docking facility, such permission shall be presented in writing to the ~~community~~
19 ~~development~~ director ~~or his designee~~ prior to the issuance of any building permit for a boat docking
20 facility.

21 (d) A certificate of use may be issued upon approval of all required inspections except for the final survey. A
22 certificate of use shall only be valid for a period of 90 days after date of issuance.

23 (e) A certificate of completion may be issued upon submission and approval of a final survey prepared and
24 certified by a Florida registered engineer or surveyor, showing the as-built location and depicting compliance
25 with the standards set forth.

26 (1) A certificate of completion must be issued within 90 days of the issuance of a certificate of use or the
27 permit will become invalid.

28 (2) The installation of a PWC lift which swivels and stores a PWC onto an existing dock or the installation of
29 seawall support pilings shall be exempt from the final survey requirement.

30 **Sec. 54-114. Minor after-the-fact encroachments.**

31 (a) Minor after-the-fact encroachments may be approved administratively by the ~~community development~~
32 director ~~or his designee~~. Encroachments of up to 0.5 feet into the required setback for a boat docking facility
33 for which a certificate of occupancy has not been issued, and encroachments of up to 1.0 feet into the
34 required setback for a boat docking facility for which a certificate of occupancy has been issued may be
35 granted administratively.

36 (b) In order to apply for an administrative variance for a boat docking facility, the property owner or ~~his~~ agent
37 shall submit the following to the ~~community development~~ director ~~or his designee~~:

38 (1) A survey prepared and certified by a Florida registered engineer or surveyor identifying the exact
39 location and size of the encroachment.

40 (2) A statement of how and when the encroachment was created.

41 (3) A statement of current ownership and ownership at the time the encroachment was created.

42 (4) A letter of no objection from each adjacent property owners.

- 1 (5) Any other factors which may show that the encroachment was not intentionally created.
- 2 (6) Applicable fee as listed in the schedule of fees.

3 **Sec. 54-115. Boat dock extensions, protrusion or encroachment into the riparian setback.**

- 4 (a) Property owners may request a boat dock extension, protrusion or encroachment into the riparian setback
5 [\("request" or "application"\)](#) to provide for additional length or protrusion beyond the respective distances
6 specified in section 54-111 [by following the procedures in this section](#).
- 7 (b) General requirements.
 - 8 (1) Petitioner must demonstrate justification for [the request extension, protrusion or encroachment into](#)
9 [the riparian setback requested and/or special conditions relative to the subject property](#), in addition to
10 compliance with [applicable](#) review criteria [in subsection \(f\), below](#).
 - 11 (2) Notice of public hearing(s) shall be provided to all property owners within 300 feet of the subject
12 petition. In the case of residential, commercial, PUD and/or DRI extension requests, the petitioner shall
13 be responsible for, and bear such costs for, all public notification requirements, including newspaper
14 advertisements in a newspaper of general circulation and mailing by first class U.S. mail of public
15 notices to all property owners within 300 feet. Proof of advertising and mailing shall be presented to
16 city staff prior to placing the subject boat dock extension on the planning board and city council
17 agendas.
 - 18 (3) Required public hearing(s) will not be scheduled until the [boat dock extension, protrusion or](#)
19 [encroachment into the riparian setback](#) application package has been deemed by staff to be complete.
20 The following items, [additional to any other items that may be listed on the application checklist](#), must
21 be included with [the application boat dock extension, protrusion or encroachment into the riparian](#)
22 [setback petition submittal](#):
 - 23 a. Completed application, including signed and notarized owner/agent affidavit.
 - 24 b. A site plan, drawn to scale, illustrating each of the following:
 - 25 1. Location map.
 - 26 2. Lot dimensions of subject property.
 - 27 3. Riparian line(s).
 - 28 4. Required boat docking facility setbacks.
 - 29 5. Configuration and dimensions of proposed boat docking facility, including decking,
30 boatlifts, boat mooring areas, etc.
 - 31 6. Configuration and dimensions of existing boat docking facility, including decking, boatlifts,
32 boat mooring area, etc., if applicable.
 - 33 7. Configuration and dimensions of existing boat docking facilities on adjacent properties.
 - 34 8. Water depth survey, completed by a professional Florida engineer, licensed marine
35 contractor, registered surveyor, or other person deemed to be qualified by the community
36 development director or his designee, using the format attached to the application form
37 provided by the city, if relative to the boat dock extension request.
 - 38 c. Permit number and certificate of completion date for the original construction of any existing
39 boat docking facility, if applicable.
 - 40 d. Resolution number and date of previous boat dock extension, protrusion or encroachment into
41 the riparian setback if applicable.
 - 42 e. Receipt of application fee.

- 1 (c) ~~An Approval of an application-boat dock encroachment into the riparian setback, protrusion, or extension,~~
2 shall be issued in the form of a resolution. In the event a resolution approving a boat dock extension
3 incorporates a site plan, said site plan shall be binding upon the property. Any deviation from the approved
4 site plan shall require a petitioner to submit a new application under this section~~make application for a boat~~
5 ~~dock encroachment into the riparian setback, protrusion, or extension.~~
- 6 (d) ~~Additional length, protrusion, or encroachment into the riparian setback, beyond the respective distances~~
7 specified in section 54-111 Applications for boat docking facilities ~~located~~ in any single-family district shall
8 require public notice and a hearing by the planning board, after which the planning board shall render a final
9 decision.
- 10 (e) ~~Additional length, protrusion, or encroachment into the riparian setback beyond the respective distances~~
11 specified in section 54-111 Applications for boat docking facilities in any multifamily or, commercial district,
12 PUD, or development of regional impact ~~district shall~~ require public notice and a hearing by the planning
13 board and the city council. The planning board shall consider the application and make a recommendation to
14 the city council for approval, approval with conditions, or denial based upon the criteria set forth herein. The
15 city council shall consider the application and recommendation from the planning board and shall make a
16 final decision for approval, approval with conditions, or denial based on the criteria set forth herein.
- 17 (f) The planning board and city council shall base its decision for approval, approval with conditions, or denial,
18 on the following criteria:
- 19 (1) Whether or not the proposed boat docking facility meets the other standards set forth in this article.
- 20 (2) Whether or not the water depth where the proposed vessel(s) is to be located is sufficient (as a general
21 guide, four feet mean low water is deemed to be sufficient) to allow for safe mooring of the vessel,
22 thereby necessitating the extension, protrusion, or encroachment requested.
- 23 (3) Whether there are special conditions related to the subject property or waterway which justify the
24 proposed dimensions and location of the proposed boat docking facility.
- 25 (4) Whether or not the proposed boat docking facility and moored vessel(s) protrude greater than 25
26 percent of the width of the navigable waterway, and whether or not a minimum of 50 percent of the
27 waterway width between boat docking facilities and moored vessel(s) on the opposite side of the
28 waterway is maintained in order to ensure reasonable waterway width for navigation. This
29 requirement shall only be applicable for extension or protrusion requests.
- 30 (5) Whether or not the proposed boat docking facility is of the minimum dimensions necessary in order to
31 adequately secure the moored vessel while providing reasonable access to the boat for routine
32 maintenance without the use of excessive deck area.
- 33 (6) Whether or not the proposed boat docking facility is of minimal dimensions and located to minimize
34 the impact of view to the channel by surrounding property owners.
- 35 (7) Whether or not the proposed vessel(s) are in excess of 50 percent of the length of the water frontage
36 on the subject property such that the extension of the boat docking facility may adversely impact the
37 view to the channel by surrounding property owners. In the case of multifamily developments and
38 public marinas, the 50 percent provision may be exceeded. This requirement shall only be applicable
39 for extension or protrusion requests.
- 40 (8) Whether or not the proposed location and design of the boat docking facility and moored vessel(s) in
41 combination is such that it may infringe upon the use of neighboring properties, including any existing
42 boat docking facilities.
- 43 (9) Whether or not the seagrasses are located within 200 feet of the proposed boat docking facility.
- 44 (10) Whether or not the proposed dock is subject to the manatee protection requirements set forth in
45 section 54-117.

- 1 (g) The planning board and city council may impose conditions upon the approval of an ~~extension, protrusion, or~~
2 ~~encroachment request application~~ which it deems necessary to accomplish the purposes of this article and to
3 protect the safety and welfare of the public. Such conditions may include, but are not limited to, requiring
4 greater side yard setback(s), additional reflectors, reflectors larger than four inches, or prohibiting or
5 restricting the amount of decking on the boat docking facility.
- 6 (h) ~~As to any boat dock extension, protrusion, or encroachment into the riparian setback, petition upon which~~
7 ~~the planning board takes action, any~~ affected property owner may appeal ~~such a~~ final action ~~by the~~
8 ~~planning board in accordance with the procedure in section 1-15 of this code to the city council. The city~~
9 ~~council may affirm, affirm with conditions, reverse or reverse with conditions the action of the planning~~
10 ~~board. Such appeal shall be filed with the city manager within 14 days of the rendition of the planning~~
11 ~~board's final decision and said appeal shall be noticed for public hearing with the city council pursuant to the~~
12 ~~procedures and applicable fees set forth in the land development code. Any appeal to a decision made by~~
13 ~~the city council shall be quasi-judicial in nature and shall be a de novo application.~~
- 14 (i) Changes and/or amendments to existing boat dock extension approvals only may be approved
15 administratively if the proposed changes do not increase the protrusion into the waterway beyond
16 provisions set forth in subsection 54-111(a), and/or increase the encroachment into the side yard setback
17 beyond the provisions set forth in subsection 54-111(b).
- 18 (j) All boat dock extension, protrusion, or riparian setback encroachment, approvals shall be consistent with all
19 regulations contained in chapter 30 ~~of the land development code and the City of Marco Island~~
20 ~~comprehensive plan.~~
- 21 (k) In the event of a conflict between chapter 30 ~~of the land development code or comprehensive plan and~~
22 ~~chapter 54 this article~~, the regulations and standards ~~contained in chapter 30 of the land development code~~
23 shall prevail.
- 24 (l) ~~In the event of a conflict between the comprehensive plan and chapter 54, the regulations and standards~~
25 ~~contained in comprehensive plan shall prevail.~~

26 **Sec. 54-116. Boathouse and boat dock canopy and boat lift canopy.**

- 27 (a) The city shall not permit the construction of new boathouses, and gazebos extending over navigable
28 waterways in any zoning district. The city may approve through the conditional use process, where
29 authorized ~~in chapter 30~~, nautical garages with cut-in boat slips.
- 30 (b) Boathouses which were existing prior to September 21, 1998, may be repaired or rebuilt subject to the
31 following:
- 32 (1) Approval of the ~~community development~~ director ~~or his designee will be is~~ required prior to the
33 issuance of a building permit to repair or rebuild within the existing footprint including the overhang of
34 a structure that was lawfully permitted and for which a certificate of completion was issued.
- 35 (2) Boathouses which were legally permitted but did not receive a certificate of completion shall require
36 public notice and public hearing by the planning board prior to the issuance of a building permit to
37 repair or rebuild within the existing footprint.
- 38 (3) Boathouses which were not issued a building permit shall require public notice and a hearing by both
39 the planning board and the city council acting as the board of zoning appeals prior to the issuance of a
40 building permit to repair or rebuild within the existing footprint.
- 41 (4) The ~~repaired or rebuilt boathouse~~ ~~community development director, planning board and city council~~
42 ~~acting as the board of zoning appeals shall base its decision for approval, approval with conditions, or~~
43 ~~denial, on shall comply with~~ the following ~~criteria~~ requirements:
- 44 a. Boathouse must have a minimum side yard setback of 15 feet, this setback requirement will not
45 apply to boathouses located over a cut-in boat slip.

- 1 b. Boathouses may not protrude more than 25 percent of the waterway width or 20 feet into the
- 2 waterway, whichever is less.
- 3 c. Boathouses may not be more than 15 feet in height as measured from the top of the decking to
- 4 the top of the roof.
- 5 d. Boathouses must be completely open on all four sides except that the header board can be
- 6 covered with decorative finishing materials or lattice board no more than 12 inches below the
- 7 bottom of the header board. Roofing material and roof color must be:
- 8 1. Same as the material and color which are used on the principal structure; or
- 9 2. Palm frond "chickee" style; or
- 10 3. Cedar shake style.
- 11 4. Roof must be hip, gable, mansard, or flat style roof, consistent with the roof style of the
- 12 principal structure. When the roof must be changed to conform, the roof overhang shall
- 13 not project more than 36 inches into the required side yard setbacks or more than 36
- 14 inches beyond the allowed protrusion.
- 15 5. A roof shall not be utilized as a viewing platform, sunning deck, gathering place or similar
- 16 use.
- 17 e. No boathouse may be used for the purpose of human habitation or storage of materials other
- 18 than recreational supplies.
- 19 (c) Boat dock canopy and boat lift canopy.
- 20 (1) Boat dock canopy and boat lift canopies shall be permitted within the City's required setback and
- 21 protrusion limits over an existing boat dock/v-area or lift attached to a dock or lift legally permitted, by
- 22 the requisite local, state and federal agencies, if the following criteria are met.
- 23 a. Canopy cover material shall be made of a soft membrane material.
- 24 b. Canopy cover material shall be of a uniform, nonreflective single color per primary residential
- 25 building.
- 26 c. Canopy covers material shall not extend more than 27 inches beyond the width of the boat lift or
- 27 dock/v-area on each side.
- 28 d. The sides of the canopy cover shall remain open on all sides, except that a drop curtain, not to
- 29 exceed 18 inches, shall be permitted on the sides.
- 30 e. Boat dock canopy and boat lift canopy shall meet the requirements of awnings and canopies in
- 31 the Florida Building Code.
- 32 f. No boat dock canopy or boat lift canopy shall be permitted at sites that contain either a
- 33 boathouse, or any other covered accessory structure.
- 34 g. Two boat dock canopies or boat lift canopies are allowed per primary residential building.

35 **Sec. 54-117. Manatee protection.**

- 36 (a) *Purpose of section.* The following are for the purpose of manatee protection and will be applicable to all
- 37 multi-slip docking facilities with ten slips or more, and all marina facilities.
- 38 (b) *Manatee protection.*
- 39 (1) Proposed developments will be reviewed for consistency with the manatee protection plan (MPP)
- 40 adopted by the Collier County Board of County Commissioners and approved by the state department
- 41 of environmental protection. If the location of the proposed development is consistent with the MPP,

then the developer will submit a "manatee awareness and protection plan", which shall address, but not be limited to, the following categories:

- a. Education and public awareness;
- b. Posting and maintaining manatee awareness signs;
- c. Information on type and destination of boat traffic that will be generated from the facility;
- d. Monitoring and maintenance of water quality to comply with state standards;
- e. Marking of navigational channels may be required.

(c) *Marina siting.*

(1) The purpose of the marina site rating system is to help determine the maximum wet slip densities in order to improve existing manatee protection. The marina site rating system gives a ranking based on three criteria; water depth, native marine habitat, and manatee abundance. In evaluating a parcel for a potential boat facility, a minimum sphere of influence for the boat traffic must be designated. For this plan an on-water travel distance of five miles is considered the sphere of influence.

(2) Rating criteria.

- a. A preferred rating is given to a site that has or legally create adequate water depth and access, will not impact native marine habitats, and will not impact a high manatee use area (see Table 1).
- b. A moderate ranking is given to a site where; there is an adequate water depth and access, no impact to a high manatee use area, but there is an impact to native marine habitat; there is adequate water depth, no impact to native marine habitat, but impacts a high manatee use area; and when the water depth is less than four feet mean low water (MLW), no impact to native marine habitat, and no impact to a high manatee use area.
- c. A protected ranking is given to a site where; there is adequate water depth and access, but there is an impact to native marine habitat and there is an impact to a high manatee use area; there is not adequate water depth, there is impact to or destruction of native marine habitat and there is impact to a high manatee use area; there is not adequate water depth, no impact to marine habitat, but there is impact to a high manatee use area; or there is not adequate depth, there is impact to marine habitat and no impact to a high manatee use area.
- D. The exact areas will depend on site specific data gathered during the site development process.

Table 1

| | Water Depth | | Native Marine Habitat | | Manatee Use | |
|-----------|---------------------|------------------|-----------------------|--------|-------------|------|
| | Greater than 4' MLW | Less than 4' MLW | No Impact* | Impact | Not High | High |
| Preferred | X | | X | | X | |
| Moderate | X | | X | | | X |
| Moderate | X | | | X | X | |
| Moderate | | X | X | | X | |
| Protected | X | | | X | | X |
| Protected | | X | | X | | X |
| Protected | | X | X | | | X |
| Protected | | X | | X | X | |

1 *For shoreline vegetation such as mangroves, no impact is defined as no greater than five percent of the
2 native marine habitat is disturbed. For sea grasses, no impact means that no more than 100 square feet of
3 sea grasses can be impacted.

4 (d) *Allowable wet slip densities.*

5 (1) *Preferred sites.* New or expanded wet slip marinas and multi-family facilities shall be allowed at a
6 density of up to 18 boat slips for every 100 feet of shoreline. Expansion of existing and construction of
7 new dry storage facilities is allowed. Expansion of existing and construction of new boat ramps is
8 allowed.

9 (2) *Moderate development sites.* New or expanded wet slips and multi-family facilities shall be allowed at a
10 density of up to ten boat slips for every 100 feet of shoreline. Expansion of existing dry storage facilities
11 is allowed. Construction of new dry storage facilities is prohibited. Expansion of existing boat ramps is
12 allowed. Construction of existing boat ramps is allowed. Construction of new boat ramps is prohibited.

13 (3) *Protected site.* New or expanded wet slip marinas and multi-family facilities shall be allowed at a
14 density of one boat slip for every 100 feet of shoreline. Expansion of existing dry storage facilities or
15 construction of new dry storage facilities is prohibited. Expansion of existing boat ramp or construction
16 of new boat ramps is prohibited.

17 (4) *Mitigation.* If a potential boat facility site is ranked as moderate or protected because of its proximity
18 to a high use manatee area its ranking can be increased if slow speed zones are established that
19 account for a significant portion of the expected travel route of the boats using the proposed facility. In
20 that case, the manatee criteria in the three-way test (see Table 1) would not affect the outcome of the
21 ranking. If such slow speed zones are not existing, the city or county may establish, with DEP approval,
22 additional slow speed zones in order to mitigate the proposed additional boat traffic.

23 (5) *Implementation.* This rating system does not preclude the existing zoning and density regulations
24 required by the current land development code. This system shall be used to determine the allowable
25 maximum powerboat wet slip densities within future marina sites for the purpose of manatee
26 protection. These criteria will be applied at the appropriate point in the city permitting process.

27 (6) *Exemption.* Existing facilities and facilities which had state or federal permits prior to adoption of the
28 county manatee protection plan shall be exempt from these provisions, but will be subject to all other
29 requirements of [chapter 30 of this code](#)~~the LDC~~.

30 **Sec. 54-118. Penalties for violation.**

31 ~~(a) Pursuant to F.S. § 162.22, a person found to be in violation of this article may be charged with a fine, not to~~
32 ~~exceed \$500.00, and may be sentenced to a definite term of imprisonment not to exceed 60 days. Each~~
33 ~~violation or noncompliance shall be considered a separate and distinct offense. Further, each day of~~
34 ~~continued violation or noncompliance shall be considered as a separate offense.~~

35 ~~(b) Violations of this article is punishable according to the penalties and procedures set forth in chapter 14 of~~
36 ~~this code, may also be prosecuted before the city code enforcement board.~~

37 **Secs. 54-119—54-140. Reserved.**

38 **ARTICLE V. SEA TURTLE PROTECTION**

39 **Sec. 54-141. Purpose and intent.**

40 The purpose of this ordinance is to protect sea turtles that nest along the beaches of Marco Island by
41 safeguarding them from the adverse effects of artificial lighting and from injury or harassment by prohibiting

1 activities disruptive to sea turtles, while also maintaining public access and public safety. As part of this ordinance,
2 the city will educate residents and beach users on the importance of appropriate coastal lighting to sea turtle
3 nesting and perform inspections to ensure compliance with this ordinance.

4 (Ord. No. 22-03 , § 2, 3-7-2022)

5 **Sec. 54-142. Applicability—Sea turtle lighting district.**

6 An overlay district, known as the sea turtle lighting district, is hereby established in the City of Marco Island.
7 The sea turtle lighting district is defined as all beachfront properties from Cape Marco to Hideaway Beach. Within
8 this district, this ordinance applies to all light visible from the beach.

9 **Sec. 54-143. Definitions.**

10 The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them
11 in this section, except where the context clearly indicates a different meaning. [These definitions are supplemental](#)
12 [to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.:](#)

13 *Artificial light* means the light emanating from any human-made device.

14 ~~*Beach* means the sand portion of land lying seaward of a seawall or line of permanent vegetation and~~
15 ~~landward of the mean high water line.~~

16 *Development* means the carrying out of any building activity, the making of any material change in the use or
17 appearance of any structure of land. For the purposes of this article, this would include any construction, change,
18 or improvements regarding artificial lighting, windows, and windowed doors.

19 *Directly visible* means visibility of the glowing elements, lamps, globes, or reflectors of an artificial light
20 source by an observer standing anywhere on the beach.

21 *Disorientation* means an event caused by direct or indirect artificial lighting on sea turtle nesting habitat
22 resulting in the disruption in the ability of nesting sea turtle females and sea turtle hatchlings to find the sea from
23 the beach.

24 *False crawl* means sea turtles leave the security of the ocean and crawl up onto Florida beaches at night
25 during the summer to dig a hole and lay their eggs. Sometimes they crawl back to the water without digging a nest
26 and without laying eggs. This is called a "false crawl."

27 *Foot candle* means the English unit for measuring illuminance; the uniform illumination of a surface one foot
28 away from a point source of one candela; one lumen per square foot; equal to 10.76 lux.

29 *Frontal dune* means the first natural or man-made mound or bluff of sand which is located landward of the
30 beach, and which has sufficient vegetation, height, continuity, and configuration to offer protective value.

31 *Full cutoff* means a lighting fixture constructed in such a manner that no light emitted by the fixture, either
32 directly from the lamp or a diffusing element or indirectly by reflection or refraction from any part of the
33 luminaire, is projected at or above 90° as determined by photometric test or certified by the manufacturer.

34 *Fully shielded* means a lighting fixture constructed in such a manner that the glowing elements, lamps,
35 globes, or reflectors of the fixture are completely covered by an opaque material to prevent them from being
36 directly visible from the beach. Any structural part of the light fixture providing this shielding must be permanently
37 affixed.

38 *Handheld devices* include any portable device that can be carried and held in one's palm. A handheld can be
39 any computing or electronic device that is compact and portable enough to be held and used in one or both hands.
40 A handheld may contain cellular communication, but this category can also include other computing devices.

1 *Harass* means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by
2 annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not
3 limited to, nesting, breeding, feeding, or sheltering.

4 *Hatchling* means any species of marine turtle, within or outside of a nest, which has recently hatched from
5 an egg.

6 *Indirectly visible* means visibility of reflected light as a result of glowing elements, lamps, globes, or reflectors
7 of an artificial light source which is visible to an observer standing anywhere on the beach without the light source
8 being directly visible.

9 *Irreparable or irreversible event* means an irreversible action leading to a false crawl, disorientation, injury, or
10 death of a sea turtle or their young. This also includes but is not limited to any irreversible harm or damage to the
11 nest.

12 *Lighting plan* means plan view and cross section drawings describing location, number, wattage, wavelength,
13 elevation, orientation, fixture cut sheets, and all types of proposed exterior artificial light sources, including, but
14 not limited to, artificial lighting affixed to permanent structures, outdoor lighting, pool lighting, and internally or
15 externally lighted signs.

16 *Long wavelength* means a luminaire emitting light wavelengths of 560 nanometers or greater and absent
17 wavelengths below 560 nanometers. Lamps that meet the definition of long wavelength using filters, gels, or
18 lenses are not permitted.

19 *Nest* means an area where marine turtle eggs have been naturally deposited or subsequently relocated.

20 *Nesting season* means the nesting period for sea turtles is from May 1st through October 31st of each year.
21 Nesting season may be extended up to 30 days by the city manager or their designee before or after these dates
22 on an annual basis based on nesting activity observed in the City of Marco Island.

23 *New development* includes new construction or remodeling of existing structures when such remodeling
24 includes alteration of exterior lighting and/or replacement of all glass or glazing.

25 *Nighttime* means the locally effective time between 9:00 p.m. and 6:00 a.m.

26 *Nonegress lighting* means lighting that is not being used to light a distinct path or meet minimum
27 requirements for emergency egress, including, but not limited to, decorative lights (e.g., Christmas lights, strobe
28 lights, string lights, etc.), balcony lights, ceiling fan lights, landscape lights, and up lights.

29 *Outdoor area* means any portion of a property that could have an artificial light source not attached to a
30 permanent structure, including, but not limited to, pathway lighting, landscape lighting, pool lighting, etc.

31 ~~*Person* means any individual, firm, association, joint venture, partnership, estate, trust, syndicate, fiduciary,
32 corporation, group, or unit of federal, state, county, or municipal government.~~

33 *Sea turtle* means any turtle, including all life stages from egg to adult, of these species: Green (*Chelonia*
34 *mydas*), Leatherback (*Dermochelys coriacea*), Loggerhead (*Caretta caretta*), Hawksbill (*Eretmochelys imbricata*),
35 and Kemp's Ridley (*Lepidochelys kemp*). For the purposes of this ordinance, the term sea turtle is synonymous
36 with marine turtle.

37 *Sea turtle nesting habitat* means all sandy beaches adjoining the waters of the Atlantic Ocean, the Gulf of
38 Mexico, and the Straits of Florida in all coastal counties and all inlet shorelines of those beaches. Nesting habitat
39 includes all sandy beach and unvegetated or vegetated dunes immediately adjacent to the sandy beach and
40 accessible to nesting female turtles.

41 *Special event* is an event such as a beach activity, sports, religious, and community event, or other similar
42 events that requires preparation, planning, and municipal resources, and may require public area or roadway
43 closures, and often a city permit.

44 *Substantial remodeling* means anything that requires a permit with regards to glass/windows, substantial
45 remodeling refers to 100 percent of all windows that may have light transmittance toward the beach.

1 *Take* means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to
2 engage in any such conduct.

3 *Temporary lighting* means any nonpermanent light source that may be hand-held or portable, including, but
4 not limited to tiki torches, lanterns, flashlights (including cell phone flashlights), candles, flash photography, etc.

5 *Tinted glass* means glass modified via tinting, film, or other material to reduce the inside to outside light
6 transmittance value.

7 *Turtle-friendly bulbs.* Bulbs that are FWC Certified Wildlife Lighting, or a bulb that produces only long
8 wavelength light (560 nanometers (nm) or longer) without the use of filters, gels, or lenses, and meet the same
9 lighting standards for FWC Certified Wildlife Lighting, as may be amended from time to time.

10 *Turtle-friendly fixtures.* Fixtures that are FWC Certified Wildlife Lighting, or fixtures that are fully shielded,
11 downward direct, meet or exceed full cut-off, and with nonreflective opaque interior surfaces, and meet the same
12 lighting standards for FWC Certified Wildlife Lighting, as may be amended from time to time.

13 *Visible from the beach* means visible to a person standing on any portion of the beach.

14 **Sec. 54-144. Existing development.**

15 Lighting associated with existing development within the sea turtle district that was permitted prior to the
16 date of this ordinance and visible from the beach, except for turtle friendly long wavelength bulbs, low, and
17 shielded light, and shielded recessed fixtures with turtle friendly bulbs, shall follow Ordinance 99-7 and the
18 following.

19 (1) *Exterior lighting.*

- 20 a. All exterior lights shall be turned off after 9:00 p.m. during turtle nesting season.
- 21 b. Lights illuminating dune crosswalks shall be turned off after 9:00 p.m. or fitted with a hood
22 during turtle nesting season.
- 23 c. High-intensity lighting, including security lighting, shall not be visible from the beach during turtle
24 nesting season.
- 25 d. Within five years, all existing multi-unit or commercial structures shall use turtle-friendly bulbs
26 and turtle-friendly fixtures on all external sources of artificial light that are visible from the beach.

27 (2) *Interior lighting.* To reduce or eliminate the negative effects of interior lighting emanating from
28 windows and doors that is visible from the beach, one or more of the following actions shall be taken
29 during sea turtle nesting season:

- 30 a. Turn off all unnecessary interior lights after 9:00 p.m.
- 31 b. Use opaque shades or darkening window treatments (e.g., blinds, shutters, or curtains) to shield
32 interior lights from the beach.
- 33 c. Rearrange moveable light fixtures away from windows so they are not visible from the beach.
- 34 d. Apply a window tint or film to an inside-to-outside light transmittance value of 45 percent or less.
35 Light transmittance values greater than 15 percent will require additional window treatments or
36 lights to be turned off to be compliant with requirements.

37 (3) Emergency lights are not subject to the above standards if on a separate circuit and activated only
38 during power outages or other situations in which emergency lighting is necessary for public safety.

39 **Sec. 54-145. New development.**

40 Lighting associated with new development that is within the sea turtle district and visible from the beach
41 shall be in compliance with Ordinance 99-7 and the following:

- 1 (1) Outdoor artificial lighting that is visible from the beach for any new development and not specifically
2 referenced in this section shall be long wavelength, downward directed, full cutoff, fully shielded and
3 mounted as close to the ground or finished floor surface as possible to achieve the required foot-
4 candles. This includes indirect visible light sources that can be seen from the beach.
- 5 (2) All exterior nonegress lighting shall not be directly or indirectly visible from the beach.
- 6 (3) All interior egress lighting shall not exceed the federal, state, and local safety requirements for the
7 number of fixtures and foot-candles.
- 8 (4) Low-profile luminaries shall be used in parking lots and such lighting shall be fitted with hoods or
9 positioned so that the light sources or any reflective surfaces illuminated by such sources are not
10 visible from the beach.
- 11 (5) Windows and doors whose light is visible from the beach at nighttime shall:
 - 12 a. Use tinted glass with an inside to outside light transmittance value of 45 percent or less and
13 opaque shades or darkening window treatments (e.g., blinds, curtains, or screens) to shield
14 interior lights from the beach during turtle nesting season; or
 - 15 b. Use tinted glass with an inside to outside light transmittance value of 15 percent or less with no
16 additional window treatments; or
 - 17 c. As an alternative, turn off all lights after 9:00 p.m. that are within the line of sight of the beach.
18 Rearrange lamps and other moveable fixtures away from windows.
- 19 (6) Temporary security lights at construction sites shall not be visible from the beach during sea turtle
20 nesting season or shall meet turtle friendly lighting standards.
- 21 (7) Emergency lights shall be on a separate circuit and activated only during power outages or other
22 situations in which emergency lighting is necessary for public safety.
- 23 (8) Common areas, including, but not limited to, stairwells, elevators, parking garages, pools, or courtyards
24 shall not produce light that is directly or indirectly visible from any portion of the beach.
- 25 (9) The city manager or designee may waive these requirements with an alternative solution that meets
26 the intent and purpose of this section.

27 **Sec. 54-146. Publicly owned lighting.**

28 Publicly owned lighting with light sources that are visible from the beach or that illuminate reflective surfaces
29 that are visible from the beach, not limited to streetlights, parking lot lights and beach access lightings, shall be
30 fitted with a hood, or re-positioned so that the point source of artificial light is not visible from the beach and does
31 not directly or indirectly illuminate the beach.

32 **Sec. 54-147. Outdoor areas.**

33 Lighting associated with any outdoor areas shall be long wavelength, downward directed, full cutoff, fully
34 shielded and mounted as close to the ground or finished floor surface as possible to achieve the required foot-
35 candles.

- 36 (1) All pathway lighting shall utilize low-level fixtures that do not exceed 42 inches in height. Fixtures shall
37 be downward directed and utilize long wavelength lamps and beachside shields.
- 38 (2) All nonegress outdoor lighting shall not be directly or indirectly visible from any portion of the beach.
- 39 (3) Internally or externally lighted signs shall not be located on the seaward and shore-perpendicular sides
40 of any structures and shall not produce light that is directly or indirectly visible from any portion of the
41 beach.

- 1 (4) Ponds and fountains on the seaward and shore-perpendicular sides of any structures shall not produce
2 light that is directly or indirectly visible from any portion of the beach.
- 3 (5) Excluding a special event permit, outdoor televisions or monitors shall only be located landward of the
4 dune and shall be shielded or positioned such that they are not directly or indirectly visible from any
5 portion of the beach.
- 6 (6) Handheld and other portable temporary lighting may only be used on the beach at nighttime during
7 nesting season if it is long wavelength and not directed toward or used in a manner that disturbs sea
8 turtles.

9 **Sec. 54-148. Parking areas.**

10 Lighting associated with any new development in parking areas shall be long wavelength, downward
11 directed, full cutoff, fully shielded, and mounted to the minimum level required to maintain compliance with
12 federal, state, and local law.

- 13 (1) Parking area lighting shall be shielded from the beach via vegetation, natural features, or artificial
14 structures rising from the ground. These shall prevent artificial light sources, including, but not limited
15 to, vehicular headlights, from producing light that is directly or indirectly visible from any portion of the
16 beach. Lighting of parking areas shall consist of either:
 - 17 a. Ground-level downward-directed fixtures, equipped with interior dark nonreflective baffles or
18 louvers, mounted either with a wall mount, on walls or piles, facing away from the beach, or
 - 19 b. Bollard-type fixtures, which do not extend more than 42 inches above the adjacent floor or deck,
20 measured from the bottom of fixture, equipped with downward-directed louvers that completely
21 hide the light source, and externally shielded 180 degrees on the side facing the beach, or
 - 22 c. Pole-mounted lights, if required, which shall:
 - 23 1. Only be used in parking areas when mounting the lights at lower elevations cannot
24 practicably comply with minimum light levels set forth in applicable federal and state laws
25 designed to protect public safety.
 - 26 2. Located on the landward sides of buildings and shall not produce light that is directly or
27 indirectly visible from any portion of the beach.
 - 28 3. Mounted at the minimum height necessary to meet the minimum light level requirement.
 - 29 4. Downward directed onto nonreflective surfaces.
 - 30 d. Equipment yards, storage yards, and temporary security lights shall also adhere to the lighting
31 restrictions contained herein.

32 **Sec. 54-149. Pool areas.**

33 Lighting associated with any with pool decks, pool facilities, swimming pools, and spas shall be long
34 wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor
35 surface as possible to achieve the required foot-candles.

- 36 (1) Lighting of the pool water surfaces, and the pool wet deck surfaces shall comply with the minimum
37 light levels set forth in applicable federal and state laws designed to protect public safety.
- 38 (2) Above-water lighting of pool decks, pool facilities, swimming pools, and spas shall otherwise adhere to
39 the applicable requirements for acceptable light fixtures set forth herein.
- 40 (3) Underwater lighting of pools or spa light shall:
 - 41 a. Be mounted in the wall

- 1 b. Not produce light that is directly or indirectly visible from any portion of the beach, and
- 2 c. Shall comply with minimum light levels set forth in applicable federal and state laws designed to
- 3 protect public safety.

4 **Sec. 54-150. Dune walkovers and beach access points.**

5 Lighting associated with any beach access points shall be restricted to that portion of the structure landward

6 of the dune. All lighting of beach access points shall be long wavelength, downward directed, full cutoff and fully

7 shielded and shall not be directly or indirectly visible from any portion of the beach.

8 Lights are allowable on dune walkovers or elevated boardwalks only as required for building code purposes

9 and may only be installed landward of the frontal dune. Walkover lighting shall not be directly or indirectly visible

10 from any portion of the beach.

11 **Sec. 54-151. Special events, vehicles, raking, temporary lighting, and beach furniture.**

12 (a) All special events or development taking place on or adjacent to the beach requires a permit from the City of

13 Marco Island in addition to any required permit from the Florida Department of Environmental Protection.

14 Lighting associated with any special events at night shall be turned off at 9:00 p.m. during turtle nesting

15 season.

16 Exception: Through a special event exception permit, event may go till 10:00 p.m. on the condition that the event

17 is monitored by any person who can provide credentials or proof of having received training on sea turtle lighting.

18 All lighting, including vehicles on the beach, must meet sea turtle friendly lighting standards.

19 (b) The operation of all vehicles, except emergency, law enforcement, code enforcement, or community service

20 officer vehicles or those permitted on the beach for sea turtle conservation in accordance with F.S. §

21 379.2431(1), as may be amended, or other research and conservation, shall be prohibited on the beach from

22 9:00 p.m. to 8:00 a.m. during sea turtle nesting season.

23 (c) Beach raking activities during sea turtle nesting season, if permitted by the City of Marco Island, shall not:

- 24 a. Operate after 9:00 p.m.
- 25 b. Begin before 8:00 a.m. or before the completion of daily monitoring for turtle nesting activity by
- 26 the Florida Fish and Wildlife Conservation Commission (FWC) authorized marine turtle permit
- 27 holder, whichever occurs first.
- 28 c. Occur within 25 feet of any marked sea turtle nest.

29 (1) During sea turtle nesting season, temporary work zone lighting for roadway construction and during

30 declared emergencies shall be directed away from the beach to avoid illumination of or direct visibility

31 from the beach. Work zone luminaires shall be shielded to avoid lighting areas outside of the

32 immediate construction area.

33 (2) All other temporary construction lighting shall be:

- 34 a. Inclusive of all the standards herein, including utilizing fixtures that are long wavelength,
- 35 downward directed, full cutoff, and fully shielded so light is not directly or indirectly visible from
- 36 the beach; and
- 37 b. Turned off from 9:00 p.m. to 6:00 a.m. in sea turtle nesting season, or if temporary lighting is
- 38 deemed necessary during sea turtle nesting season it shall only be allowed from 6:00 a.m. to 9:00
- 39 p.m., must be restricted to the minimal amount necessary, and shall incorporate all the standards
- 40 herein; and
- 41 c. Mounted less than eight feet above the adjacent floor or deck, measured from the bottom of
- 42 fixture, and

- 1 d. Restricted to the minimal number of foot-candles necessary to conform to the applicable
2 construction safety regulations.
- 3 (3) Man-made moveable objects shall not obstruct sea turtle nesting habitat during nesting season during
4 nighttime. All obstructions, including, but not limited to, beach furniture, cabanas, umbrellas, tents,
5 personal watercraft, bikes, vehicles, and boats, shall be removed from the sea turtle nesting habitat,
6 and shall be removed between 9:00 p.m. and 8:00 a.m., or prior to the completion of daily monitoring
7 for sea turtle nesting activity by the FWC authorized marine turtle permit holder, whichever comes
8 first.
- 9 (4) During sea turtle nesting season, beach vendors with a valid beach vendor permit are authorized to
10 store registered equipment and vehicles at or adjacent to the beach vendor operations office or
11 storage area, which shall be located at the dune vegetation line or at another acceptable location.
- 12 (5) No beach furniture or other man-made object shall be placed within 25 feet of a marked sea turtle
13 nest.

14 **Sec. 54-152. Unlawful to kill, molest, or injure sea turtles.**

- 15 (a) It shall be unlawful for any person, firm, or corporation to kill, molest, cause a disorientation, or cause direct
16 or indirect injury to any species of sea turtle or sea turtle hatchlings, their nests, and/or eggs in the City of
17 Marco Island or within its jurisdictional waters. It shall be unlawful to take, collect or possess any part of a
18 sea turtle or eggs.
- 19 (b) It shall be unlawful for any person, firm, or corporation to relocate or possess a sea turtle or eggs without
20 first obtaining a permit from the Florida Department of Environmental Protection (FDEP)/Florida Fish and
21 Wildlife Conservation Commission (FWC). A person, not take, disturb, mutilate, destroy, cause to be
22 destroyed, transfer, sell, offer to sell, molest, or harass any sea turtle species or hatchling, or parts thereof,
23 or the eggs or nest of any sea turtle species.
- 24 (c) When a sea turtle nest is created, a permitted sea turtle monitor posts it on the beach with stakes, flagging
25 tape and signage. It shall be unlawful to enter the posted nest area or impact the posted nest area in any
26 manner. A minimum of a 25-foot perimeter with no activity within should be given to the posted nest area
27 for protection.

28 **Sec. 54-153. Construction during nesting season.**

29 It shall be unlawful to construct any structure, add any fill, mechanically clean any beach, or grade any soil
30 material within 100 feet of the nesting zone of a beach where sea turtles' nest or may nest during the nesting
31 season. Construction activities shall not interfere with sea turtle nesting, shall preserve, or replace any native
32 vegetation on the site, and shall maintain the natural existing beach profile and minimize interference with the
33 natural beach dynamics and function. All rules, guidelines, best management practices required by the federal or
34 state agencies, if not stated in this ordinance, shall be followed.

35 **Sec. 54-154. ~~Violations Reserved.~~**

36 ~~Violation of the provisions of this article or failure to comply with any of its requirements shall constitute a~~
37 ~~code violation. Any person or firm who violates this article or fails to comply with any of its requirements shall~~
38 ~~upon conviction thereof be fined, or imprisoned, or both, as provide by law. After an appropriate period to correct~~
39 ~~the violation, each day such violation continues shall be considered a separate offense. Additionally, each sea~~
40 ~~turtle or eggs that are killed injured, or molested shall constitute a separate violation. Any other person, who~~
41 ~~commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and~~
42 ~~suffer the penalties herein provided.~~

1 ~~The city, in addition to the sanctions contained herein, may take any other appropriate legal action, including~~
2 ~~but not limited to, injunctive action, to enforce the provisions of this article.~~

3 **Sec. 54-155. Jurisdiction and enforcement.**

4 This article is enforceable by any duly authorized law enforcement officer, City of Marco Island code
5 enforcement officer ~~or designee~~, the Marco Island Police Department, the Division of Law Enforcement of the Fish
6 and Wildlife Conservation Commission and its officers, the Collier County Sheriff's Office, and any other state or
7 federally authorized law enforcement agency.

- 8 (1) Such officers shall have the power and duty to issue such orders and to make such investigations,
9 reports, and arrests in connection with the provisions of this article or cause any inspections to be
10 made of all vessels in accordance with this article and the Florida Statutes.
- 11 (2) Any official with jurisdiction is authorized and empowered to make inspections at reasonable hours of
12 all activities regulated by this article in order to ensure compliance with the provisions of this article.
13 Any person who violates any provision of this chapter, or of any regulation or guideline that
14 implements this chapter, shall be ordered immediately to stop all work.
- 15 (3) Every two weeks, lighting compliance inspections shall be conducted by ~~the a code compliance official~~
16 ~~City of Marco Island Code Enforcement or city designee~~ during sea turtle nesting season to ensure
17 compliance with this ordinance.

18 **Sec. 54-156. Penalties.**

19 ~~Violation of this article is punishable according to the penalties and procedures set forth in chapter 14 of this code.~~

20 ~~(a) After one warning in a calendar year excluding an irreparable event, in addition to and as a supplement to~~
21 ~~any civil and criminal penalties provided by state and federal statutes, and the City's Code of Ordinances, the~~
22 ~~following shall apply:~~

- 23 (1) ~~Any person who is found to have violated any provision of this article, shall be, upon conviction, subject~~
24 ~~to the following penalties:~~
- 25 a. ~~First offense—Minimum of \$150.00, not to exceed \$500.00 for each offense as provided for in~~
26 ~~F.S. § 162.22; and~~
- 27 b. ~~Second offense—Minimum of \$500.00, not to exceed \$1,500.00, as provided for in F.S. § 162.09;~~
28 ~~and~~
- 29 c. ~~Third offense—Minimum of \$1,500.00, not to exceed \$2,000.00, as provided for in F.S. § 162.09;~~
30 ~~and~~
- 31 d. ~~Irreparable event—Up to the maximum possible as provided for in F.S. § 162.09.~~
- 32 (2) ~~Each separate violation shall constitute a separate offense, and upon conviction of a specified~~
33 ~~ordinance violation, each day of violation shall constitute a separate violation.~~
- 34 (3) ~~In addition to the penalties provided herein, the city may recover reasonable attorney's fees, court~~
35 ~~costs, court reporter's fees and other expenses of litigation by appropriate suit at law against the~~
36 ~~person found to have violated this division or the orders, rules, regulations and permits issued~~
37 ~~hereunder.~~
- 38 (4) ~~If a state of emergency is declared by the Governor of the State of Florida or there is a significant~~
39 ~~weather event, the City of Marco Island Code Enforcement may issue more than one warning for~~
40 ~~noncompliance with this article.~~

41 **Secs. 54-157—54-160. Reserved.**

1 **ARTICLE VI. WATERWAYS AND BOATING SAFETY**

2 **Sec. 54-161. Intent and purpose.**

3 It is the intent and purpose of this article to protect and promote the health, safety and welfare of the public
4 by providing reasonable regulation of the use and operation of vessels on the public waters of the city. It is
5 intended that this article shall be liberally construed to affect such intent and purpose.

6 **Sec. 54-162. Title and citation.**

7 This article shall be known and cited as the "City of Marco Island Waterways and Boating Safety Ordinance."

8 **Sec. 54-163. Applicability.**

9 This article shall apply to and be enforced within the corporate limits of the City of Marco Island including all
10 natural and manmade waterways, the Gulf of Mexico, and those islands within the defined city limits of the city.
11 Employees of, and vessels operated by, or under the direction of, federal, state, county or city governments, or
12 their contractors, when authorized by the city, are exempt from these provisions.

13 **Sec. 54-164. Definitions.**

14 ~~When~~As used in this ~~chapter and in this~~ article, the terms below shall have the following meanings unless the
15 context clearly requires a different meaning, the term. These definitions are supplemental to the definitions in
16 section 1-2 of this code. The definitions in this section shall prevail in case of conflict.:

17 *Abandoned vessel* means any vessel whose ownership cannot be determined due to failure to register said
18 vessel or failure to document said vessel; failure to properly mark or identify said vessel as required in the
19 registration or documentation process; any unattended vessel which is adrift; any unattended vessel that is found
20 in a badly deteriorated condition, or is taking on water, or is sinking or partially sunk, or sunk; any unattended
21 vessel that is causing damage to private or public property; any unattended vessel that is releasing contaminates
22 or chemicals into water; any unattended vessel that is or was on fire; or any unattended vessel that is a menace to
23 navigation; any vessel that is unattended for a period greater than 72 hours.

24 *Anchorage* means a designated area within the bays and waterways of Marco Island in which vessels may
25 remain at anchor for the period of time permitted by the ordinance.

26 *Anchoring* means to secure a vessel by use of ground tackle.

27 *Bays and waterways* mean any natural or manmade body of water, creek, bay, inlet or canal within the
28 boundaries of the city.

29 ~~Beach means the soft sand portion of land lying seaward of a seawall or rocky shore or line of permanent~~
30 ~~vegetation and landward of the mean high water line.~~

31 *Boating accident* means a collision, accident, or casualty involving a vessel in or upon, or entering into or
32 exiting from, the water, including but not limited to capsizing, collision with another vessel or object, sinking,
33 personal injury, death, disappearance of any person from on board under circumstances which indicate the
34 possibility of death or injury, or property damage (in excess of \$2,000.00) to any vessel or dock, or other property.

35 *Commercial vessel* means any vessel primarily engaged in the taking or landing of saltwater fish or saltwater
36 products or freshwater fish or freshwater products, or any vessel licensed pursuant to F.S. § 370.06, from which
37 commercial quantities of saltwater products are harvested, from within and without the waters of this state for
38 sale either to the consumer, retail dealer, or wholesale dealer; or any vessel engaged in any activity wherein a fee
39 is paid by the user, either directly or indirectly, to the owner, operator or custodian of the vessel; or any vessel

1 engaged in commercial enterprise; or any vessel designed to support commercial operations; or any other vessel,
2 except a recreational vessel as defined herein.

3 *Commission* means the division of law enforcement of the fish and wildlife conservation commission.

4 *Discharge* means the intentional or unintentional release of pollution or sewage.

5 *Ground tackle* means a mechanical device that prevents a vessel from moving, including but not limited to
6 anchors, anchor chains, anchor lines and/or fittings, etc. for anchoring or mooring a vessel.

7 *License or licensed* means a valid occupational license recognized by the city.

8 *Length* means the measurement from end to end over the deck parallel to the centerline excluding sheer.

9 *Live-aboard vessel* shall have the same meaning as used in F.S. § 327.02, ~~as may be subsequently modified or~~
10 ~~amended from time to time.~~

11 *Livery vessel* means any vessel leased, rented, or chartered to another person or entity for consideration.

12 *Marina* means a boating facility, chiefly for recreational boating, located on navigable water frontage, and
13 providing all or any combination of the following: boat slips or dockage, dry boat storage, small boat hauling or
14 launching facilities, marine fuel and lubricants, marine supplies, bait and fishing equipment, restaurants, boat and
15 boat motor sales, and rentals. Minor boat, rigging and motor repair which is incidental to the principal marina use
16 is generally allowed as an accessory use. However, no dredge, barge or other work-dockage or service is permitted,
17 and no boat construction or reconstruction is permitted. A boat sales lot is not a marina.

18 *Marine sanitation device* means any equipment on board a vessel, which is designed to receive, retain, treat,
19 or discharge sewage, and any process to treat such sewage.

20 *Marker* means any aid to navigation, including channel marker, information or regulatory mark, isolated
21 danger mark, safe water mark, special mark, inland waters obstruction mark, or mooring buoy in, on, or over the
22 waters or the shores thereof, and includes, but is not limited to, a sign, beacon, buoy, or light.

23 *Moor* means to tie off a vessel to any submerged fixed object; or to tie or secure a vessel to a piling, dock,
24 wharf, seawall, dolphin, mooring buoy, or other object or thing located or attached to real property in or adjacent
25 to real property.

26 *Navigation rules* means the International Navigational Rules Act of 1977, 33 U.S.C. appendix following s.
27 1602, as amended, including the annexes thereto, for vessels on waters outside of established navigational lines of
28 demarcation as specified in 33 C.F.R. part 80 or the Inland Navigational Rules Act of 1980, 33 U.S.C. S. 2001 et seq.,
29 as amended, including the annexes thereto, for vessels on all waters not outside of such lines of demarcation.

30 *Operate* means to be in charge of or in command of or in actual physical control of a vessel or aircraft, or to
31 exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway, or to
32 control or steer a vessel being towed by another vessel upon the waters of the city.

33 *Owner* means a person who holds the legal title of a vessel, or, if a vessel is the subject of an agreement for
34 the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the
35 agreement and with an immediate right of possession as vested in the conditional vendee, or lessee, or mortgagor,
36 such person shall be deemed the owner.

37 *Parasail* means a parachute or paraglide device tethered to a vessel enabling recreational gliding in the air
38 while being towed by the vessel.

39 *Permit* means a vendor's permit, building permit, or other permit required by the city to comply with this or
40 any other city ordinance.

41 ~~*Person* means an individual, partnership, firm, corporation, association, or other legal entity.~~

42 ~~*Personal watercraft* has the meaning ascribed to it in section 54-32 of this code. means a vessel less than 16~~
43 ~~feet in length which uses an inboard motor powering a water jet pump, as its primary source of motive power and~~

1 ~~which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the~~
2 ~~conventional manner of sitting or standing inside the vessel.~~

3 Police department means City of Marco Island Police Department.

4 *Prohibited activity* means such activity as will impede or disturb navigation or creates a safety hazard, or any
5 act specifically prohibited by this article.

6 *Recreational vessel* means any vessel manufactured and used primarily for noncommercial purposes, or
7 leased rented or chartered to a person for the person's noncommercial use.

8 *Registration* means a state-operating license on a vessel, which is issued with an identifying number, an
9 annual certificate of registration, and a decal designating the year for which a registration fee is paid.

10 *Restricted area* means any area denoted by regulatory marker, any area or vessel (moving or stationary)
11 designated as restricted by a government entity denoted with markers, or by written, radio, or verbal notice to
12 mariners. These restrictions may be made by a governmental entity on the basis of safety to the public, vessel
13 speeds, vessel traffic, boating accidents, visibility, hazardous conditions, currents, water depth, or other navigation
14 hazard.

15 *Safety equipment* means that equipment designed to be life saving or distress conveying appliances required
16 by the United States Coast Guard (as specified in the Code of Federal Regulations) by the State of Florida, and the
17 city.

18 Seaplane has the meaning ascribed to it in section 54-32 of this code.~~means any aircraft that is capable of~~
19 ~~landing and/or lifting off from a water surface.~~

20 *Unattended vessel* is any vessel that has no person on board.

21 Vessel has the meaning ascribed to it in section 54-32 of this code.~~for the purpose of this article means any~~
22 ~~human, motor, wind, non-powered or artificially propelled water conveyance and every other description of boat,~~
23 ~~watercraft, barge, and airboat, seaplane on the water, used or capable of being used as a means of transportation~~
24 ~~or in the water.~~

25 Water-skiing has the meaning ascribed to it in section 54-32~~means a person or persons being towed in the~~
26 ~~water by a vessel and using water skis, a ski board, inflatable device or aqua-plane.~~

27 **Sec. 54-165. Restricted areas and activities.**

28 It shall be unlawful:

- 29 (1) To operate a vessel in a prohibited manner or to carry on any prohibited activity, as defined in this
30 article, or state or federal law, which has been deemed a safety hazard or interference with navigation,
31 or to operate or continue operating after warning, within any restricted area.
- 32 (2) For anyone to fish from any private property of another without the express permission of the owner
33 or lessee. Where such property is vacant or not developed, failure to provide written evidence of such
34 permission shall be considered as prima facie evidence of lack of permission.
- 35 (3) For anyone to fish from the surface portion, sidewalk, roadway, approach, landing, or underneath any
36 bridge, except the areas approved for fishing underneath the following:
 - 37 a. The State Road 951 Bridge at the Marco River.
 - 38 b. The County Road 92 Bridge at the Marco River.
- 39 (4) To launch or retrieve a vessel utilizing a trailer; from any public right-of-way or land owned by a
40 government or from any private land without the consent of the owner, except:
 - 41 a. Marinas;
 - 42 b. Caxambas Park boat ramp;

- 1 c. Southwest of the State Road 951 bridge at the Marco River; and
- 2 d. Other areas as specifically authorized by the city.
- 3 (5) For any person to post any sign, regulatory marker, aid to navigation, permanent mooring device, or
- 4 other device in any canal, navigational channel, or other place without having first obtained a license or
- 5 permit from the appropriate state or federal agency where such permit is required under state or
- 6 federal law and a permit from the city.
- 7 (6) For any person with a commercial vessel to load or off-load hazardous materials upon a beach or public
- 8 park, boating facility or ramp without a permit from the city.

9 **Sec. 54-166. Interference with navigation.**

10 Consistent with F.S. § 327.44, as may be subsequently modified or amended from time to time, no person
11 shall anchor, operate, or permit to be anchored, except in case of emergency, or operated a vessel or carry on any
12 prohibited activity in a manner which shall unreasonably or unnecessarily constitute a navigational hazard or
13 interfere with another vessel. Anchoring under bridges or in or adjacent to heavily traveled channels shall
14 constitute interference if unreasonable under the prevailing circumstances.

15 **Sec. 54-167. Anchoring and mooring.**

16 It shall be unlawful:

- 17 (1) To anchor or moor a live-aboard vessel or floating structure within the city. A "floating structure" shall
- 18 have the same meaning as used in F.S. § 327.02, as may be subsequently modified or amended from
- 19 time to time.
- 20 (2) To moor a vessel at a dock, mooring, piling or seawall of a property owner without the consent of the
- 21 owner or person in control of the premises, except in an emergency. Failure to provide written
- 22 evidence of such permission shall be considered as prima fascia evidence of lack of permission. Any
- 23 such mooring must comply with all applicable regulations of ~~the City this c~~Code.
- 24 (3) To intentionally place or moor a commercial vessel on a beach for more than four hours without a
- 25 permit from the city.

26 **Sec. 54-168. Damage of markers or buoys.**

27 No person shall willfully damage, alter, or move a lawfully placed aid-to-navigation marker or buoy,
28 regulatory marker or buoy, or area boundary marker or buoy. Any person who damages, alters, or moves a lawfully
29 placed aid-to-navigation marker or buoy, regulatory marker or buoy, or area boundary marker or buoy located
30 within the city shall immediately notify the ~~Marco Island p~~Police ~~d~~Department.

31 **Sec. 54-169. Abandoned vessels.**

32 Any vessel that is deemed abandoned in or on a city waterway, bay, canal, open water, or beach or
33 abandoned in violation of this article may be removed and impounded by the police department. All costs for
34 removal, towing and storage will be assessed to the owner on a rate scale established by the city manager. If the
35 vessel is unclaimed is shall be disposed as provided in state statutes and may be retained by the city for official use
36 or sold with the proceeds paying for the charges incurred, with the remainder of the funds to be used solely by the
37 ~~Marco Island P~~police ~~d~~Department for the education and enforcement of marine related laws. (Ref. F.S. ch 327.22)
38 Failure to act on the part of the owner waives all liability of the city from damages as a result from towing and
39 storage.

1 **Sec. 54-170. Liveries; safety regulations.**

- 2 (a) A livery or marina may not knowingly lease, hire, or rent a vessel to any person:
- 3 (1) When the number of persons intending to use the vessel exceeds the number considered to constitute
4 a maximum safety load for the vessel as specified on the authorized persons capacity plate of the
5 vessel.
- 6 (2) When the vessel does not contain the required safety equipment required under this article and/or F.S.
7 § 327.50.
- 8 (b) When the vessel is equipped with a motor of ten horsepower or greater, the livery or marina shall provide a
9 comprehensive pre-operation instruction briefing to all operators of rental vessels regardless of age and
10 prior maritime training internal and external to a livery or marina that includes, but need not be limited to,
11 all of the topics included on the list provided to each livery or marina by the [Marco Island Police](#)
12 [Department](#).
- 13 (1) The pre-operation instruction briefing must be documented on a form approved by the [Marco Island](#)
14 [Police Department](#) prior to use.
- 15 (2) Any such form must be retained for a period of six months.
- 16 (3) Any such form shall be provided to the [Marco Island Police Department](#), or any other law
17 enforcement agency, upon request.
- 18 (c) All operators shall initial and sign the form attesting that they have completed, understood, and will comply
19 with all conditions set forth in the form. The livery or marina operator(s) who gave the pre-operation safety
20 briefing will be required to cosign the form attesting that they have insured that all operators have received
21 the required pre-operation safety briefing.
- 22 (d) Any person delivering the pre-operational safety briefing on behalf of the livery or marina shall have:
- 23 (1) Successfully completed a boater safety course approved by the National Association of State Boating
24 Law Administrators and this state.
- 25 (2) A copy of the documentation attesting to the completion of this course must be maintained by the
26 livery or marina during the person's employment, and for six months thereafter.
- 27 (3) All liveries and marinas shall provide any requested documentation relating to an employee's
28 competency to instruct the pre-operational safety briefing to the [Marco Island Police Department](#),
29 or any other law enforcement agency, upon request.
- 30 (e) The livery or marina shall display boating safety information in a place visible to the renting public. The
31 commission prescribes by rule pursuant to F.S. ch. 120, the contents and size of the boating safety
32 information to be displayed.
- 33 (f) If a rental vessel is involved in a boating accident within the city, the livery or marina shall immediately notify
34 the [Marco Island Police Department](#) upon learning of the boating accident.
- 35 (g) No person under the age of 14 may operate a powered rental boat, except in an emergency. No person may
36 allow a person under the age of 14 to operate a powered rental boat, except in an emergency.

37 **Sec. 54-171. Maritime special events.**

38 Any person directing or holding a demonstration, regatta, race, marine parade, tournament, or exhibition on
39 the navigable waters of the city, must insure that the event is held in compliance with F.S. § 327.48, and obtain the
40 appropriate permit(s) from the city. Any person directing the holding of such event shall be responsible for
41 providing adequate protection to the participants, spectators, and other users of the water, and must obey all
42 terms and conditions of required permits.

1 **Sec. 54-172. Water-ski, parasail, and aquaplanes regulated.**

2 Water-skiing or towing of an object designed for a person to ride on or in when a person is actually riding on
3 or in the object or being towed is prohibited within all canals or bays or when closer than 50 feet from any
4 manmade object.

5 **Sec. 54-173. Swimming and diving.**

6 It shall be unlawful:

- 7 (1) To swim, snorkel, or scuba dive within 50 feet of any bridge, within the city.
8 (2) To jump from any bridge within the city.

9 **Sec. 54-174. Jurisdiction and enforcement.**

- 10 (a) This article is enforceable by the ~~Marco Island Police~~ Department, the Division of Law Enforcement of the
11 Fish and Wildlife Conservation Commission and its officers, the Collier County Sheriff's Office, and any other
12 state or federally authorized law enforcement agency, all of whom may order the removal of vessels deemed
13 to be an interference or a hazard to public safety, enforce the provisions of this article, or cause any
14 inspections to be made of all vessels in accordance with this article and the Florida Statutes.
- 15 (b) Such officers shall have the power and duty to issue such orders and to make such investigations, reports,
16 and arrests in connection with the provisions of this article, or cause any inspections to be made of all vessels
17 in accordance with this article and the Florida Statutes.

18 **Sec. 54-175. Penalties.**

- 19 ~~(a) Violation of this article is punishable according to the penalties and procedures set forth in chapter 14 of this~~
20 ~~code. Any person or persons, firm or corporation, or any agent thereof, who violates any of the provisions of~~
21 ~~any article of this chapter shall be punished by a fine not exceeding \$500.00, or imprisonment not exceeding~~
22 ~~60 days, or by both such fine and imprisonment. Each day any violation of any provision of any article of this~~
23 ~~chapter shall continue shall constitute a separate offense.~~
- 24 ~~(b) In addition to the penalties provided in paragraph (a) of this section, any condition caused or permitted to~~
25 ~~exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be abated~~
26 ~~by the city as provided by law, and each day that such condition continues shall be regarded as a new and~~
27 ~~separate offense.~~

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