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ORDINANCE 24-XX

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA AMENDING THE CITY OF MARCO ISLAND CODE OF ORDINANCES BY AMENDING CHAPTER 26, "FLOODS," TO PROVIDE FOR CONSISTENCY WITH THE MODEL ORDINANCE APPROVED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY; TO IMPROVE RESILIENCY OF FLOODPLAIN CONSTRUCTION; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166, Florida Statutes, provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the City Council adopted Ordinance No. 20-04 on October 5, 2020 to amend Code of Ordinances Chapter 6 and Ordinance No. 20-07 on December 31, 2020 to amend Chapter 26, and now desires to amend those chapters further; and

WHEREAS, the Florida Division of Emergency Management identified a number of amendments necessary for consistency with the final model ordinance approved by the Federal Emergency Management Agency; and

WHEREAS, the City Council is adopting (1) an update to the required declarations of land restriction (non-conversion agreements) for certain enclosures below elevated buildings; (2) Update definitions to reference Limit of Moderate Wave Action and Coastal A zone; (3) Removing minimum elevation requirement of 9' NAVD to 18" above the crown of the road; (4) In flood hazard areas, the elevation of dry floodproofing shall be at or above the elevation required by the Florida Building Code, except in a Coastal A zones the elevation of dry floodproofing shall be at or above the base flood elevation plus two (2) feet; and (5) update limitations on alteration of sand dunes and mangrove stands.

WHEREAS, the City Council finds that the adoption of this Ordinance is in the best interest of the health, safety, and welfare of the citizens and residents of the City of Marco Island.

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

Section 1. Recitals.

The foregoing "WHEREAS" clauses are true and correct and reflective of the legislative intent underlying this Ordinance and are hereby ratified and made a specific part of this Ordinance.

48 **Section 2. Chapter 26 of the City Code Amended.**

49
50 That Chapter 26 "Floods" of the City of Marco Island Code of Ordinances is hereby
51 amended as shown in Exhibit "A".

52
53 **Section 3. Codification.**

54
55 It is the intention of the City Council, and it is hereby ordained, that the
56 amendments to the City of Marco Island Code of Ordinances made by this
57 Ordinance shall constitute a new Section 6-111 of the City of Marco Island Code
58 of Ordinances, and that the sections of this Ordinance may be renumbered and re-
59 lettered as necessary, and that the word "Ordinance" may be changed to "Section",
60 "Article" or other appropriate word.

61
62 **Section 4. Conflicts.**

63
64 All ordinances or parts of ordinances and all resolutions or parts of resolutions in
65 conflict with the provisions of this Ordinance are hereby superseded and resolved
66 to the extent of any conflict in favor of the provisions of this Ordinance.

67
68 **Section 5. Severability.**

69
70 If any term, section, clause, sentence or phrase of this Ordinance is for any reason
71 held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction,
72 the holding shall not affect the validity of the other or remaining terms, sections,
73 clauses, sentences or phrases portions of this Ordinance, and this Ordinance shall
74 be read and applied as if the invalid, illegal, or unenforceable term, provision,
75 clause, sentence or section did not exist.

76
77 **Section 6. Effective Date.**

78
79 This Ordinance shall become effective upon its adoption.

80
81 ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this _____ day
82 of _____, 2023.

83
84 **ATTEST:**

CITY OF MARCO ISLAND, FLORIDA

85
86 _____
87 Joan Taylor, City Clerk

By: _____
Jared Grifoni, Chairman

88
89 Approved as to form and legal sufficiency:

90
91 _____
92 Alan L. Gabriel, City Attorney
93
94
95

96 **EXHIBIT A**

97 **ARTICLE II. FLOODPLAIN MANAGEMENT**

98 **DIVISION 1. ADMINISTRATION**

99 **Sec. 26-31. General.**

- 100 (a) *Title.* These regulations shall be known as the Floodplain Management Ordinance of
101 the City of Marco Island, hereinafter referred to as "this ordinance."
- 102 (b) *Scope.* Unless otherwise specified, the provisions of this ordinance shall apply to all
103 development that is wholly within or partially within any flood hazard area, including,
104 but not limited to, the subdivision of land; filling, grading, and other site improvements
105 and utility installations; construction, alteration, remodeling, enlargement,
106 improvement, replacement, repair, relocation or demolition of buildings, structures,
107 and facilities that are exempt from the Florida Building Code; placement, installation,
108 or replacement of manufactured homes and manufactured buildings; installation or
109 replacement of tanks; placement of recreational vehicles; installation of swimming
110 pools; and any other development. Section 26-90 shall apply to areas outside of the
111 flood hazard area established in section 26-32(c).
- 112 (c) *Intent.* The purposes of this ordinance and the flood load and flood-resistant
113 construction requirements of the Florida Building Code are to establish minimum
114 requirements to safeguard the public health, safety, and general welfare and to
115 minimize public and private losses due to flooding through regulation of development
116 in flood hazard areas to:
- 117 (1) Minimize unnecessary disruption of commerce, access and public service during
118 times of flooding;
 - 119 (2) Require the use of appropriate construction practices in order to prevent or
120 minimize future flood damage;
 - 121 (3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations,
122 storage of equipment or materials, and other development which may increase
123 flood damage or erosion potential;
 - 124 (4) Manage the alteration of flood hazard areas, watercourses, and shorelines to
125 minimize the impact of development on the natural and beneficial functions of
126 the floodplain;
 - 127 (5) Minimize damage to public and private facilities and utilities;
 - 128 (6) Help maintain a stable tax base by providing for the sound use and development
129 of flood hazard areas;
 - 130 (7) Minimize the need for future expenditure of public funds for flood control projects
131 and response to and recovery from flood events; and
 - 132 (8) Meet the requirements of the National Flood Insurance Program for community
133 participation as set forth in the Title 44 Code of Federal Regulations, Section
134 59.22.

- 135 (d) *Coordination with the Florida Building Code.* This ordinance is intended to be
136 administered and enforced in conjunction with the Florida Building Code. Where
137 cited, ASCE 24 refers to the edition of the standard that is referenced by the Florida
138 Building Code.
- 139 (e) *Warning.* The degree of flood protection required by this ordinance and the Florida
140 Building Code, as amended by this community, is considered the minimum
141 reasonable for regulatory purposes and is based on scientific and engineering
142 considerations. Larger floods can and will occur. Flood heights may be increased by
143 manmade or natural causes. This ordinance does not imply that land outside of
144 mapped special flood hazard areas, or that uses permitted within such flood hazard
145 areas, will be free from flooding or flood damage. The flood hazard areas and base
146 flood elevations contained in the flood insurance study and shown on flood insurance
147 rate maps and the requirements of Title 44 Code of Federal Regulations, Sections
148 59 and 60 may be revised by the Federal Emergency Management Agency, requiring
149 this community to revise these regulations to remain eligible for participation in the
150 National Flood Insurance Program. No guaranty of vested use, existing use, or future
151 use is implied or expressed by compliance with this ordinance.
- 152 (f) *Disclaimer of liability.* This ordinance shall not create liability on the part of the Marco
153 Island City Council, the City of Marco Island, by any officer or employee thereof for
154 any flood damage that results from reliance on this ordinance or any administrative
155 decision lawfully made thereunder.

156 **Sec. 26-32. Applicability.**

- 157 (a) *General.* Where there is a conflict between a general requirement and a specific
158 requirement, the specific requirement shall be applicable.
- 159 (b) *Areas to which this ordinance applies.* This ordinance shall apply to all flood hazard
160 areas within the City of Marco Island, as established in subsection 26-32(c) of this
161 ordinance.
- 162 (c) *Basis for establishing flood hazard areas.* The flood insurance study for Collier
163 County, Florida, and incorporated areas dated February 8, 2024 ~~May 16, 2012~~, and
164 all subsequent amendments and revisions, and the accompanying flood insurance
165 rate maps (FIRM), and all subsequent amendments and revisions to such maps, are
166 adopted by reference as a part of this ordinance and shall serve as the minimum
167 basis for establishing flood hazard areas. Studies and maps that establish flood
168 hazard areas are on file at City Hall.
- 169 (1) *Submission of additional data to establish flood hazard areas.* To establish flood
170 hazard areas and base flood elevations, pursuant to section 26-35 of this
171 ordinance, the floodplain administrator may require submission of additional
172 data. Where field surveyed topography prepared by a Florida licensed
173 professional surveyor or digital topography accepted by the community indicates
174 that ground elevations:
- 175 a. Are below the closest applicable base flood elevation, even in areas not
176 delineated as a special flood hazard area on a FIRM, the area shall be
177 considered as flood hazard area and subject to the requirements of this
178 ordinance and, as applicable, the requirements of the Florida Building Code.

- 179 b. Are above the closest applicable base flood elevation, the area shall be
180 regulated as special flood hazard area unless the applicant obtains a letter
181 of map change that removes the area from the special flood hazard area.
- 182 (d) *Other laws.* The provisions of this ordinance shall not be deemed to nullify any
183 provisions of local, state or federal law.
- 184 (e) *Abrogation and greater restrictions.* This ordinance supersedes any ordinance in
185 effect for management of development in flood hazard areas. However, it is not
186 intended to repeal or abrogate any existing ordinances, including, but not limited to,
187 land development regulations, zoning ordinances, or stormwater management
188 regulations, or the Florida Building Code. In the event of a conflict between this
189 ordinance and any other ordinance, the more restrictive shall govern. This ordinance
190 shall not impair any deed restriction, covenant or easement, but any land that is
191 subject to such interests shall also be governed by this ordinance.
- 192 (f) *Interpretation.* In the interpretation and application of this ordinance, all provisions
193 shall be:
- 194 (1) Considered as minimum requirements;
195 (2) Liberally construed in favor of the governing body; and
196 (3) Deemed neither to limit nor repeal any other powers granted under state
197 statutes.

198 **Sec. 26-33. Duties and powers of the floodplain administrator.**

- 199 (a) *Designation.* The city manager or his designee is designated as the floodplain
200 administrator. The floodplain administrator may delegate performance of certain
201 duties to other employees.
- 202 (b) *General.* The floodplain administrator is authorized and directed to administer and
203 enforce the provisions of this ordinance. The floodplain administrator shall have the
204 authority to render interpretations of this ordinance consistent with the intent and
205 purpose of this ordinance and may establish policies and procedures in order to
206 clarify the application of its provisions. Such interpretations, policies, and procedures
207 shall not have the effect of waiving requirements specifically provided in this
208 ordinance without the granting of a variance pursuant to section 26-37 of this
209 ordinance.
- 210 (c) *Applications and permits.* The floodplain administrator, in coordination with other
211 pertinent offices of the community, shall:
- 212 (1) Review applications and plans to determine whether proposed new
213 development will be located in flood hazard areas;
- 214 (2) Review applications for modification of any existing development in flood hazard
215 areas for compliance with the requirements of this ordinance;
- 216 (3) Interpret flood hazard area boundaries where such interpretation is necessary
217 to determine the exact location of boundaries; a person contesting the
218 determination shall have the opportunity to appeal the interpretation;
- 219 (4) Provide available flood elevation and flood hazard information;

- 220 (5) Determine whether additional flood hazard data shall be obtained from other
221 sources or shall be developed by an applicant;
- 222 (6) Review applications to determine whether proposed development will be
223 reasonably safe from flooding;
- 224 (7) Issue floodplain development permits or approvals for development other than
225 buildings and structures that are subject to the Florida Building Code, including
226 buildings, structures and facilities exempt from the Florida Building Code, when
227 compliance with this ordinance is demonstrated, or disapprove the same in the
228 event of noncompliance; and
- 229 (8) Coordinate with and provide comments to the building official to assure that
230 applications, plan reviews, and inspections for buildings and structures in flood
231 hazard areas comply with the applicable provisions of this ordinance.
- 232 (d) *Substantial improvement and substantial damage determinations.* For applications
233 for building permits to improve buildings and structures, including alterations,
234 movement, enlargement, replacement, repair, change of occupancy, additions,
235 rehabilitations, renovations, substantial improvements, repairs of substantial
236 damage, and any other improvement of or work on such buildings and structures, the
237 floodplain administrator, in coordination with the building official, shall:
- 238 (1) Estimate the market value, or require the applicant to obtain an appraisal of the
239 market value prepared by a qualified independent appraiser, of the building or
240 structure before the start of construction of the proposed work; in the case of
241 repair, the market value of the building or structure shall be the market value
242 before the damage occurred and before any repairs are made;
- 243 (2) Compare the cost to perform the improvement, the cost to repair a damaged
244 building to its pre-damaged condition, or the combined costs of improvements
245 and repairs, if applicable, to the market value of the building or structure;
- 246 (3) Determine and document whether the proposed work constitutes substantial
247 improvement or repair of substantial damage; the determination requires
248 evaluation of previous permits issued for improvements and repairs as specified
249 in the definition of "substantial improvement;" and
- 250 (4) Notify the applicant if it is determined that the work constitutes substantial
251 improvement or repair of substantial damage and that compliance with the flood
252 resistant construction requirements of the Florida Building Code and this
253 ordinance is required.
- 254 (e) *Modifications of the strict application of the requirements of the Florida Building Code.*
255 The floodplain administrator shall review requests submitted to the building official
256 that seek approval to modify the strict application of the flood load and flood resistant
257 construction requirements of the Florida Building Code to determine whether such
258 requests require the granting of a variance pursuant to section 26-37 of this
259 ordinance.
- 260 (f) *Notices and orders.* The floodplain administrator shall coordinate with appropriate
261 local agencies for the issuance of all necessary notices or orders to ensure
262 compliance with this ordinance.

- 263 (g) *Inspections.* The floodplain administrator shall make the required inspections as
264 specified in section 26-36 of this ordinance for development that is not subject to the
265 Florida Building Code, including buildings, structures and facilities exempt from the
266 Florida Building Code. The floodplain administrator shall inspect flood hazard areas
267 to determine if development is undertaken without issuance of a permit.
- 268 (h) *Other duties of the floodplain administrator.* The floodplain administrator shall have
269 other duties, including, but not limited to:
- 270 (1) Establish, in coordination with the building official, procedures for administering
271 and documenting determinations of substantial improvement and substantial
272 damage made pursuant to subsection 26-33(d) of this ordinance;
 - 273 (2) Require that applicants proposing alteration of a watercourse notify adjacent
274 communities and the Florida Division of Emergency Management, State
275 Floodplain Management Office, and submit copies of such notifications to the
276 Federal Emergency Management Agency (FEMA);
 - 277 (3) Require applicants who submit hydrologic and hydraulic engineering analyses
278 to support permit applications to submit to FEMA the data and information
279 necessary to maintain the flood insurance rate maps if the analyses propose to
280 change base flood elevations or flood hazard area boundaries; such
281 submissions shall be made within six months of such data becoming available;
 - 282 (4) Review required design certifications and FEMA Elevation Certificates specified
283 by this ordinance and the Florida Building Code and this ordinance to determine
284 that such certifications are complete;
 - 285 (5) Notify the Federal Emergency Management Agency when the corporate
286 boundaries of the City of Marco Island are modified; and
 - 287 (6) Advise applicants for new buildings and structures, including substantial
288 improvements, that are located in any unit of the Coastal Barrier Resources
289 System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and
290 the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood
291 insurance is not available on such construction; areas subject to this limitation
292 are identified on flood insurance rate maps as "Coastal Barrier Resource System
293 Areas" and "Otherwise Protected Areas."
- 294 (i) *Floodplain management records.* Regardless of any limitation on the period required
295 for retention of public records, the floodplain administrator shall maintain and
296 permanently keep and make available for public inspection all records that are
297 necessary for the administration of this ordinance and the flood-resistant construction
298 requirements of the Florida Building Code, including flood insurance rate maps;
299 letters of map change; records of issuance of permits and denial of permits;
300 determinations of whether proposed work constitutes substantial improvement or
301 repair of substantial damage; required design certifications and FEMA Elevation
302 Certificates specified by the Florida Building Code and this ordinance; notifications
303 to adjacent communities, FEMA, and the state related to alterations of watercourses;
304 assurances that the flood-carrying capacity of altered watercourses will be
305 maintained; documentation related to appeals and variances, including justification
306 for issuance or denial; and records of enforcement actions taken pursuant to this

307 ordinance and the flood-resistant construction requirements of the Florida Building
308 Code. These records shall be available for public inspection at City Hall.

309 **Sec. 26-34. Permits.**

310 (a) *Permits required.* Any owner or owner's authorized agent (hereinafter "applicant")
311 who intends to undertake any development activity within the scope of this ordinance,
312 including buildings, structures and facilities exempt from the Florida Building Code,
313 which is wholly within or partially within any flood hazard area shall first make
314 application to the floodplain administrator, and the building official if applicable, and
315 shall obtain the required permit(s) and approval(s). No such permit or approval shall
316 be issued until compliance with the requirements of this ordinance and all other
317 applicable codes and regulations has been satisfied.

318 (b) *Floodplain development permits or approvals.* Floodplain development permits, or
319 approvals shall be issued pursuant to this ordinance for any development activities
320 not subject to the requirements of the Florida Building Code, including buildings,
321 structures and facilities exempt from the Florida Building Code. Depending on the
322 nature and extent of proposed development that includes a building or structure, the
323 floodplain administrator may determine that a floodplain development permit or
324 approval is required in addition to a building permit.

325 (1) *Buildings, structures and facilities exempt from the Florida Building Code.*
326 Pursuant to the requirements of federal regulation for participation in the National
327 Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain
328 development permits or approvals shall be required for the following buildings,
329 structures and facilities that are exempt from the Florida Building Code and any
330 further exemptions provided by law, which are subject to the requirements of this
331 ordinance:

- 332 a. Railroads and ancillary facilities associated with the railroad.
- 333 b. Nonresidential farm buildings on farms, as provided in F.S. § 604.50.
- 334 c. Temporary buildings or sheds used exclusively for construction purposes.
- 335 d. Mobile or modular structures used as temporary offices.
- 336 e. Those structures or facilities of electric utilities, as defined in F.S. § 366.02,
337 which are directly involved in the generation, transmission, or distribution of
338 electricity.
- 339 f. Chickees constructed by the Miccosukee Tribe of Indians of Florida or the
340 Seminole Tribe of Florida. As used in this paragraph, the term "chickee"
341 means an open-sided wooden hut that has a thatched roof of palm or
342 palmetto or other traditional materials, and that does not incorporate any
343 electrical, plumbing, or other non-wood features.
- 344 g. Family mausoleums not exceeding 250 square feet in area which are
345 prefabricated and assembled on site or preassembled and delivered on site
346 and have walls, roofs, and a floor constructed of granite, marble, or
347 reinforced concrete.

- 348 h. Temporary housing provided by the department of corrections to any
349 prisoner in the state correctional system.
- 350 i. Structures identified in F.S. § 553.73(10)(k), are not exempt from the Florida
351 Building Code if such structures are located in flood hazard areas
352 established on Flood Insurance Rate Maps.
- 353 (c) *Application for a permit or approval.* To obtain a floodplain development permit or
354 approval the applicant shall first file an application in writing on a form furnished by
355 the community. The information provided shall:
- 356 (1) Identify and describe the development to be covered by the permit or approval.
357 (2) Describe the land on which the proposed development is to be conducted by
358 legal description, street address or similar description that will readily identify
359 and definitively locate the site.
- 360 (3) Indicate the use and occupancy for which the proposed development is
361 intended.
- 362 (4) Be accompanied by a site plan or construction documents as specified in section
363 26-35 of this ordinance.
- 364 (5) State the valuation of the proposed work.
- 365 (6) Be signed by the applicant or the applicant's authorized agent.
- 366 (7) Give such other data and information as required by the floodplain administrator.
- 367 (8) A signed Declaration of Land Restriction (Nonconversion Agreement) shall be
368 recorded in the County public records prior to issuance of the Certificate of
369 Occupancy for the following:
- 370 a. An enclosure below a new or substantially improved elevated building and
371 that is more than five feet in height.
- 372 b. A crawl/underfloor space that is more than five feet in height (measured
373 from the lowest interior grade or floor to the bottom of the floor system
374 above).
- 375 c. A garage or detached accessory structure that is not elevated and is larger
376 than 120 square feet in area.
- 377 e. As part of resolving violations of the terms of permits and approved plans,
378 when required by the floodplain administrator or the building official.
- 379 (9) Include the FEMA DryFloodproofing Certificate, the FEMA Elevation Certificate,
380 and the Marco Island Zone V Design Certificate, as appropriate to the projects.
- 381 (d) *Validity of permit or approval.* The issuance of a floodplain development permit or
382 approval pursuant to this ordinance shall not be construed to be a permit for, or
383 approval of, any violation of this ordinance, the Florida Building Codes, or any other
384 ordinance of this community. The issuance of permits based on submitted
385 applications, construction documents, and information shall not prevent the
386 floodplain administrator from requiring the correction of errors and omissions.
- 387 (e) *Expiration.* A floodplain development permit or approval shall become invalid unless
388 the work authorized by such permit is commenced within 180 days after its issuance,

389 or if the work authorized is suspended or abandoned for a period of 180 days after
390 the work commences. Extensions for periods of not more than 180 days each shall
391 be requested in writing and justifiable cause shall be demonstrated.

392 (f) *Suspension or revocation.* The floodplain administrator is authorized to suspend or
393 revoke a floodplain development permit or approval if the permit was issued in error,
394 on the basis of incorrect, inaccurate or incomplete information, or in violation of this
395 ordinance or any other ordinance, regulation or requirement of this community.

396 (g) *Other permits required.* Floodplain development permits and building permits shall
397 include a condition that all other applicable state or federal permits be obtained
398 before commencement of the permitted development, including, but not limited to,
399 the following:

400 (1) The South Florida Water Management District; F.S. § 373.036.

401 (2) Florida Department of Health for onsite sewage treatment and disposal systems;
402 F.S. § 381.0065 and Chapter 64E-6, F.A.C.

403 (3) Florida Department of Environmental Protection for construction, reconstruction,
404 changes, or physical activities for shore protection or other activities seaward of
405 the coastal construction control line; F.S. § 161.141.

406 (4) Florida Department of Environmental Protection for activities subject to the Joint
407 Coastal Permit; F.S. § 161.055.

408 (5) Florida Department of Environmental Protection for activities that affect wetlands
409 and alter surface water flows, in conjunction with the U.S. Army Corps of
410 Engineers; Section 404 of the Clean Water Act.

411 (6) Federal permits and approvals.

412 **Sec. 26-35. Site plans and construction documents.**

413 (a) *Information for development in flood hazard areas.* The site plan or construction
414 documents for any development subject to the requirements of this ordinance shall
415 be drawn to scale and shall include, as applicable to the proposed development:

416 (1) Delineation of flood hazard areas, flood zone(s), base flood elevation(s), and
417 ground elevations if necessary for review of the proposed development.

418 (2) Reserved.

419 (3) Reserved.

420 (4) Location of the proposed activity and proposed structures, and locations of
421 existing buildings and structures; in coastal high hazard areas, new buildings
422 shall be located landward of the reach of mean high tide.

423 (5) Location, extent, amount, and proposed final grades of any filling, grading, or
424 excavation.

425 (6) Where the placement of fill is proposed, the amount, type, and source of fill
426 material; compaction specifications; a description of the intended purpose of the
427 fill areas; and evidence that the proposed fill areas are the minimum necessary
428 to achieve the intended purpose.

429 (7) Delineation of the coastal construction control line or notation that the site is
430 seaward of the coastal construction control line, if applicable.

431 (8) Extent of any proposed alteration of sand dunes or mangrove stands, provided
432 such alteration is approved by the Florida Department of Environmental
433 Protection.

434 (9) Existing and proposed alignment of any proposed alteration of a watercourse.

435 The floodplain administrator is authorized to waive the submission of site plans,
436 construction documents, and other data that are required by this ordinance but that are
437 not required to be prepared by a registered design professional if it is found that the nature
438 of the proposed development is such that the review of such submissions is not necessary
439 to ascertain compliance with this ordinance.

440 (b) Reserved.

441 (c) *Additional analyses and certifications.* As applicable to the location and nature of the
442 proposed development activity, and in addition to the requirements of this section,
443 the applicant shall have the following analyses signed and sealed by a Florida
444 licensed engineer for submission with the site plan and construction documents:

445 (1) For alteration of a watercourse or canal, an engineering analysis prepared in
446 accordance with standard engineering practices which demonstrates that the
447 flood-carrying capacity of the altered or relocated portion of the watercourse or
448 canal will not be decreased, and certification that the altered watercourse shall
449 be maintained in a manner which preserves its ~~the channel's~~ flood-carrying
450 capacity; the applicant shall submit the analysis to FEMA as specified in
451 subsection 26-35(d) of this ordinance.

452 (2) For activities that propose to alter sand dunes or mangrove stands ~~in coastal~~
453 ~~high hazard areas (zone V)~~, an engineering analysis that demonstrates that the
454 proposed alteration will not increase the potential for flood damage.

455 (d) *Submission of additional data.* When additional hydrologic, hydraulic or other
456 engineering data, studies, and additional analyses are submitted to support an
457 application, the applicant has the right to seek a letter of map change from FEMA to
458 change the base flood elevations or change boundaries of flood hazard areas shown
459 on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall
460 be prepared by a Florida licensed engineer in a format required by FEMA. Submittal
461 requirements and processing fees shall be the responsibility of the applicant.

462 **Sec. 26-36. Inspections.**

463 (a) *General.* Development for which a floodplain development permit or approval is
464 required shall be subject to inspection.

465 (b) *Development other than buildings and structures.* The floodplain administrator shall
466 inspect all development to determine compliance with the requirements of this
467 ordinance and the conditions of issued floodplain development permits or approvals.

468 (c) *Buildings, structures and facilities exempt from the Florida Building Code.* The
469 floodplain administrator shall inspect buildings, structures and facilities exempt from

470 the Florida Building Code to determine compliance with the requirements of this
471 ordinance and the conditions of issued floodplain development permits or approvals.

472 (1) *Buildings, structures and facilities exempt from the Florida Building Code, lowest*
473 *floor inspection.* Upon placement of the lowest floor, including basement, and
474 prior to further vertical construction, the owner of a building, structure or facility
475 exempt from the Florida Building Code, or the owner's authorized agent, shall
476 submit to the floodplain administrator a FEMA Elevation Certificate prepared and
477 sealed by a Florida licensed professional surveyor.

478 (2) *Buildings, structures and facilities exempt from the Florida Building Code, final*
479 *inspection.* As part of the final inspection, the owner or owner's authorized agent
480 shall submit to the floodplain administrator a final FEMA Elevation Certificate;
481 such certifications shall be prepared as specified in subsection 26-36(a)(1) of
482 this ordinance.

483 (d) *Manufactured homes.* The floodplain administrator or building official shall inspect
484 manufactured homes that are installed or replaced in flood hazard areas to determine
485 compliance with the requirements of this ordinance and the conditions of the issued
486 permit. Upon placement of a manufactured home, a FEMA Elevation Certificate
487 certification of the elevation of the lowest floor shall be submitted to the floodplain
488 administrator or building official.

489 **Sec. 26-37. Variances and appeals.**

490 (a) *General.* The Marco Island City Council shall hear and decide on requests for
491 appeals and requests for variances from the strict application of this ordinance.
492 Pursuant to F.S. § 553.73(5), the Marco Island City Council shall hear and decide on
493 requests for appeals and requests for variances from the strict application of the flood
494 resistant construction requirements of the Florida Building Code. This section does
495 not apply to Section 3109 of the Florida Building Code, Building.

496 (b) *Appeals.* The Marco Island City Council shall hear and decide appeals when it is
497 alleged there is an error in any requirement, decision, or determination made by the
498 floodplain administrator in the administration and enforcement of this ordinance. Any
499 person aggrieved by the decision of Marco Island City Council may appeal such
500 decision to the circuit court, as provided by Florida Statutes.

501 (c) *Limitations on authority to grant variances.* The Marco Island City Council shall base
502 its decisions on variances on technical justifications submitted by applicants, the
503 considerations for issuance in subsection 26-37(f) of this ordinance, the conditions
504 of issuance set forth in section 26-37(g) of this ordinance, and the comments and
505 recommendations of the floodplain administrator and the building official. The Marco
506 Island City Council has the right to attach such conditions as it deems necessary to
507 further the purposes and objectives of this ordinance.

508 (d) *Historic buildings.* A variance is authorized to be issued for the repair, improvement,
509 or rehabilitation of a historic building that is determined eligible for the exception to
510 the flood resistant construction requirements of the Florida Building Code, Existing
511 Building, Chapter 12 Historic Buildings, upon a determination that the proposed
512 repair, improvement, or rehabilitation will not preclude the building's continued
513 designation as a historic building and the variance is the minimum necessary to

514 preserve the historic character and design of the building. If the proposed work
515 precludes the building's continued designation as a historic building, a variance shall
516 not be granted and the building and any repair, improvement, and rehabilitation shall
517 be subject to the requirements of the Florida Building Code.

518 (e) *Functionally dependent uses.* A variance is authorized to be issued for the
519 construction or substantial improvement necessary for the conduct of a functionally
520 dependent use, as defined in this ordinance, is the minimum necessary considering
521 the flood hazard, and all due consideration has been given to use of methods and
522 materials that minimize flood damage during occurrence of the base flood.

523 (f) *Considerations for issuance of variances.* In reviewing requests for variances, the
524 Marco Island City Council shall consider all technical evaluations, all relevant factors,
525 all other applicable provisions of the Florida Building Code, this ordinance, and the
526 following:

527 (1) The danger that materials and debris may be swept onto other lands resulting in
528 further injury or damage;

529 (2) The danger to life and property due to flooding or erosion damage;

530 (3) The susceptibility of the proposed development, including contents, to flood
531 damage and the effect of such damage on current and future owners;

532 (4) The importance of the services provided by the proposed development to the
533 community;

534 (5) The availability of alternate locations for the proposed development that are
535 subject to lower risk of flooding or erosion;

536 (6) The compatibility of the proposed development with existing and anticipated
537 development;

538 (7) The relationship of the proposed development to the comprehensive plan and
539 floodplain management program for the area;

540 (8) The safety of access to the property in times of flooding for ordinary and
541 emergency vehicles;

542 (9) The expected heights, velocity, duration, rate of rise and debris and sediment
543 transport of the floodwaters and the effects of wave action, if applicable,
544 expected at the site; and

545 (10) The costs of providing governmental services during and after flood conditions
546 including maintenance and repair of public utilities and facilities such as sewer,
547 gas, electrical and water systems, streets and bridges.

548 (g) *Conditions for issuance of variances.* Variances shall be issued only upon:

549 (1) Submission by the applicant, of a showing of good and sufficient cause that the
550 unique characteristics of the size, configuration, or topography of the site limit
551 compliance with any provision of this ordinance or the required elevation
552 standards;

553 (2) Determination by the Marco Island City Council that:

- 554 a. Failure to grant the variance would result in exceptional hardship due to the
555 physical characteristics of the land that render the lot undevelopable;
556 increased costs to satisfy the requirements or inconvenience do not
557 constitute hardship;
- 558 b. The granting of a variance will not result in increased flood heights,
559 additional threats to public safety, extraordinary public expense, nor create
560 nuisances, cause fraud on or victimization of the public or conflict with
561 existing local laws and ordinances; and
- 562 c. The variance is the minimum necessary, considering the flood hazard, to
563 afford relief.
- 564 (3) Receipt of a signed statement by the applicant that the variance, if granted, shall
565 be recorded in the office of the clerk of the court in such a manner that it appears
566 in the chain of title of the affected parcel of land; and
- 567 (4) If the request is for a variance to allow construction of the lowest floor of a new
568 building, or substantial improvement of a building, below the required elevation,
569 a copy in the record of a written notice from the floodplain administrator to the
570 applicant for the variance, specifying the difference between the base flood
571 elevation and the proposed elevation of the lowest floor, stating that the cost of
572 federal flood insurance will be commensurate with the increased risk resulting
573 from the reduced floor elevation (up to amounts as high as \$25.00 for \$100.00
574 of insurance coverage), and stating that construction below the base flood
575 elevation increases risks to life and property.

576 **Sec. 26-38. Violations.**

- 577 (a) *Violations.* Any development that is not within the scope of the Florida Building Code
578 but that is regulated by this ordinance that is performed without an issued permit, that
579 is in conflict with an issued permit, or that does not fully comply with this ordinance,
580 shall be deemed a violation of this ordinance. A building or structure without a FEMA
581 Elevation Certificate, other required design certifications, or other evidence of
582 compliance required by this ordinance or the Florida Building Code is presumed to
583 be a violation until such time as that documentation is provided.
- 584 (b) *Authority.* For development that is not within the scope of the Florida Building Code
585 but that is regulated by this ordinance and that is determined to be a violation, the
586 floodplain administrator is authorized to serve notices of violation or stop work orders
587 to owners of the property involved, to the owner's agent, or to the person or persons
588 performing the work.
- 589 (i) *Resolving violations.* As part of resolving violations, the floodplain administrator or
590 building official may require submission of a Declaration of Land Restriction
591 (Nonconversion Agreement).
- 592 (c) *Unlawful continuance.* Any person who shall continue any work after having been
593 served with a notice of violation or a stop work order, except such work as that person
594 is directed to perform to remove or remedy a violation or unsafe condition, shall be
595 subject to penalties as prescribed by law. Pursuant to F.S. § 162.22, a person found
596 to be in violation of this article may be charged a fine not to exceed \$500.00, and
597 may be sentenced to a definite term of imprisonment, not to exceed 60 days.

598 Violations of this article may also be prosecuted before a code enforcement board
599 established by the city.

600 **Secs. 26-39—26-60. Reserved.**

601 *DIVISION 2. DEFINITIONS*

602 **Sec. 26-61. General.**

603 (a) *Scope.* Unless otherwise expressly stated, the following words and terms shall, for
604 the purposes of this ordinance, have the meanings shown in this section.

605 (b) *Terms defined in the Florida Building Code.* Where terms are not defined in this
606 ordinance and are defined in the Florida Building Code, such terms shall have the
607 meanings ascribed to them in that code.

608 (c) *Terms not defined.* Where terms are not defined in this ordinance or the Florida
609 Building Code, such terms shall have ordinarily accepted meanings such as the
610 context implies.

611 **Sec. 26-62. Definitions.**

612 *Accessory structure* means, for the purposes of this chapter, a structure used only
613 for parking and storage on the same parcel of property as a principal structure and the
614 use of which is incidental to the use of the principal structure and used only for parking
615 and storage.

616 *Appeal* means a request for a review of the floodplain administrator's interpretation
617 of any provision of this ordinance.

618 *ASCE 24* means a standard titled "Flood Resistant Design and Construction" that is
619 referenced by the Florida Building Code. ASCE 24 is developed and published by the
620 American Society of Civil Engineers, Reston, VA.

621 *Base flood* means a flood having a 1-percent chance of being equaled or exceeded
622 in any given year. [Also defined in FBC, B, Section 202.] The base flood is commonly
623 referred to as the "100-year flood" or the "1-percent-annual chance flood."

624 *Base flood elevation* means the elevation of the base flood, including wave height,
625 relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum
626 (NAVD) or other datum specified on the flood insurance rate map (FIRM). [Also defined
627 in FBC, B, Section 202.]

628 *Basement* means the portion of a building having its floor subgrade (below ground
629 level) on all sides. [Also defined in FBC, B, Section 202.]

630 *Coastal A Zone.* Flood hazard areas that have been delineated as subject to wave
631 heights between 1 ½ feet (457 mm) and 3 feet (914 mm). Such areas are seaward of the
632 Limit of Moderate Wave Action shown on the Flood Insurance Rate Map.

633 *Coastal construction control line* means the line established by the State of Florida
634 pursuant to F.S. § 161.053, and recorded in the official records of the community, which
635 defines that portion of the beach-dune system subject to severe fluctuations based on a
636 100-year storm surge, storm waves or other predictable weather conditions.

637 *Coastal high hazard area* means a special flood hazard area extending from offshore
638 to the inland limit of a primary frontal dune along an open coast and any other area subject
639 to high velocity wave action from storms or seismic sources. Coastal high hazard areas
640 are also referred to as "high hazard areas subject to high velocity wave action" or "V
641 zones" and are designated on flood insurance rate maps (FIRM) as zone V1-V30, VE, or
642 V.

643 ~~*Conditional letter of map revision (CLOMR)* means a formal review and comment as
644 to whether a proposed flood protection project or other project complies with the minimum
645 NFIP requirements for such projects with respect to delineation of special flood hazard
646 areas. A CLOMR does not revise the effective flood insurance rate map or flood insurance
647 study; upon submission and approval of certified as-built documentation, a letter of map
648 revision may be issued by FEMA to revise the effective FIRM.~~

649 *Declaration of Land Restriction (Nonconversion Agreement)* means a form provided
650 by the Floodplain Administrator to be signed by the owner and recorded in the County
651 public records in Official Records of the Clerk of Courts, for the owner to agree not to
652 convert or modify in any manner that is inconsistent with the terms of the building permit
653 and these regulations, enclosures below elevated buildings, certain crawl/underfloor
654 spaces, and garages.

655 *Design flood* means the flood associated with the greater of the following two areas: [Also
656 defined in FBC, B, Section 202.]

- 657 (1) Area with a floodplain subject to a 1-percent or greater chance of flooding in any
658 year; or
659 (2) Area designated as a flood hazard area on the community's flood hazard map,
660 or otherwise legally designated.

661 *Design flood elevation* means the elevation of the "design flood," including wave
662 height, relative to the datum specified on the community's legally designated flood hazard
663 map. In areas designated as zone AO, the design flood elevation shall be the elevation
664 of the highest existing grade of the building's perimeter plus the depth number (in feet)
665 specified on the flood hazard map. In areas designated as zone AO where the depth
666 number is not specified on the map, the depth number shall be taken as being equal to
667 two feet. [Also defined in FBC, B, Section 202.]

668 *Development* means any manmade change to improved or unimproved real estate,
669 including, but not limited to, buildings or other structures, tanks, temporary structures,
670 temporary or permanent storage of equipment or materials, mining, dredging, filling,
671 grading, paving, excavations, drilling operations or any other land disturbing activities.

672 *Encroachment* means the placement of fill, excavation, buildings, permanent
673 structures or other development into a flood hazard area which may impede or alter the
674 flow capacity of riverine flood hazard areas.

675 *Existing building and existing structure* means any buildings and structures for which
676 the "start of construction" commenced before September 14, 1979. [Also defined in FBC,
677 B, Section 202.]

678 *Federal Emergency Management Agency (FEMA)* means the federal agency that, in
679 addition to carrying out other functions, administers the National Flood Insurance
680 Program.

681 *FEMA Elevation Certificate* means the form issued by FEMA for the collection of
682 information and elevations for specific buildings in flood hazard areas. The FEMA
683 Elevation Certificate, FEMA Form 086-0-33, is revised and reissued periodically,
684 Applicants and permittees shall use the edition current as of the date of submission.

685 *Flood or flooding* means a general and temporary condition of partial or complete
686 inundation of normally dry land from: [Also defined in FBC, B, Section 202.]

- 687 (1) The overflow of inland or tidal waters.
- 688 (2) The unusual and rapid accumulation or runoff of surface waters from any source.

689 *Flood damage-resistant materials* means any construction material capable of
690 withstanding direct and prolonged contact with floodwaters without sustaining any
691 damage that requires more than cosmetic repair. [Also defined in FBC, B, Section 202.]

692 *Flood hazard area* means the greater of the following two areas: [Also defined in FBC, B,
693 Section 202.]

- 694 (1) The area within a floodplain subject to a 1-percent or greater chance of flooding
695 in any year.
- 696 (2) The area designated as a flood hazard area on the community's flood hazard
697 map, or otherwise legally designated.

698 *Flood insurance rate map (FIRM)* means the official map of the community on which
699 the Federal Emergency Management Agency has delineated both special flood hazard
700 areas and the risk premium zones applicable to the community. [Also defined in FBC, B,
701 Section 202.]

702 *Flood insurance study (FIS)* means the official report provided by the Federal
703 Emergency Management Agency that contains the flood insurance rate map, the flood
704 boundary and floodway map (if applicable), the water surface elevations of the base flood,
705 and supporting technical data. [Also defined in FBC, B, Section 202.]

706 *Floodplain administrator* means the office or position designated and charged with
707 the administration and enforcement of this ordinance (may be referred to as the floodplain
708 manager).

709 *Floodplain development permit or approval* means an official document or certificate
710 issued by the community, or other evidence of approval or concurrence, which authorizes
711 performance of specific development activities that are located in flood hazard areas and
712 that are determined to be compliant with this ordinance.

713 *Florida Building Code* means the family of codes adopted by the Florida Building
714 Commission, including: Florida Building Code, Building; Florida Building Code,
715 Residential; Florida Building Code, Existing Building; Florida Building Code, Mechanical;
716 Florida Building Code, Plumbing; Florida Building Code, Fuel Gas.

717 *Freeboard* means additional height used as a factor of safety in setting the minimum
718 elevation of a structure, or floodproofing measures applied to a structure to provide a higher
719 level of protection. Freeboard is used to compensate for factors that may increase flood
720 heights and for uncertainties inherent in determining flood frequencies and flood
721 elevations. The Florida Building Code specifies freeboard in terms of feet above the base
722 flood elevation.

723 *Functionally dependent use* means a use which cannot perform its intended purpose
724 unless it is located or carried out in close proximity to water, including only docking
725 facilities, port facilities that are necessary for the loading and unloading of cargo or
726 passengers, and shipbuilding and ship repair facilities; the term does not include long-
727 term storage or related manufacturing facilities.

728 *Highest adjacent grade* means the highest natural elevation of the ground surface
729 prior to construction next to the proposed walls or foundation of a structure.

730 *Historic structure* means any structure that is determined eligible for the exception to
731 the flood hazard area requirements of the Florida Building Code, Existing Building,
732 Chapter 12 Historic Buildings.

733 *Letter of map change (LOMC)* means an official determination issued by FEMA that
734 amends or revises an effective flood insurance rate map or flood insurance study. Letters
735 of map change include:

736 (1) *Letter of map amendment (LOMA)* means an amendment based on technical data
737 showing that a property was incorrectly included in a designated special flood hazard
738 area. A LOMA amends the current effective flood insurance rate map and establishes
739 that a specific property, portion of a property, or structure is not located in a special flood
740 hazard area.

741 (2) *Letter of map revision (LOMR)* means a revision based on technical data that may
742 show changes to flood zones, flood elevations, special flood hazard area boundaries and
743 floodway delineations, and other planimetric features.

744 (3) *Letter of map revision based on fill (LOMR-F)* means a determination that a
745 structure or parcel of land has been elevated by fill above the base flood elevation and is,
746 therefore, no longer located within the special flood hazard area. In order to qualify for
747 this determination, the fill must have been permitted and placed in accordance with the
748 community's floodplain management regulations.

749 (4) *Conditional letter of map revision (CLOMR)* means a formal review and comment
750 as to whether a proposed flood protection project or other project complies with the
751 minimum NFIP requirements for such projects with respect to delineation of special flood
752 hazard areas. A CLOMR does not revise the effective flood insurance rate map or flood
753 insurance study; upon submission and approval of certified as-built documentation, a
754 letter of map revision may be issued by FEMA to revise the effective FIRM.

755 *Light-duty truck*, as defined in 40 C.F.R. 86.082-2, means any motor vehicle rated at 8,500
756 pounds gross vehicular weight rating or less which has a vehicular curb weight of 6,000
757 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which
758 is:

- 759 (1) Designed primarily for purposes of transportation of property or is a derivation of
760 such a vehicle; or
- 761 (2) Designed primarily for transportation of persons and has a capacity of more than
762 12 persons; or
- 763 (3) Available with special features enabling off-street or off-highway operation and
764 use.

765 *Limit of Moderate Wave Action*. Line shown on FIRMs to indicate the inland limit of

766 the 1 ½-foot (457 mm) breaking wave height during the base flood.

767 *Lowest floor* means the lowest floor of the lowest enclosed area of a building or
768 structure, including basement, but excluding any unfinished or flood-resistant enclosure,
769 other than a basement, usable solely for vehicle parking, building access or limited
770 storage provided that such enclosure is not built so as to render the structure in violation
771 of non-elevation requirements of the Florida Building Code or ASCE 24. [Also defined in
772 FBC, B, Section 202.]

773 *Manufactured home* means a structure, transportable in one or more sections, which
774 is eight feet or more in width and greater than 400 square feet, and which is built on a
775 permanent, integral chassis and is designed for use with or without a permanent
776 foundation when attached to the required utilities. The term "manufactured home" does
777 not include a "recreational vehicle" or "park trailer." [Also defined in 15C-1.0101, F.A.C.]

778 *Manufactured home park or subdivision* means a parcel (or contiguous parcels) of
779 land divided into two or more manufactured home lots for rent or sale.

780 *Market value* means ~~the price at which a property will change hands between a willing~~
781 ~~buyer and a willing seller, neither party being under compulsion to buy or sell and both~~
782 ~~having reasonable knowledge of relevant facts. As used in this ordinance, the term refers~~
783 ~~to the market value of buildings and structures, excluding the land and other~~
784 ~~improvements on the parcel. Market value is the may be established by a qualified~~
785 ~~independent appraiser, actual cash value (in-kind replacement cost depreciated for age,~~
786 ~~wear and tear, neglect, and quality of construction) determined by a qualified independent~~
787 ~~appraiser, or tax assessment value adjusted to approximate market value by a factor~~
788 provided by the county property appraiser.

789 *New construction*, for the purposes of administration of this ordinance and the flood
790 resistant construction requirements of the Florida Building Code, means structures for
791 which the "start of construction" commenced on or after September 14, 1979, and
792 includes any subsequent improvements to such structures.

793 *Park trailer* means a transportable unit which has a body width not exceeding 14 feet
794 and which is built on a single chassis and is designed to provide seasonal or temporary
795 living quarters when connected to utilities necessary for operation of installed fixtures and
796 appliances. [Defined in 15C-1.0101, F.A.C.]

797 *Recreational vehicle* means a vehicle, including a park trailer, which is: [Defined in F.S. §
798 320.01(b)]

- 799 (1) Built on a single chassis;
800 (2) Four hundred square feet or less when measured at the largest horizontal
801 projection;
802 (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
803 (4) Designed primarily not for use as a permanent dwelling but as temporary living
804 quarters for recreational, camping, travel, or seasonal use.

805 *Sand dunes* means naturally occurring accumulations of sand in ridges or mounds
806 landward of the beach.

807 *Special flood hazard area* means an area in the floodplain subject to a one-percent
808 or greater chance of flooding in any given year. Special flood hazard areas are shown on

809 FIRMs as zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B
810 Section 202.]

811 *Start of construction* means the date of issuance of permits for new construction and
812 substantial improvements, provided the actual start of construction, repair, reconstruction,
813 rehabilitation, addition, placement, or other improvement is within 180 days of the date of
814 the issuance. The actual start of construction means either the first placement of
815 permanent construction of a building (including a manufactured home) on a site, such as
816 the pouring of slab or footings, the installation of piles, the construction of columns.
817 Permanent construction does not include land preparation (such as clearing, grading, or
818 filling), the installation of streets or walkways, excavation for a basement, footings, piers,
819 or foundations, the erection of temporary forms or the installation of accessory buildings
820 such as garages or sheds not occupied as dwelling units or not part of the main buildings.
821 For a substantial improvement, the actual "start of construction" means the first alteration
822 of any wall, ceiling, floor or other structural part of a building, whether or not that alteration
823 affects the external dimensions of the building. [Also defined in FBC, B Section 202.]

824 *Substantial damage* means damage of any origin sustained by a building or structure
825 whereby the cost of restoring the building or structure to its before-damaged condition
826 would equal or exceed 50 percent of the market value of the building or structure before
827 the damage occurred. [Also defined in FBC, B Section 202.]

828 *Substantial improvement* means any combination of repair, reconstruction, rehabilitation,
829 alteration, addition, or other improvement of a building or structure ~~taking place during a~~
830 ~~five-year period, the cumulative the~~ cost of which equals or exceeds 50 percent of the
831 market value of the building or structure before the improvement or repair is started. ~~For~~
832 ~~each building or structure, the five-year period begins on the date of the first permit issued~~
833 ~~for improvement or repair of that building or structure.~~ If the structure has incurred
834 "substantial damage," any repairs are considered substantial improvement regardless of
835 the actual repair work performed. The term does not, however, include: [Also defined in
836 FBC, B, Section 202.]

- 837 (1) Any project for improvement of a building required to correct existing health,
838 sanitary, or safety code violations identified by the building official and that are
839 the minimum necessary to assure safe living conditions.
- 840 (2) Any alteration of a historic structure provided the alteration will not preclude the
841 structure's continued designation as a historic structure and the alteration is
842 approved by variance issued pursuant to section 26-37 of this ordinance.
- 843 ~~(3) Costs of additional, code-compliant building elements or alterations or~~
844 ~~replacements of materials or building elements whose express purpose is the~~
845 ~~mitigation of future wind or flood damage, provided the costs of such measures,~~
846 ~~plus the costs of any other improvements and repairs undertaken at the same~~
847 ~~time, do not exceed 50 percent of the market value of the structure. Costs~~
848 ~~associated with horizontal additions and vertical additions shall not be excluded.~~
849 ~~Examples of code-compliant wind and flood mitigation measures include, but are~~
850 ~~not limited to, the installation or replacement of storm shutters; replacement of~~
851 ~~windows and doors with impact resistant glass; strengthening of roof~~
852 ~~attachments or exterior walls; replacing existing interior or exterior wall covering~~
853 ~~materials with wind and flood damage resistant materials; elevating machinery~~
854 ~~and equipment; and installation of flood openings.~~

855 ~~(4) Costs of additional, code-compliant energy efficiency retrofits whose express~~
856 ~~purpose is the improvement of energy efficiency of the building, provided the~~
857 ~~costs of such measures, plus the costs of any other improvements and repairs~~
858 ~~undertaken at the same time, do not exceed 50 percent of the market value of~~
859 ~~the structure. Costs associated with lateral and vertical additions shall not be~~
860 ~~excluded. Examples of code-compliant energy efficiency retrofits include, but are~~
861 ~~not limited to application of insulation; replacement of windows and doors with~~
862 ~~insulated products; installation of geo-thermal climate control systems;~~
863 ~~installation of attic ventilation equipment; and the installation of solar energy~~
864 ~~systems.~~

865 *Variance* means a grant of relief from the requirements of this ordinance, or the flood
866 resistant construction requirements of the Florida Building Code, which permits
867 construction in a manner that would not otherwise be permitted by this ordinance or the
868 Florida Building Code.

869 *Watercourse* means a river, creek, stream, channel or other topographic feature in,
870 on, through, or over which water flows at least periodically.

871 **Secs. 26-63—26-89. Reserved.**

872 *DIVISION 3. FLOOD-RESISTANT DEVELOPMENT*

873 **Sec. 26-90. Building elevations.**

- 874 (a) The building elevations specified in this section apply in all areas of the City.
- 875 (b) In flood hazard areas, the lowest floor (Zone A) or bottom of lowest horizontal
876 structural member of the lowest floor (Zone V and Coastal A Zone) shall be at or
877 above the higher of:
- 878 (1) The base flood elevation plus one foot,
- 879 (2) ~~Elevation nine feet, relative to the North American Vertical Datum. 18" above~~
880 ~~crown of nearest paved street or interior paved roadway system.~~
- 881 (3) 24" above the crown of ungraded or unfinished road.
- 882 (4) The elevation required by the Florida Building Code.
- 883
- 884 (c) In flood hazard areas, the elevation of dry floodproofing shall be at or above the
885 elevation required by the Florida Building Code, except in Coastal A Zones the
886 elevation of dry floodproofing shall be at or above the base flood elevation plus two
887 (2) feet.
- 888 ~~(d) (e)~~ Outside of flood hazard areas (Zone X), the lowest floor shall be at or above:
- 889 (1) "18" above crown of nearest paved street or interior paved roadway system.
- 890 (2) "24" above the crown of ungraded or unfinished road.
- 891 ~~(e) (d)~~ Within projects that have water management routing and storage facilities
892 designed and built for a 25-year, three-day storm event in accordance with South
893 Florida Water Management District's criteria, the lowest floor shall be at or above the

894 higher of the elevation required by (b) or (c), as applicable, or the 100-year zero
895 discharge elevation determined for the project.

896 **Sec. 26-91. Buildings and structures.**

897 (a) *Design and construction of buildings, structures and facilities exempt from the Florida*
898 *Building Code.* Pursuant to subsection 26-34(b)(1) of this ordinance, buildings,
899 structures, and facilities that are exempt from the Florida Building Code, including
900 substantial improvement or repair of substantial damage of such buildings, structures
901 and facilities, shall be designed and constructed in accordance with the flood load
902 and flood-resistant construction requirements of ASCE 24. Structures exempt from
903 the Florida Building Code that are not walled and roofed buildings shall comply with
904 the requirements of section 26-97 of this ordinance.

905 (b) *Buildings and structures seaward of the coastal construction control line.* If extending,
906 in whole or in part, seaward of the coastal construction control line and also located,
907 in whole or in part, in a flood hazard area:

908 (1) Buildings and structures shall be designed and constructed to comply with the
909 more restrictive applicable requirements of the Florida Building Code, Building
910 Section 3109 and Section 1612 or Florida Building Code, Residential Section
911 R322.

912 (2) Minor structures and non-habitable major structures as defined in F.S. § 161.54,
913 shall be designed and constructed to comply with the intent and applicable
914 provisions of this ordinance and ASCE 24.

915 (c) Accessory structures are permitted below the base flood elevation provided the
916 accessory structures are used only for parking or storage and:

917 (1) If located in special flood hazard areas (Zone A/AE) other than coastal high
918 hazard areas, are one-story and not larger than 600 square feet.

919 (2) If located in special flood hazard areas (Zone A/AE) other than coastal high
920 hazard areas, have flood openings in accordance with Section R322.2 of the
921 Florida Building Code, Residential.

922 (3) If located in coastal high hazard areas (Zone V/VE), are not located below
923 elevated buildings and are not larger than 100 square feet.

924 (4) Are anchored to resist flotation, collapse or lateral movement resulting from flood
925 loads.

926 (5) Have flood damage-resistant materials used below the base flood elevation plus
927 one foot.

928 (6) Have mechanical, plumbing and electrical systems, including plumbing fixtures,
929 elevated to or above the base flood elevation plus one foot.

930 (d) Florida Building Codes, technical amendments.

931 (1) The minimum elevation for buildings and structures shall be as specified in the
932 Marco Island Code of Ordinances, Chapter 26.

933 (2) Enclosed areas below the required elevation for dwellings in flood hazard areas
934 shall have the minimum access necessary to allow for the parking of vehicles (garage

935 door) or limited storage of maintenance equipment used in connection with the
936 premises (standard exterior door) or entry to the building (elevator or stairway with
937 standard exterior door or one double door set for main entrance).

938 (xx) The definitions for the term "Substantial Improvement" shall be as specified the
939 Marco Island Code of Ordinances, Chapter 26.

940 (xx) The definitions for the terms "Substantial Damage" and "Substantial
941 Improvement" shall be as specified in the Marco Island Code of Ordinances, Chapter
942 26.

943 **Sec. 26-92. Subdivisions.**

944 (a) *Minimum requirements.* Subdivision proposals, including proposals for manufactured
945 home parks and subdivisions, shall be reviewed to determine that:

946 (1) Such proposals are consistent with the need to minimize flood damage and will
947 be reasonably safe from flooding;

948 (2) All public utilities and facilities such as sewer, gas, electric, communications, and
949 water systems are located and constructed to minimize or eliminate flood
950 damage; and

951 (3) Adequate drainage is provided to reduce exposure to flood hazards.

952 (b) *Subdivision plats.* Where any portion of proposed subdivisions, including
953 manufactured home parks and subdivisions, lies within a flood hazard area, the
954 following shall be required:

955 (1) Delineation of flood hazard areas and flood zones, and design flood elevations,
956 as appropriate, shall be shown on preliminary plats; and

957 (2) Compliance with the site improvement and utilities requirements of section 26-
958 93 of this ordinance.

959 **Sec. 26-93. Site improvements, utilities and limitations.**

960 (a) *Minimum requirements.* All proposed new development shall be reviewed to
961 determine that:

962 (1) Such proposals are consistent with the need to minimize flood damage and will
963 be reasonably safe from flooding;

964 (2) All public utilities and facilities such as sewer, gas, electric, communications, and
965 water systems are located and constructed to minimize or eliminate flood
966 damage; and

967 (3) Adequate drainage is provided to reduce exposure to flood hazards.

968 (b) *Sanitary sewage facilities.* All new and replacement sanitary sewage facilities, private
969 sewage treatment plants (including all pumping stations and collector systems), and
970 on-site waste disposal systems shall be designed in accordance with the standards
971 for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and
972 ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the
973 facilities and discharge from the facilities into floodwaters, and impairment of the
974 facilities and systems.

- 975 (c) *Water supply facilities.* All new and replacement water supply facilities shall be
976 designed in accordance with the water well construction standards in Chapter 62-
977 532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of
978 floodwaters into the systems.
- 979 (d) Reserved.
- 980 (e) *Limitations on placement of fill.* Subject to the limitations of this ordinance, fill shall
981 be designed to be stable under conditions of flooding including rapid rise and rapid
982 drawdown of floodwaters, prolonged inundation, and protection against flood-related
983 erosion and scour. In addition to these requirements, if intended to support buildings
984 and structures (zone A only), fill shall comply with the requirements of the Florida
985 Building Code.
- 986 (f) *Limitations on alteration of sand dunes and mangrove stands sites in coastal high*
987 ~~*hazard areas (zone V).*~~ *In coastal high hazard areas, alteration* The alteration of sand
988 dunes and mangrove stands shall be permitted only if such alteration is approved by
989 the Florida Department of Environmental Protection and only if the engineering
990 analysis required by subsection 26-35(c) of this ordinance demonstrates that the
991 proposed alteration will not increase the potential for flood damage. Construction or
992 restoration of dunes under or around elevated buildings and structures shall comply
993 with subsection 26-97(e) of this ordinance.

994 **Sec. 26-94. Manufactured homes.**

- 995 (a) *General.* All manufactured homes installed in flood hazard areas shall be installed by
996 an installer that is licensed pursuant to F.S. § 320.8249, and shall comply with the
997 requirements of Chapter 15C-1, F.A.C. and the requirements of this ordinance. If
998 located seaward of the coastal construction control line, manufactured homes shall
999 comply with the more restrictive of the applicable requirements.
- 1000 (b) *Foundations.* All new manufactured homes and replacement manufactured homes
1001 installed in flood hazard areas shall be installed on permanent, reinforced
1002 foundations that:
- 1003 (1) In flood hazards areas (zone A) other than coastal high hazard areas, are
1004 designed in accordance with the foundation requirements of the Florida Building
1005 Code, Residential Section R322.2 and this ordinance.
- 1006 (2) In coastal high hazard areas (zone V), are designed in accordance with the
1007 foundation requirements of the Florida Building Code, Residential Section
1008 R322.3 and this ordinance.
- 1009 (c) *Anchoring.* All new manufactured homes and replacement manufactured homes
1010 shall be installed using methods and practices which minimize flood damage and
1011 shall be securely anchored to an adequately anchored foundation system to resist
1012 flotation, collapse or lateral movement. Methods of anchoring include, but are not
1013 limited to, use of over-the-top or frame ties to ground anchors. This anchoring
1014 requirement is in addition to applicable state and local anchoring requirements for
1015 wind resistance.
- 1016 (d) *Elevation.* Manufactured homes that are placed, replaced, or substantially improved
1017 shall be elevated such that the bottom of the frame is at or above the elevation

1018 required, as applicable to the flood hazard area, in the Florida Building Code,
1019 Residential Section R322.3 (Zone A) or Section R322.3 (Zone V and Coastal A
1020 Zone).

1021 (e) *Enclosures.* Fully-enclosed areas below elevated manufactured homes shall comply
1022 with the requirements of the Florida Building Code, Residential Section R322.2 or
1023 R322.3 for such enclosed areas, as applicable to the flood hazard area.

1024 (f) *Utility equipment.* Utility equipment that serves manufactured homes, including
1025 electric, heating, ventilation, plumbing, and air conditioning equipment and other
1026 service facilities, shall comply with the requirements of the Florida Building Code,
1027 Residential Section R322, as applicable to the flood hazard area.

1028 **Sec. 26-95. Recreational vehicles and park trailers.**

1029 (a) *Temporary placement.* Recreational vehicles and park trailers placed temporarily in
1030 flood hazard areas shall:

1031 (1) Be on the site for fewer than 180 consecutive days; or

1032 (2) Be fully licensed and ready for highway use, which means the recreational
1033 vehicle or park model is on wheels or jacking system, is attached to the site only
1034 by quick-disconnect-type utilities and security devices, and has no permanent
1035 attachments such as additions, rooms, stairs, decks and porches.

1036 (b) *Permanent placement.* Recreational vehicles and park trailers that do not meet the
1037 limitations in subsection 26-95(a) of this ordinance for temporary placement shall
1038 meet the requirements of section 26-94 of this ordinance for manufactured homes.

1039 **Sec. 26-96. Tanks.**

1040 (a) *Underground tanks.* Underground tanks in flood hazard areas shall be anchored to
1041 prevent flotation, collapse or lateral movement resulting from hydrodynamic and
1042 hydrostatic loads during conditions of the design flood, including the effects of
1043 buoyancy assuming the tank is empty.

1044 (b) *Above-ground tanks, not elevated.* Above-ground tanks that do not meet the
1045 elevation requirements of subsection 26-96(c) of this ordinance shall:

1046 (1) Be permitted in flood hazard areas (zone A) other than coastal high hazard
1047 areas, provided the tanks are anchored or otherwise designed and constructed
1048 to prevent flotation, collapse or lateral movement resulting from hydrodynamic
1049 and hydrostatic loads during conditions of the design flood, including the effects
1050 of buoyancy assuming the tank is empty and the effects of flood-borne debris.

1051 (2) Not be permitted in coastal high hazard areas (zone V).

1052 (c) *Above-ground tanks, elevated.* Above-ground tanks in flood hazard areas shall be
1053 attached to and elevated to or above the design flood elevation on a supporting
1054 structure that is designed to prevent flotation, collapse or lateral movement during
1055 conditions of the design flood. Tank-supporting structures shall meet the foundation
1056 requirements of the applicable flood hazard area.

1057 (d) *Tank inlets and vents.* Tank inlets, fill openings, outlets and vents shall be:

- 1058 (1) At or above the design flood elevation or fitted with covers designed to prevent
1059 the inflow of floodwater or outflow of the contents of the tanks during conditions
1060 of the design flood; and
- 1061 (2) Anchored to prevent lateral movement resulting from hydrodynamic and
1062 hydrostatic loads, including the effects of buoyancy, during conditions of the
1063 design flood.

1064 **Sec. 26-97. Other development.**

1065 (a) *General requirements for other development.* All development, including manmade
1066 changes to improved or unimproved real estate for which specific provisions are not
1067 specified in this ordinance or the Florida Building Code, shall:

- 1068 (1) Be located and constructed to minimize flood damage;
- 1069 (2) Reserved.
- 1070 (3) Be anchored to prevent flotation, collapse or lateral movement resulting from
1071 hydrostatic loads, including the effects of buoyancy, during conditions of the
1072 design flood;
- 1073 (4) Be constructed of flood damage-resistant materials; and
- 1074 (5) Have mechanical, plumbing, and electrical systems above the design flood
1075 elevation or meet the requirements of ASCE 24, whichever is greater, except
1076 that minimum electric service required to address life safety and electric code
1077 requirements is permitted below the design flood elevation provided it conforms
1078 to the provisions of the electrical part of building code for wet locations.

1079 (b) *Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways,*
1080 *patios and similar nonstructural uses in coastal high hazard areas (zone V).* In coastal
1081 high hazard areas, concrete slabs used as parking pads, enclosure floors, landings,
1082 decks, walkways, patios and similar nonstructural uses are permitted beneath or
1083 adjacent to buildings and structures provided the concrete slabs are designed and
1084 constructed to be:

- 1085 (1) Structurally independent of the foundation system of the building or structure;
- 1086 (2) Frangible and not reinforced, so as to minimize debris during flooding that is
1087 capable of causing significant damage to any structure; and
- 1088 (3) Have a maximum slab thickness of not more than four inches.

1089 (c) *Decks and patios in coastal high hazard areas (zone V).* In addition to the
1090 requirements of the Florida Building Code, in coastal high hazard areas decks and
1091 patios shall be located, designed, and constructed in compliance with the following:

- 1092 (1) A deck that is structurally attached to a building or structure shall have the
1093 bottom of the lowest horizontal structural member at or above the design flood
1094 elevation and any supporting members that extend below the design flood
1095 elevation shall comply with the foundation requirements that apply to the building
1096 or structure, which shall be designed to accommodate any increased loads
1097 resulting from the attached deck.

- 1098 (2) A deck or patio that is located below the design flood elevation shall be
1099 structurally independent from buildings or structures and their foundation
1100 systems, and shall be designed and constructed either to remain intact and in
1101 place during design flood conditions or to break apart into small pieces to
1102 minimize debris during flooding that is capable of causing structural damage to
1103 the building or structure or to adjacent buildings and structures.
- 1104 (3) A deck or patio that has a vertical thickness of more than 12 inches or that is
1105 constructed with more than the minimum amount of fill necessary for site
1106 drainage shall not be approved unless an analysis prepared by a qualified
1107 registered design professional demonstrates no harmful diversion of floodwaters
1108 or wave run-up and wave reflection that would increase damage to the building
1109 or structure or to adjacent buildings and structures.
- 1110 (4) A deck or patio that has a vertical thickness of 12 inches or less and that is at
1111 natural grade or on nonstructural fill material that is similar to and compatible
1112 with local soils and is the minimum amount necessary for site drainage may be
1113 approved without requiring analysis of the impact on diversion of floodwaters or
1114 wave run-up and wave reflection.
- 1115 (d) *Other development in coastal high hazard areas (zone V)*. In coastal high hazard
1116 areas, development activities other than buildings and structures shall be permitted
1117 only if also authorized by the appropriate federal, state or local authority; if located
1118 outside the footprint of, and not structurally attached to, buildings and structures; and
1119 if analyses prepared by qualified registered design professionals demonstrate no
1120 harmful diversion of floodwaters or wave run-up and wave reflection that would
1121 increase damage to adjacent buildings and structures. Such other development
1122 activities include, but are not limited to:
- 1123 (1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control
1124 structures;
- 1125 (2) Solid fences and privacy walls, and fences prone to trapping debris, unless
1126 designed and constructed to fail under flood conditions less than the design flood
1127 or otherwise function to avoid obstruction of floodwaters; and
- 1128 (3) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C.,
1129 as filled systems or mound systems.
- 1130 (e) *Nonstructural fill in coastal high hazard areas (zone V)*. In coastal high hazard areas:
- 1131 (1) Minor grading and the placement of minor quantities of nonstructural fill shall be
1132 permitted for landscaping and for drainage purposes under and around
1133 buildings.
- 1134 (2) Nonstructural fill with finished slopes that are steeper than one unit vertical to
1135 five units horizontal shall be permitted only if an analysis prepared by a qualified
1136 registered design professional demonstrates no harmful diversion of floodwaters
1137 or wave run-up and wave reflection that would increase damage to adjacent
1138 buildings and structures.
- 1139 (3) Where authorized by the Florida Department of Environmental Protection or
1140 applicable local approval, sand dune construction and restoration of sand dunes
1141 under or around elevated buildings are permitted without additional engineering

1142 analysis or certification of the diversion of floodwater or wave run-up and wave
1143 reflection if the scale and location of the dune work is consistent with local beach-
1144 dune morphology and the vertical clearance is maintained between the top of
1145 the sand dune and the lowest horizontal structural member of the building.

1146 **Secs. 26-98—26-130. Reserved.**

1147 *DIVISION 4. MISCELLANEOUS PROVISIONS*

1148 **Sec. 26-131. Fiscal impact statement.**

1149 In terms of design, plan application review, construction and inspection of buildings
1150 and structures, the cost impact as an overall average is negligible in regard to the local
1151 technical amendments because all development has been subject to the requirements of
1152 the local floodplain management ordinance adopted for participation in the National Flood
1153 Insurance Program. In terms of lower potential for flood damage, there will be continued
1154 savings and benefits to consumers.

1155 **Sec. 26-132. Applicability.**

1156 For the purposes of jurisdictional applicability, this ordinance shall apply in the City
1157 of Marco Island. This ordinance shall apply to all applications for development, including
1158 building permit applications and subdivision proposals, submitted on or after May 16,
1159 2012.