

Chapter 18 ENVIRONMENT

ARTICLE I. IN GENERAL

Secs. 18-1—18-30. Reserved.

ARTICLE II. ~~PROPERTY MAINTENANCE~~ ~~NUISANCE~~, ~~LITTER~~, ~~WEED~~, ~~PLANT~~ AND ~~RIGHT-OF-WAY CONTROL~~ ABANDONED PROPERTY

Sec. 18-31. Title of article.

This article shall be known and may be cited as the "City of Marco Island Property Maintenance, Litter and Abandoned Property~~Nuisance, Litter, Weed, Plant, and Right-of-Way Control~~ Ordinance."

Sec. 18-32. 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: These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.

Abandoned property means any wrecked, inoperative, unregistered, derelict or partially dismantled property having little, if any, value other than nominal salvage value, which has been left unattended and unprotected from the elements, which shall include but not be limited to motor vehicles, trailers, boats, machinery, appliances, refrigerators, washing machines, dryers, construction materials and/or equipment, plumbing fixtures, furniture, and any other similar article. However, any property which is located on the premises of a lawfully established commercial enterprise that is customary and incidental to the operations and services provided by that establishment shall not be construed as abandoned property.

Clearance zone of sidewalks means an area of improved public right-of-way in which no encroachments are permitted. The clearance zone encompasses the entire width of the sidewalk, as the term is defined in section 1-2, by 7½ feet in height, as measured from the sidewalk surface. Vegetative encroachments, including tree limbs and branches, palm fronds, bushes, shrubs, or weeds and grasses are not permitted. Additionally, sidewalks are to remain free of objects.

Code compliance official ~~means any person employed by the city who is authorized by the city manager to investigate and enforce code violations. This includes the chief of code compliance, code compliance officers, chief of building services, building division inspectors, zoning administrator, public safety director, public safety officers, the sheriff and deputy sheriffs of the county, or any other law enforcement officer of the state.~~

Litter and pollution mean any accumulated, placed, swept, scattered, thrown, leaked, dumped, or persisting garbage, trash, fluid other than uncontaminated water, household waste, furniture, aluminum or tin cans, refuse, lawn waste, palm fronds, leaves, paper, glass, metal, plastic, cloth, wood, sweepings, tree limbs and roots, downed trees, grass and landscape clippings, abandoned property, oil, grease, ~~dead~~ animal carcass, animal waste, bacterial growth, algae, insects, larvae, or other foreign matter which is unsightly, obnoxious or offensive, or any item which is likely to injure any person or create a traffic or pedestrian hazard.

Mowable lot means a lot, 50 percent or more of which can be mowed with a bushhog-type or smaller mowing equipment without damage to the lot or equipment.

Noxious plant means any living plant which is deemed an exotic, invasive or a prohibited plant species pursuant to the Land Development Code, ~~or~~ the Florida Exotic Pest Plant Council's ~~2007-most recent~~ List of Invasive Plant Species, ~~as amended~~, or on the noxious weed list set forth in Section 5B-57.007, Florida Administrative Code, ~~as amended~~. ~~A copy of the Florida Exotic Pest Plant Council's 2007 List of Invasive Plant Species and Section 5B-57.007, Florida Administrative Code, is available from the community development department.~~

Occupant means a residential or nonresidential lessee or tenant of a developed property.

~~*Owner* has the meaning ascribed to it in section 1-2, for property whether developed or undeveloped. means the owner, occupant, lessee, or agent of an owner of any developed or undeveloped lot or property.~~

~~*Public nuisance* means the commission or omission of any act, by any person, or the keeping, maintaining, propagation, existence or permitting of anything, by any person, by which the life, health, safety, or welfare of any person may be threatened or impaired. Additionally, permitted uses and conditional uses in any residentially zoned area which create smoke, dust, noise, odor, vibration, or glare which by themselves or in combination may be harmful or injurious to human health or welfare or which unreasonably interfere with the customary use and enjoyment of life or property are a public nuisance. Nothing in this subsection shall be construed to prevent a person from using a barbecue grill or fireplace.~~

~~*Weeds over 15 inches* means excessive growth of grasses or weeds and undergrowth exceeding 15 inches in height.~~

Sec. 18-33. Penalties; ~~additional remedies.~~

- (a) ~~Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 14 of this code. In addition to the remedies set forth in section 18-37, if any person fails or refuses to obey or comply with or violates any of the provisions of this article, such person, upon conviction of such offense, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$500.00 or by imprisonment not to exceed 60 days in the county jail, or both, in the discretion of the court. Each violation or noncompliance shall be considered a separate and distinct offense. Further, each day of continued violation or noncompliance shall be considered as a separate offense.~~
- (b) ~~Nothing contained in this section 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. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.~~
- (c) ~~Further, nothing in this section shall be construed to prohibit the city from prosecuting any violation of this article by means of a code enforcement board established pursuant to the authority of F.S. ch. 162 and chapter 14, article II.~~
- (d) ~~All remedies and penalties provided for in this section shall be cumulative and independently available to the city, and the city shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law.~~

Sec. 18-34. Findings; purpose of article.

The city council ~~does~~ hereby ~~find~~ makes the following findings ~~facts~~:

- (1) The accumulation of litter and abandoned property on public and private property constitutes a hazard and is detrimental to the health, safety, and welfare of the citizens of the city.
- (2) The accumulation of weeds, grass, or prohibited noxious plants on or in close proximity to residentially, commercially, or industrially zoned land is detrimental to the health, safety, and welfare of the citizens of the city.

- (3) The obstruction of the public rights-of-way with litter, weeds, bushes, trees, or other objects is a hazard to the citizens of the city in that injuries can occur from the obstruction of sight triangles and from striking objects that should be cleared from the right-of-way.
- (4) Protection of the quality of life and economy for the city, its businesses, and its citizens can be accomplished by maintaining a good community appearance.

Sec. 18-35. ~~Applicability of article~~Reserved.

~~This article shall apply to and be enforced within the corporate limits of the city.~~

Sec. 18-36. Prohibited activities and conditions.

~~Violating any provision in this section. The following activities and conditions are-is~~ considered to be a nuisance and ~~are-is~~ not permitted in the city:

- (1) ~~Dumping/Littering.~~ No person shall ~~cause or allow dump any~~ litter ~~or pollution~~ in any manner or any amount ~~or pollute on~~ any public property, private property, public right-of-way, ~~public street, highway,~~ or body of water. This prohibition shall not be construed as to prohibit the placement of trash or yard wastes for removal by the waste management authority ~~pursuant to as per Section 18-36 subsection (8) of this section.~~
- (2) *Burial of waste materials.* Inert waste materials may be buried on-site on a parcel of property after a valid building permit for such property has been obtained, and provided that such disposal is in conformance with federal, state, and local laws and regulations. For purposes of this section, inert waste materials are specifically limited to brick, block, concrete, rock, stone, earth, and sand that is free from contamination and of other types of waste, and that is capable of serving as fill material without environmental harm to, or pollution of, groundwater or surface water. All other wastes, including garbage, hazardous waste, rubbish, refuse, paper products, containers, cloth, wood and wood products, sweepings, liquids other than water, sludge, tree limbs and trunks, undergrowth, and materials produced by clearing and grubbing, and other horticultural wastes shall not be buried on a parcel of property but shall be otherwise lawfully disposed of.
- (3) *Noxious plants.* The growth of ~~certain~~ noxious plants on developed and undeveloped lots in all areas of the city is hereby prohibited, except for existing trees which were allowed to remain on developed property before June 11, 1991, when county Ordinance No. 91-47 initially prohibited the practice. At the time of development of undeveloped land, all noxious plants shall be removed from the site. When an existing structure is renovated which causes changes to the square footage as authorized by the building permit, all noxious plants shall be removed from the property prior to the issuance of a certificate of occupancy or certificate of completion. No person shall plant, sell, or distribute noxious plants or their seeds within the city.
- (4) *Public nuisances.* No owner ~~or occupant of a property, lessee, occupant, guest, or agent for the owner~~ shall allow the ~~keeping existence~~ of a public nuisance on ~~any such~~ property, ~~developed or undeveloped.~~
- (5) *Weeds, litter or obstructions in right-of-way.* All owners ~~and occupants of property, lessees, occupants or agents for the owner of developed and undeveloped lots~~ shall ~~maintain control all excessive growth of~~ grasses ~~or and~~ weeds within the ~~right-of-way roadway swale~~ adjacent to ~~their such~~ property ~~to a maximum height of 15 inches by cutting or removing the grasses and weeds,~~ and shall maintain the ~~abutting street~~ right-of-way free from any accumulation of ~~abandoned property,~~ litter, pollution, ~~or and~~ other matter. No ~~owner, lessee, occupant, guest, or other~~ person shall place or construct any object, ~~other than one mailbox or change the landscaping~~ in the public right-of-way without first obtaining a city permit ~~pursuant to section 42-76 of this code of ordinances except as provided in subsection (8) for trash pickup.~~ Any lawfully permitted encroachment into the public right-of-way may be continued

unless such encroachment causes a nuisance as described in this article. ~~For purposes of this subsection, excessive growth is defined as grasses or weeds exceeding 15 inches in height.~~

- (6) *Sidewalk maintenance.* All owners ~~and, lessees,~~ occupants ~~or agents for the owner of developed and undeveloped lots~~ shall control bushes, trees, grasses, litter, ~~or~~ other objects which cover, impede, delay or restrict the public's access to the sidewalk ~~adjacent to the owners' or occupants' property.~~ All owners ~~and, lessees,~~ occupants ~~or agents for the owner of a property~~ shall maintain a clearance zone for all sidewalks adjacent to ~~their~~ such property ~~ies~~ and this clearance zone shall remain clear to allow for public access.
- (7) *Trash receptacles for public establishments.* Each ~~person~~ owner and occupant of any establishment open to the public shall provide receptacles adequate to contain litter generated from the establishment.
- (8) *Placement of waste at curb.* ~~Owners, lessees, commercial businesses, or occupants of any property~~ It is a violation of this article to shall not place ~~their~~ any trash receptacle, bagged garbage, yard waste, recycle bin, or other waste or abandoned property out by the curb of ~~their property~~ for trash pickup before 6:00 p.m. of the evening before the scheduled pickup day. All owners ~~and, lessees, commercial businesses, or~~ occupants of any property shall remove any such containers and place them inside their garage or to the side or rear of their dwelling or structure by 7:00 p.m. on the evening of trash pickup.
- (9) *Wind-driven debris and litter.* All ~~persons~~ owners, occupants, contractors, disposal contractors, and cleaning persons, and commercial businesses shall ~~ensure that store their litter in such a manner as to eliminate no~~ wind-driven ~~debris and~~ litter is generated from their property or activities in and about the city, their residence, or their business. Spillage and overflow around containers shall constitute an illegal accumulation of litter and shall be cleaned up immediately.
- (10) *Weeds and litter on private property.* Owners ~~and, lessees,~~ occupants ~~of a property, or agents of the owner of any lot, developed or undeveloped,~~ shall ~~control all excessive growth of~~ maintain grasses ~~or~~ weeds on such property to a maximum height of over 15 inches ~~by cutting the grasses and weeds.~~ ~~Owners, lessees, occupants or agents for the owner of developed and undeveloped lots shall control all excessive growth of grasses or weeds within the right of way adjacent to their property by cutting or removing the grasses and weeds.~~ The practice of scalping or removing grass or weeds by clearing the topsoil is prohibited except when done as part of the building process when a permit has been issued for the property. All accumulations of litter ~~and, pollution, abandoned property, downed trees or other matter~~ on or within such ~~lots private property or the public street right of way adjacent to the lot~~ shall be removed by the owner ~~or, occupant, lessee, or agent of an owner, except that trash may be placed in the right of way as part of trash pickup as outlined in subsection (8) of this section.~~
- (11) *Abandoned property.* Abandoning property, allowing property to be abandoned, or allowing abandoned property to persist, is a violation of this article.

Sec. 18-37. Abatement of nuisances.

- (a) Whenever the ~~city manager or designed~~ code compliance enforcement official ~~shall~~ determines that an violation of any provision ~~activity or condition as described~~ in section 18-36(1) through (9) and (11) exists, then a notice of violation may be served on the owner of record of the property. The notice shall include a property description, the date, the ordinance code number which has been violated, a description of the violation, the name of the recorded owner, a correction deadline date to be no more than 20 days from the date of the letter or notice, and the name of the city manager or designed code compliance official. Notice shall be deemed served by personal service, by certified or registered mail with return receipt requested, or by posting a notice at the property and city hall for a period of seven days when the property owner refuses to accept the certified letter or the letter is returned as not deliverable. For the purposes of this section, delivery by certified or registered mail shall be deemed to occur upon deposit in the U.S. mail with sufficient postage attached. If the activity or condition described in the notice is not abated after the correction date

passes, the ~~city manager or designated~~ code compliance official may initiate abatement of the activity or condition as prescribed in subsection (c) of this section.

- ~~(b) Annually, the city manager or designated code compliance official shall publish the code compliance policy and abatement procedure regarding violations of section 18-36(10). Whenever the city manager or code compliance official shall determines that grass or weeds on a developed or undeveloped lot exceed 15 inches is in violation of section 18-36(10) (weeds over 15 inches), a notice of violation shall be posted on the lot and at the code compliance office. The notice shall include the date, the location, the type of violation, the ordinance number, the date by which the violation must be corrected, and the name and phone number of the investigating code compliance officer. Notice shall require corrective action in no more than seven days from the date the notice is posted. If the overgrown weeds are not truly abated as described in the notice after the passing of seven days, the city manager or his designated code compliance official may initiate abatement of the overgrown weeds as prescribed in subsection (c) of this section.~~
- (be) After the property owner or his agent has refused to abate the activity or condition described in the notice by the specified date, the city may, through its employees, servants, agents, or contractors, enter upon the property and take such steps as are reasonably required to effect the abatement of the nuisance.
- (ce) After the abatement of the nuisances by the city, the cost to the city shall be calculated and shall include an administrative fee of \$100.00 per parcel. An invoice shall be sent to the ~~property owner or his agent~~ and shall be paid within 20 days of the mailing of the invoice.
- (de) If the invoice is not paid in full, a certified letter, return receipt requested, shall be mailed to the property owner or agent advising that a notice of assessment of lien shall be recorded in the official records of the county and thereafter shall constitute a lien against the land on which the violation occurred or exists and upon any other real or personal property owned by the violator. The notice of assessment of lien shall include the lien number, the date, the legal description of the property, the name of the recorded owners, and an explanation of the cause of the lien. The owner or agent shall be afforded the opportunity to pay all assessments due, plus a late fee of \$25.00, within 14 days from the date of mailing. If full payment is not received within the 14-day period, the city ~~manager or his designee~~ shall record the notice of assessment of lien in the official records of the county. Such assessment shall be a legal, valid, and binding obligation which shall run with the property until paid.
- (ef) After the expiration of one year from the date of recording of the notice of assessment of lien, as provided in this section, a suit may be filed to foreclose the lien. Such foreclosure proceedings shall be instituted, conducted, and enforced in conformity with the procedures for the foreclosure of municipal special assessment liens, as set forth in F.S. ch. 173, which provisions are incorporated in this article in their entirety to the same extent as if such provisions were set forth verbatim in this section.
- (fg) The liens for delinquent assessments imposed under this section shall remain liens coequal with the lien of all state, county, district, and municipal taxes, superior in dignity to all other filed liens and claims, until paid as provided in this article.
- (gh) Nothing in this section shall ~~be construed to limit the city from pursuing other enforcement measures as provided in this code the right of any code compliance official to cite the owner into court or before the code enforcement board after giving notice as required by state statutes~~ in addition to the abatement of the nuisance.

Sec. 18-38. Appeals and adjustments.

- (a) Any property owner receiving notice for failure to pay an invoice in full for nuisance abatement may file an appeal to the city manager within 14 days from the date the notice was mailed.
- (b) The appeal must specifically address the reason for failing to pay the invoice, including any unusual or special circumstances that the property owner deems pertinent to justify his failure or refusal to pay.
- (c) Upon receipt of the appeal, the city manager may, ~~at his discretion~~:

- (1) Adjust fees assessed and/or administrative costs imposed for corrective action taken by the city; or
- (2) Instruct the code compliance official to initiate proceedings before the ~~code enforcement board~~ special magistrate.

~~(d) The code enforcement board will be empowered to act as the city's board of adjustments and appeals.~~

Sec. 18-39. Right to hearing on declaration of public nuisance and assessment.

- (a) Any property owner receiving notice from the city ~~manager or his designated code compliance official~~ of the existence of a public nuisance as described in subsections 18-36(1) through (9) ~~and (11)~~ may contest this determination by filing an application for a hearing before the ~~code enforcement board~~ special magistrate within 15 days from the date affixed on the notice of violation. The owner of property posted for a public nuisance as described in subsection 18-36(10) may contest this determination by filing an application for a hearing before the ~~code enforcement board~~ special magistrate within seven days from the posting date of the notice of violation.
- (b) Prior to the expiration of the 20 days provided for in subsection 18-37(~~cd~~), any owner shall have a right to request a hearing before the ~~code enforcement board~~ special magistrate to show cause, if any, why the expense and charges incurred by the city under this article are excessive or unwarranted or why such expenses should not constitute a lien against the property.
- (c) If, after the hearing, the ~~code enforcement board~~ special magistrate determines that the assessment is fair, reasonable, and warranted, the assessment resolution shall be recorded forthwith. If the ~~code enforcement board~~ special magistrate determines that the charges are excessive or unwarranted, ~~it the magistrate~~ shall direct the city ~~manager or his designated code compliance official~~ to recompute the charges and ~~the code enforcement board~~ shall hold a further hearing after notice to the owner upon the recomputed charges.

Sec. 18-40. Enforcement procedures; corrective notices.

- (a) Officers of city code compliance department are hereby empowered to issue written corrective notices and/or notices to appear in misdemeanor court to any person violating the provisions of this article. Officers are further empowered to process these cases for hearing before the city code enforcement board.
- (b) Written corrective notices issued to violators of this article shall state the date observed, the nature of the offense committed, the corrective measures to be taken and the date on or before which such corrections shall be made. If the agent issuing the written corrective notice has reason to believe a violation presents a serious threat to the public health, safety or welfare of the public or that the violation is of such a nature as to require immediate correction, the violator may be required by the notice to effectuate immediate corrective measures upon receipt of the notice. The time period allowed for taking corrective measures shall not exceed 20 days. All such notices issued shall be maintained by the issuing authority for public inspection during normal office hours. Notices mailed to the violator's address indicated on the records of the county property appraiser's most current tax roll of such lot or parcel of land for ad valorem taxation purposes by registered or certified mail, return receipt requested, shall be deemed personal service upon the person for the purpose of this article.
- (c) Any person who has been served with such notice in accordance with the provisions of this article, and who neglects or refuses or fails to fully comply with the corrective notices so ordered and/or to comply within the timeframe so ordered therein, shall be in violation of this article.

Secs. 18-41—18-60. Reserved.

ARTICLE III. FERTILIZER REGULATIONS

Sec. 18-61. Short title.

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

Sec. 18-62. Intent and purpose.

- (a) To provide for the regulation of fertilizers containing nitrogen or phosphorous and to provide specific management guidelines for fertilizer application in order to minimize the negative environmental effects said fertilizers have in and on the waterbodies within and surrounding the city.
- (b) These guidelines and practices are established to help communities, developers, builders, contractors, businesses and homeowners be partners in improving and protecting Florida's environment.
- (c) This article is based on the "Model Ordinance for Florida-Friendly Fertilizer Use" or equivalent as encouraged by F.S. § 403.9337.
- (d) Nitrogen and phosphorous are essential ingredients for plant growth; however, overuse and improper application of these nutrients create water quality issues and pollute our treasured natural waters. They promote algae blooms and other excessive plant growth. Low to no phosphorus fertilizer and slow release nitrogen fertilizer, along with proper utilization, result in absorption by plants and lower levels of nitrogen and phosphorus reaching the water bodies within and surrounding the city and their associated watersheds.
- (e) Certification and training, as required by article IV (Marco Island Lawn and Landscape Maintenance Registration Regulations), will result in increasing the knowledge of lawn and landscape maintenance professionals, and their customers, of:
 - (1) The effects of pesticides, fertilizers and overwatering on the environment;
 - (2) Ways to reduce the amount of fertilizers and pesticides utilized; and
 - (3) Methods to limit water use on lawns and landscapes thus potentially lowering the impacts of nonpoint source pollution on local water bodies.

Sec. 18-63. 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. These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.

Application means the physical deposition of fertilizer to turf or landscape plants.

Applicator ~~has the meaning ascribed to it in section 8-71~~~~means any person who applies, in any manner, fertilizer to turf or landscape plants within the city as defined in this article.~~

Approved best management practices training program means a training program approved per F.S. § 403.9338, or any more stringent requirements set forth in this article that includes the most current version of the Florida Department of Environmental Protection's "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008," as revised, and approved by the city manager ~~or designee~~.

Best management practices means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

~~City manager means the city manager or his designee, who will administer and enforce the provisions of this article.~~

~~Code compliance officer-official has the meaning ascribed to it in section 1-2 of this code or inspector means any designated employee or agent of the city whose duty it is to enforce codes and ordinances enacted by the city.~~

Commercial fertilizer applicator, except as provided in F.S. § 482.1562(9), means any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer and includes the employer of the applicator.

Fertilize, fertilizing, or fertilization means the act of applying fertilizer to a lawn (turf), specialized turf, or landscape plant.

Fertilizer means any substance that contains nitrogen, phosphorus, or any combination of these plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

Guaranteed analysis means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

Impervious surface means a constructed surface, such as a sidewalk, road, parking lot, or driveway, covered by impenetrable materials such as asphalt, concrete, brick, pavers, stone, or highly compacted soils.

~~Institutional applicator has the meaning ascribed to it in section 8-71 means any person, other than a private, noncommercial or commercial applicator who applies fertilizer for the purpose of maintaining turf or landscape plants. Institutional applicators shall include, but shall not be limited to, owners and managers or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites, and any residential properties maintained in condominium or common ownership.~~

Landscape plant means any native or exotic tree, shrub, or groundcover (excluding turf).

~~Lawn and landscape professional means any person who engages in solicitation for the delivery of lawn or landscaping maintenance and services.~~

Low maintenance zone means an area a minimum of ten feet wide adjacent to watercourses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

Leaching means the process by which soluble constituents are dissolved and filtered through the soil by a percolating fluid.

~~Noncommercial applicator has the means meaning ascribed to it in section 8-71 any person other than a commercial fertilizer applicator or institutional applicator who applies fertilizer on turf or landscape plants in the city, such as an individual owner of a single family residential unit.~~

~~Person has the meaning ascribed to it in section 1-2 of this code means any natural person and shall also mean any business, corporation, association, club, organization, and/or any group of people acting as an organized entity.~~

Prohibited application period means the time period during which any of the following are likely: flood watch or warning, or a tropical storm watch or warning, or a hurricane watch or warning is in effect for any portion of Collier County, issued by the National Weather Service, or if heavy rain (World Meteorological Organization definition of heavy rain is rainfall greater than or equal to 50 mm (two inches) in a 24-hour period).

Rainy season means June 1 through September 30 of each calendar year.

Rapid release or water soluble nitrogen means any product containing:

- (1) Ammonium nitrate.
- (2) Ammonium sulfate.
- (3) Calcium nitrate.

- (4) Diammonium phosphate.
- (5) Monoammonium phosphate.
- (6) Potassium nitrate.
- (7) Sodium nitrate.
- (8) Urea (not in the form of slow release nitrogen).
- (9) Others as may be designated in writing by the administrator.

Runoff means the water that results from and occurs following a rain event, or following an irrigation event, because the water is not absorbed by the soil or landscape and flows from the area.

Saturated soil means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this article, soils shall be considered saturated if standing water is present or the pressure of a person standing on the soil causes the release of free water.

Slow release, controlled release, timed release, slowly available, or water insoluble nitrogen means nitrogen in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant longer than a "rapid release nitrogen" product. Forms of slow release, controlled release, slowly available, or water insoluble nitrogen include:

- (1) Isobutylidene diurea (IBUD).
- (2) Resin, polymer, or sulphur coated urea.
- (3) Biosolids or residuals from domestic wastewater treatment.
- (4) Ureaformaldehyde.
- (5) Composted animal manure.
- (6) Others as may be designated in writing by the city manager or designee.

Turf, sod, or lawn means a piece of grass-covered soil held together by the roots of the grass.

Wetlands means those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soils [see Fla. Admin. Code R. 62-340].

Yard waste means shredded yard clippings, leaves, grass clippings, coconuts, limbs and any plant debris created in the act of mowing, trimming and removal of vegetation.

Sec. 18-64. Fertilizer regulations.

- (a) *Applicability.* This section shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the city unless such applicator is specifically exempted by the terms of this section from the regulatory provisions of this section. This section shall be prospective only, and shall not impair any existing contracts.
- (b) *Exemptions.* This section shall not apply to:
 - (1) Bona fide farm operations as defined in the Florida Right to Farm Act, F.S. § 823.14.
 - (2) Other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock.
 - (3) Yard waste compost, mulches, or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil. Yard wastes shall not be disposed of or stored by shorelines, seawalls, swales or near storm drains.

- (4) Athletic fields that are maintained by a public entity and used by the public are exempt from [the](#) fertilizer application regulations [underin](#) section 18-64(f)(1) of this article.
 - (5) Newly planted turf and/or landscape plants may be fertilized only for a 60 day period beginning 30 days after planting, if needed to allow the plants to become well established. Caution should be used to prevent direct deposition of nitrogen and phosphorus into the water.
- (c) *Impervious surfaces.* Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces. Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed. Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container. In no case shall grass clippings, vegetative material, and/or vegetative debris, including coconuts either intentionally or accidentally, be washed, swept, thrown, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, sidewalks or roadways.
- (d) *Fertilizer free zones.*
- (1) Fertilizer shall not be applied within ten feet of any pond, stream, storm drain, watercourse, lake, canal or wetland as defined by the Florida Department of Environmental Protection, or from the top of a seawall.
 - (2) Spreader deflector shields are required when fertilizing adjacent to fertilizer free zones or impervious surfaces.
- (e) *Timing of fertilizer application.* No applicator shall apply fertilizers containing nitrogen or phosphorous to turf and/or landscape plants during the rainy season (June 1 – September 30) and the prohibited application period and to saturated soils.
- (f) *Fertilizer content and application rate.*
- (1) Phosphorus fertilizer shall not be applied to turf or landscape plants unless a soil or tissue deficiency has been verified by an approved test. Where a deficiency has been verified, phosphorous fertilizer shall not be applied at application rates that exceed 0.25 lbs. P₂O₅/1000 ft² per application and not to exceed 0.50 lbs. P₂O₅/1000 ft² per year.
 - (2) Fertilizer applied to turf or landscape plants within the city must contain no less than 50 percent slow release nitrogen per guaranteed analysis label as guaranteed analysis and label are defined in F.S. ch. 576.
 - (3) *Total yearly applications.* Fertilizers shall not be applied more than four times during any one calendar year to a single area. No more than four pounds of nitrogen per 1,000 square feet shall be applied to any turf or landscape area in any calendar year.
 - (4) Where fertilizer application is not described in this article, fertilizer shall be applied in accordance with requirements and directions provided by Fla. Admin. Code R. 5E-1.003 for turf and as found in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs.
- (g) *Education and outreach.*
- (1) The city will provide educational materials, notices and/or presentations notifying residents that fertilizers applied within the city shall be formulated and applied in compliance with this section.
 - (2) The beautification committee, in conjunction with city staff, shall incorporate into their community outreach programs no less than two educational sessions on the requirements of the fertilizer ordinance per year.
 - (3) Retail businesses within the city selling fertilizer are requested to post a notice in a conspicuous location near the fertilizer notifying customers of the fertilizer ordinance.

Sec. 18-65. Permitting, penalties and enforcement.

- (a) *Permitting.* All persons intending to apply fertilizer are required to obtain appropriate permits from the city.
 - (1) A minimum of one business day prior to fertilizer application within the city, the person must apply for an e-mail permit, free of charge, indicating the location, type of fertilizer and acknowledgement that a spreader deflector will be utilized.
 - (2) ~~A code compliance official~~ ~~Codes enforcement~~ may visit any site where fertilization is occurring and stop work if a permit was not received or if improper products or methods are being employed.
- (b) Upon the request of ~~a code compliance official~~ ~~enforcement~~, applicators shall be required to provide the label for fertilizer being applied to verify compliance with this article.
- (c) ~~Violation of this article shall be~~ ~~Any person who violates any provision of this article shall be guilty of a noncriminal infraction. Violators will be~~ ~~is~~ ~~subject to the issuance of a citation imposing the following penalties:~~
 - (1) ~~First violation: a fine up to \$150.00; and~~
 - (2) ~~Each subsequent violation: a fine not to exceed \$300.00.~~
- (d) ~~Any person or persons, firm or corporation, or any agent thereof, who violates~~ ~~Violation of any of the provisions of any section of~~ this article shall be ~~punishable according to the procedures and penalties set forth in chapter 14 of this code and punished~~ by revocation of any certification issued under this article, ~~and other penalties as may be imposed by the code enforcement magistrate pursuant to this Code, chapter 14 of this Code, and Florida law.~~

Secs. 18-66—18-100. Reserved.

ARTICLE IV. NOISE CONTROL

Sec. 18-101. Short title.

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

Sec. 18-102. Intent and purpose.

- (a) It is the public policy of the city that every person is entitled to ambient sound levels that are not detrimental to life, health, and enjoyment of his or her property.
- (b) The ~~Marco Island City~~ ~~City~~ Council finds that ~~unreasonably~~ excessive noise degrades the environment of the city to a degree that such noise:
 - (1) Is harmful to the health, safety, and welfare of city residents and visitors; and
 - (2) Interferes with the comfortable enjoyment of life and property; and
 - (3) Interferes with the well-being, tranquility, and privacy of one's home; and
 - (4) Can cause and aggravate health problems.
- (c) The effective control of ~~unreasonably~~ excessive noise is essential to the health, safety, and welfare of city residents and visitors, and fosters the comfortable enjoyment of life, including, but not limited to, recreation, work, communication, and rest.

- (d) This section is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of residents and visitors of the ~~City of Marco Island~~ through the control, reduction, and prevention of ~~unreasonably excessive~~ noises that disturb, injure, or endanger the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivities.
- (e) Nothing contained in this ~~section~~ ~~article~~ is intended to infringe upon the constitutionally protected rights guaranteed by the Florida Constitution and the First Amendment of the United States Constitution. This section enacts narrowly drawn; content-neutral regulations that are to be interpreted to not unduly restrict constitutionally protected rights.

Sec. 18-103. 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. [These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.](#)

A-weighted sound level means the sound pressure level in decibels as measured with a sound level meter using the A-weighting network as described in ANSI S1.4-1983 issued by the American National Standards Institute. The unit of measurement is the dBA.

Ambient noise means the surrounding or steady background noise, as distinguished from the specific noise which is the subject of the attempted measurement.

C-weighted sound level means the sound pressure level in decibels as measured with a sound level meter using the C-weighting network as described in ANSI S1.4-1983 issued by the American National Standards Institute. The unit of measurement is the dBC.

Construction means any site preparation, assembly; erection, substantial repair, alteration (or similar action) of structures, utilities, public or private right-of-way or similar things. Construction does not include demolition.

Completely enclosed building means a building separated on all sides from adjacent open space or from other buildings by permanent roof and by exterior walls or party walls, pierced only by closed windows and normal entrance or exit doors. Such doors shall not be kept open except for normal ingress and egress.

Commercial zone means ~~uses and activities on~~ lands primarily intended for business or commercial use.

Decibel (dB) means a unit for measuring the amplitude of sound, equal to 20 times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

Demolition means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

Device means a mechanism which is intended to produce, or which actually produces noise when operated or handled.

Duplex means a structure containing two dwelling units.

Enforcement official means any Florida certified law enforcement officer, or community service officer/deputy, or code enforcement ~~official~~ ~~officer~~.

~~*Emergency* means any occurrence or set circumstances involving actual or imminent physical injury to persons or property which demands immediate action. It shall be the burden of the alleged violator to prove the "emergency".~~

Emergency vehicle means a motor vehicle or vessel used by fire-rescue/emergency medical personnel, law enforcement, community service officers, or code enforcement ~~official~~ ~~officers~~; or a motor vehicle or vessel used in response to a public calamity or to protect persons or property from imminent danger.

Emergency work means work made necessary to restore property to a safe condition following a public calamity, work to restore public utilities, or work required to protect persons or property from an imminent exposure to danger.

Equivalent sound pressure level means the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying sound.

[Excessive noise \(see noise disturbance\)](#)

Frequency means the number of complete fluctuations per second of the sound wave.

Intensity (or loudness) means the magnitude of the fluctuation measured in atmospheric pressure units or microbars.

Governmental entity means any federal, state, county, municipal, district, board or separate unit of government created or established by law.

Holiday means those days designated as legal holidays by the [City of Marco Island](#) and federal government.

Institutional zone means ~~uses and activities on~~ lands primarily intended for [non-commercial](#), non-residential ~~or commercial~~ activity such as public lands, schools, [churches/houses of worship](#), or conservation areas.

Motor vehicle means any self-propelled vehicle, such as, but not limited to, passenger cars, trucks, truck trailers, semitrailers, campers, motorcycles, minibikes, go-carts, amphibious craft on land, and dune buggies or racing vehicles which are propelled by mechanical power.

Motorboat means any vehicle which is primarily operated on water or which does operate on water, such as boats, barges, amphibious craft, or hover craft, and which is propelled by mechanical power.

Muffler means any apparatus consisting of baffles, chambers, or acoustical absorbing material whose primary purpose is to transmit liquids or gases while causing a reduction in sound emission at one end.

Multifamily dwelling means a structure containing more than two dwelling units.

Noise [disturbance or excessive noise](#) means any sound, which because of its volume level, duration, and character, disturbs [the peace and comfort](#), ~~injures, or~~ endangers the ~~comfort~~, health, ~~peace, or safety~~ [and welfare](#), ~~or is a nuisance to~~ reasonable persons of ordinary sensibilities, [constituting a nuisance](#). ~~Noise disturbance means any sound which endangers or injures the health of humans or disturbs a reasonable person of ordinary sensitivities.~~

Period of observation means the time interval during which noise and facts are obtained by enforcement officials.

~~[Person means any natural person, individual, association, partnership, corporation, municipality, governmental agency, business trust, estate, trust, two or more persons having a joint or common interest or any other legal entity and includes any officer, employee, department, agency or instrumentality of the United States, a state or any political subdivision of a state or any other entity whatsoever or any combination of such, jointly or severally.](#)~~

Person(s) responsible means, but, is not limited to, any person who has any manner of control over a property, premises, dwelling, structure, location, business, vehicle, device, stereo, or source of sound and may include, but is not limited to, any property owner, tenant, subtenant, business owner, resident, operator or person having operational control, person(s) creating or controlling the volume of sound, property manager, or person(s) in charge or otherwise authorized to make decisions regarding the use of sound equipment, or any combination of such, jointly and severally.

Plainly audible means any sound that can be clearly heard and understood by a reasonable person using such person's ordinary auditory senses, so long as the person's hearing is not enhanced by any device, such as a hearing aid.

Powered model vehicles means any powered vehicles, either airborne, waterborne or landborne, which are designed not to carry persons or property, such as, but not limited to, model airplanes, boats, cars, rockets, and which are being propelled by mechanical means.

Private right-of-way means any street, avenue, boulevard, highway, sidewalk, bike path, or alley, or similar place, which is not owned or controlled by a governmental entity.

Property boundary means an imaginary line exterior to any enclosed structure, at the ground surface, which separates the real property owned by one person from that owned by another person, and its vertical extension.

~~*Public right-of-way* means any street, avenue, boulevard, highway, alley, or public space, which is dedicated to, owned, or controlled by a public governmental entity.~~

Public space means any property or structures thereon normally accessible to the public.

Receiving property means at or within the property line, which is receiving sound from another property, but does not include public rights-of-way.

Residential zone means ~~uses and activities on~~ lands primarily intended for residential use.

Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity, and frequency.

Sound source means any person, animal, device, operation, process, activity, or phenomenon that emits or causes sound.

~~*Unreasonably excessive noise from a property* means sound from any property, which is unreasonably loud and raucous meaning any sound that, because of its volume level or duration, jars, injures, or endangers the health, safety, welfare, or wellbeing of a reasonable individual of ordinary sensibilities. Unreasonably excessive noise violations are considered irreversible or irreparable.~~

Volume means the degree of intensity, audibility, quality, strength, or loudness of sound.

Weekday means any day, Monday through Friday, which is not a holiday.

Sec. 18-104. General noise prohibitions.

- (a) *Prohibition of ~~unreasonably~~ excessive noise from a property.* It ~~shall be~~ unlawful for any person(s), including the property owner(s), to permit, cause, allow, create, emit, or sustain ~~unreasonably~~ excessive noise from a property, including ~~the~~ air space above the property thereof, located in the City of Marco Island. Noise ~~disturbances~~ violations are ~~considered~~ irreversible and irreparable violations of this article.
- (b) *Prima facie evidence.* For the purposes of this subsection, the following shall constitute prima facie evidence that ~~a sound noise~~ (whether recurrent, intermittent, or continuous) is ~~unreasonably~~ excessive ~~and raucous if~~:
- (1) Between the hours of 10:00 p.m. and 7:00 a.m., the sound is plainly audible a minimum of 50 feet from the property line of the source of the sound or within a fully enclosed structure or residence on any receiving property; or
 - (2) Sound pressure levels by receiving land use;

Receiving Land Use Category	Time	Sound Pressure Level Limit (dBA)
Residential zone, public space, or institutional zone	7:00 a.m.—9:00 p.m.	68
	9:00 p.m.—7:00 a.m.	60
Commercial zone	7:00 a.m.—9:00 p.m.	72
	9:00 p.m.—7:00 a.m.	65

- (3) Multifamily dwellings and duplexes. ~~In the case of multifamily dwellings and duplex dwelling units, it shall be~~ unlawful to create or permit to be created any sound that exceeds a sound pressure level of 50 dBA, during the hours between 7:00 a.m. to 9:00 p.m., or 45 dBA during the hours between 9:00 p.m. and 7:00 a.m., ~~daily,~~ measured from ~~inside any other neighbor's~~ dwelling unit within such multifamily or duplex structure. The plainly audible standard does not apply ~~to this paragraph in multifamily dwellings and duplexes.~~
- (cd) It ~~shall be~~ unlawful for any person ~~owning or in possession of to use or rent~~ any building or premises ~~to use or rent the same~~ for any ~~purpose business or residential use, or for any purpose of pleasure or recreation~~ if such use makes, continues, or causes to be made or continued, any noise disturbance, ~~as defined in this article within the limits of the city.~~

Sec. 18-105. ~~Specifically noise prohibited prohibitions activities.~~

~~The following specific standards and restrictions shall apply to specific uses and/or activities in the city except for such exemptions as are enumerated herein. In addition to the standards for noise disturbances in section 18-104, the~~ The following acts are declared to be ~~noise disturbances loud, disturbing, excessive noise and/or unreasonably excessive noise from a property,~~ in violation of this article, ~~but said acts shall not be deemed to be exclusive. Unless otherwise specified herein, all other unlawful noise-generating activities are prohibited. Noise violations are considered irreversible and irreparable.~~

- (1) *Construction equipment and activity.* Operating or causing to be operated any equipment or performing any activity in furtherance of construction, ~~repair, alteration~~ or demolition work on buildings, structures, roads, or projects within the city:
 - a. Between the hours of 7:00 p.m. and 7:00 a.m.
 - b. For pile driving activities, between the hours of 7:00 p.m. and 8:00 a.m.
 - c. On Sundays, or any holidays ~~declared by the City of Marco Island or the government of the United States.~~
- (2) *Activities in the vicinity of schools, ~~churches~~houses of worship, and health care facilities.* Creating any ~~excessive~~ noise on any street adjacent to any school, ~~church~~house of worship, or health care facility, which unreasonably interferes with the workings of such institution, or ~~causes excessive noise to be heard within such facilities which disturbs patients in a health care facility.~~
- (3) *Landscape maintenance.* Undertaking landscape maintenance activities, including the use of air-blowing or vacuum equipment, ~~in such a manner as to create noise that is plainly audible~~ across a real property boundary between the hours of 9:00 p.m. and 7:00 a.m. Golf courses engaged in the regular maintenance of greens, fairways, practice areas, etc., are exempt from this provision.
- (4) *Fireworks.* The use of fireworks ~~as defined in F.S. ch. 791.01~~ is prohibited at any time without a permit ~~within the incorporated limits of the City of Marco Island pursuant to F.S. §§ 791.014(4)(a) and (b).~~
- ~~(5) It shall be unlawful for any person owning or in possession of any building or premises to use or rent the same for any business or residential use, or for any purpose of pleasure or recreation if such use makes, continues, or causes to be made or continued, any noise disturbance, as defined in this article within the limits of the city.~~

Sec. 18-106. Exemptions.

The following noises shall be exempt from the restrictions set forth in the other sections of this article:

- (1) Sound ~~made~~ by a horn or other warning device required or permitted by F.S. § 316.271 ~~or F.S. § 327.65~~ other statutory provision shall be regulated in accordance with state law.

- (2) Noises resulting from any authorized emergency vehicle, when responding to an emergency call or acting in time of emergency or any other public safety operation.
- (3) Noises resulting from emergency work, which is to be construed as work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from any imminent exposure to danger. It shall be the burden of an alleged violator to prove an emergency.
- (4) Noises incidental to city approved refuse collection.
- (5) Community events such as parades, festivals, sporting events, or fairs being conducted in accordance with the conditions contained in a special event permit granted by the city manager ~~or designee.~~
- (6) Noises associated with city operations, construction, or maintenance.
- (7) Noises associated with police or fire department training.
- (8) Sound from cCommunity and organized sporting events and school activities.
- (9) Noise associated with lightning warning systems.
- (10) Non-amplified crowd ~~sounds-noise~~ resulting from otherwise lawful public gatherings.
- (11) Noise from aAny aircraft operating in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instructions used pursuant to and within the duly adopted federal air regulations.
- (12) Amplified sound on property controlled by a governmental agency during governmental sponsored activities.
- (13) Sound produced by activities in the fields, grounds, or facilities of any sporting venue to which the public or community has access.
- (14) Sounds generated by Houses of worship (~~excluding~~ between 7:00 ap.m. and 7:00 pa.m.).

Sec. 18-107. Temporary exemption.

- (a) A person may seek a temporary exemption from the provisions of this section ~~by seeking an exemption from the city manager.~~ A completed exemption application must be submitted, on a form provided by the city, and submitted to the designated city department. An exemption may only be issued for a specified limited period of time and ~~shall set forth is subject to such~~ conditions or requirements ~~as shall be~~ deemed necessary to mitigate potential adverse effects upon neighboring properties and to otherwise ensure that the public health, safety, and general welfare is protected. The city manager may adopt administrative rules, ~~as he or she deems necessary,~~ to implement the provisions of this section.
- (b) In determining whether an exemption shall be issued, the city manager shall consider the following criteria:
 - (1) The granting of the exemption will not establish a precedent of or encourage more incompatible uses in the surrounding area; and
 - (2) The applicant has demonstrated that enforcement of the provisions of this ~~chapter article~~ would create an undue hardship on the applicant because of unique circumstances peculiar to the applicant; ~~and.~~
- (c) The city manager shall grant or deny an application for an exemption within 15 days from the date of the filing of a complete application. An application may be denied if it is determined to be incomplete. If no ruling has been made, upon the expiration of the 15th day, or if the 15th day is a Saturday, Sunday, or holiday, upon the following working day, the application shall be deemed to be granted.
- (d) Any violation of any conditions imposed upon the granting of the exemption shall be deemed a violation of this ~~section~~article.

Sec. 18-108. Enforcement and penalties.

~~The authority to enforce the provisions of the City of Marco Island Noise Control Ordinance shall be vested in enforcement officials. Nothing in this section shall prohibit the sworn law enforcement officers identified as enforcement officials from charging persons responsible for acts, which affect the peace and quiet of other persons, that violate this article with~~ for breach of the peace or disorderly conduct ~~under pursuant to~~ F.S. § 877.03, ~~as may be amended from time to time. This section shall be enforced by an enforcement official as follows:~~

- (1) Any person(s) ~~responsible for a violation of the City of Marco Island Noise Control Ordinance violating this article~~ shall be given a warning that a notice of violation ~~or citation~~ will be issued ~~for violation of the city's noise ordinance~~ if the person(s) responsible fails to bring the sound level into compliance within five minutes ~~and maintain a compliant sound level~~ for the ~~next~~ 48 hours ~~that follow~~. The notice and warning may be given in writing or verbally ~~and to~~ inform the person(s) responsible for a purported ~~excessive noise disturbance violation of that there is a the~~ violation of the City of Marco Island's Noise Control Ordinance. No warnings will be issued after 11:00 p.m. ~~The notice shall include, at a minimum, the following:~~

~~You are being notified that you are in violation of the City of Marco Island's Noise Control Ordinance. You are being given a five minute warning to bring the sound level into compliance with the City of Marco Island's Noise Control for the next 48 hours. The failure to timely bring the sound level into compliance is a violation of the City of Marco Island's Noise Ordinance.~~
- (2) The ~~enforcement code compliance~~ official may issue a notice of violation or citation ~~pursuant to the procedures and penalties set forth in chapter 14 of this code~~ to any person(s) responsible ~~who for failure to does not~~ timely bring the sound level into compliance.
- (3) Any person(s) responsible for a violation of ~~this article the City of Marco Island Noise Control Ordinance, which violations are that jars, injures, or endangers the health, safety, welfare, or wellbeing of a reasonable individual of ordinary sensibilities, because of the volume level or duration of the noise, considered irreparable and irreversible in nature,~~ may, without warning, be immediately issued a ~~citation or~~ notice of violation ~~for an irreparable and irreversible offense. by an officer.~~
- (4) ~~Regardless of whether if the property owner person(s) caused responsible for a the violation noise disturbance occurring on their property of the City of Marco Island Noise Control Ordinance is not the property owner,~~ the property owner will be issued a notice of violation ~~or citation~~ for each individual violation of ~~the City of Marco Island Noise Control Ordinance this article.~~ The first violation ~~of the City of Marco Island Noise Control Ordinance by a property owner,~~ in a rolling twelve-month period, will result in the issuance of a notice of violation, which shall constitute an official warning. All subsequent ~~violations in a rolling twelve-month period shall result in issuance of citations, or~~ notices of violations ~~issued to the property owner, in a rolling twelve-month period, shall that~~ require a hearing before the ~~City of Marco Island Code Enforcement S~~pecial ~~M~~agistrate, and the potential imposition of a fine for the violation(s).
- (5) Any person(s), including the property owner(s), who violates any of the provisions of this section shall be subject to a civil penalty not to exceed \$250.00 for a first violation (excludes the violation which resulted in the property owner's first warning), \$500.00 for the second violation, and \$1,000.00 for the third violation, \$2,000.00 for the fourth violation, \$4,000.00 for the fifth violation, and \$5,000.00 for the sixth and subsequent violations occurring within one year after a finding of violation of the previous offense or the payment of a citation for a violation of this ~~ordinance article.~~ ~~Each violation of this section article shall constitute a separate and distinct offense for which a civil citation or notice of violation may be issued.~~
- (6) Joint and several responsibility. Any person(s) responsible for ~~unreasonably~~ excessive noise from a property or from a vehicle, as defined herein, may be liable for the violation under this section. More than one person may be found to be responsible for the violation.

(7) The city may use all available means of enforcement provided in chapter 14 of this code.

~~Sec. 18-109. Civil remedies.~~

~~In addition to the penalties provided in section 18-108, the city manager is hereby authorized to institute any appropriate action or proceeding including suit for injunctive relief in order to prevent or abate violations of this article.~~

~~Sec. 18-110. Jurisdiction and enforcement.~~

~~(a) This article is enforceable by enforcement officials.~~

~~(b) Such officers and officials shall have the power and duty to issue such orders and to make such investigations and reports in connection with the provisions of this article, or cause any inspections to be made for noise violations in accordance with this article and the Florida Statutes.~~

~~Sec. 18-111. Public nuisance.~~

~~Unreasonably excessive noise is declared a public nuisance as defined and discussed under Chapter 18 Environment/Article II Nuisance, Litter, Weed, Plant and Right-Of-Way Control. The prosecution of an offense under this section does not limit the city's right to abate the public nuisance, or from seeking injunctive relief, by any means provided by law. The city attorney or designee(s) may bring suit on behalf of the city against the person(s) responsible for causing, maintaining, permitting, or allowing a public nuisance under this section. This section shall not prohibit or otherwise restrict any person(s) from bringing suit against a public nuisance for unreasonably excessive noise. Relief may be granted according to the terms and conditions of F.S. § 60.05, or any other means provided by law.~~

Secs. ~~18-109~~~~18-112~~—18-140. Reserved.

ARTICLE V. ENDANGERED, THREATENED OR LISTED SPECIES PROTECTION

Sec. 18-141. Purpose and intent.

The purpose of this article is to protect the species currently listed by the Florida Fish and Wildlife Conservation Commission (FWC), United States Fish and Wildlife Service (USFWS) and Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as endangered, threatened or of special concern or status in the City of Marco Island, Florida, by including measures for protection and/or relocation of endangered, threatened, or species of special concern or status.

The presence of listed species on a parcel of property presents legitimate hardship, and may constitute reasonable grounds for consideration of a variance for construction setbacks and/or landscape requirements, that are consistent with all state and federal requirements.

Sec. 18-142. 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: These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.

Active burrow means a potentially occupied burrow for Burrowing Owls that contains eggs or is used by flightless young.

Authorized or registered agent means a person or applicant who has been approved by FWC to perform protective actions specified by an incidental take permit.

Burrow means a hole in the ground used as a shelter by wildlife, especially gopher tortoises and burrowing owls, to incubate, birth, and raise offspring.

Inactive burrow means a potentially occupied burrow for burrowing owls that does not contain eggs or flightless young.

Listed species means any species that is commonly found on Marco Island and which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range and is listed by CITES, USFWS and FWC.

Posting means stakes, flagging, signage, perches, string, rope, pipes, or other means to identify a protection zone.

Protection zone means the buffer area deemed necessary by state or federal guidelines or rules to minimize or avoid disturbance or taking of listed species.

Taking means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or an attempt to engage in any such conduct. This may also include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

Sec. 18-143. New development.

For new development or any order that requires a pre-permit inspection, the following, as applicable, shall serve as guidelines or standards for the protection of endangered, threatened or species of special concern or status as prescribed by the goals, objectives and policies of the conservation element of the Marco Island Comprehensive Plan:

- (1) Prior to submission of any permit application, the applicant must survey 100 percent of the affected property for the most commonly found listed species on Marco Island: the Burrowing Owl (*Athene cunicularia floridana*), the Gopher Tortoise (*Gopherus polyphemus*), American Osprey (*Pandion haliaetus*), beach-nesting and migratory coastal bird species, including American Oystercatcher (*Haematopus palliatus*), Black Skimmer (*Rynchops niger*), Least Tern (*Sternula antillarum*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), Snowy Plover (*Charadrius nivosus*), Reddish Egret (*Egretta rufescens*), Roseate Spoonbill (*Platalea ajaja*), Tricolored Heron (*Egretta tricolor*), and Little Blue Heron (*Egretta caerulea*), and Bald Eagle (*Haliaeetus leucocephalus*). If a listed species is on the property, the appropriate state and/or federal agency must be contacted for management guidelines, and compliance with all agency permits and protections is required.
- (2) If a listed species is found on the property, then the applicant must include the survey with the permit application and indicate that a state or federal permit is being pursued for removal, relocation or protection of the listed species onsite. The survey must be conducted by a professional environmental surveyor licensed to conduct such work or an FWC authorized or registered agent. In addition, all burrowing owl burrows and gopher tortoise must be posted by the City of Marco Island, Audubon of the Western Everglades (AWE), or Florida Fish and Wildlife Conservation Commission (FWC) staff or authorized agents.
- (3) Further, a management plan for a protection zone during construction shall be submitted [to the city](#) for review and approval [by the community affairs department](#) for the management of on-site habitat and wildlife, including measures for protection and/or relocation of species of special status. Such plans shall comply with current federal, state and local policies. The city may consider and utilize recommendations and letters of technical assistance of the FWC, and recommendations and guidelines of the USFWS, in issuing developmental orders on property containing wildlife species of special status.

Sec. 18-144. Activities within protection zones.

The following activities are permitted within the protection zones of the burrowing owl and gopher tortoise burrows with the understanding that if any burrow does collapse, it must be reported immediately to the [City of Marco Island](#) to ensure proper rescue efforts can take place:

- (1) City-approved volunteers, including FWC and Audubon staff and volunteers, who maintain burrows in designated zones in the city, may conduct maintenance activities that shall include the clipping of vegetation within the protection zone, staking and posting the zone with flagging tape, string or rope, and signage, and recording pertinent data.
- (2) FWC or Audubon-trained contractors may enter the protection zone to remove debris with the full understanding that they can do nothing to disturb or harm the species or burrow in any manner. Contractors and lawn/lot maintenance companies shall accept full responsibility for the actions of their employees to ensure that all laws protecting such species are adhered to. Entry into a protection zone is prohibited except by authorized or registered agent, property owner, FWC, and trained city or Audubon staff, volunteers or consultants.
- (3) FWC or Audubon-trained city employees and property owners may enter the protection zone for the purpose of maintaining vegetation if using equipment that does not exert pressure on the ground to ensure the burrow does not collapse.
- (4) Scientific research/investigations approved by the FWC and/or the USFWS may occur within the city. The city shall be notified of all such research/investigations and provided with all study reports and publications.
- (5) Authorized representatives of developers including, but not limited to, professional environmental consultants that are conducting surveys or monitoring in conjunction with private or municipal construction may enter only after training or permit from FWC.
- (6) To prevent unnecessary disturbance, take or burrow collapse, operation and parking of any vehicles or equipment is prohibited within 33 feet of burrowing owl burrows and within 25 feet of gopher tortoise burrows.

Sec. 18-145. Protection and permitting procedures.

Requirements for incidental take permitting and protecting listed species are as follows:

- (1) No active or inactive owl and/or gopher tortoise burrow, or nests of any other listed species, may be taken without proper state or federal permits issued by the FWC or USFWS, as required.
- (2) If state or federal permit(s) are issued, they shall be posted on site during all phases of the construction.
- (3) No city building permits will be issued for applicants to take a gopher tortoise burrow, unless FWC has issued permit to take the tortoise burrow(s) and construction can commence with a protection zone in place. No city permits will be issued for applicants to take a burrowing owl burrow unless an FWC migratory nest/burrow removal permit has been issued and provided to the city. Only inactive burrows can be taken per FWC migratory nest/burrow removal permit provisions and the FWC Burrowing Owl Guidelines. For burrowing owls, the protection zone ~~requirement shall be a protection zone, shall~~ consist of silt fencing, erected prior to construction activities around two to three sides of each affected burrow, leaving one or two sides open for species ingress and egress, as follows:
 - a. Ten-foot buffer in all directions around the entrance of burrowing owl burrows during the non-breeding season (July 11 through February 14).

- b. Thirty-three-foot buffer in all directions around the entrance of burrowing owl burrows during the breeding season (February 15 through July 10).
 - c. FWC or Audubon trained contractors will be responsible for maintaining the protection zone during construction and informing all workers and subcontractors to avoid the protection zone and to not do anything that would violate the burrow(s) in such a way as to make it collapse. Any contractor that violates or destroys a protection zone will be subject to penalties, as provided in this article. Such protection zone shall be removed upon completion of construction activities.
- (4) No city permits will be issued for applicants to take a gopher tortoise burrow, unless FWC has issued permit to take the tortoise burrow(s) and construction can commence with a protection zone in place.

The protection zone requirements for gopher tortoises shall be:

- a. ~~A protection zone, consisting of~~ Silt fencing, having a diameter of at least 25 feet, erected prior to construction activities around two to three sides of each affected burrow during all phases of construction, leaving one or two sides open for species ingress and egress.
- b. FWC or Audubon trained contractors will be responsible for maintaining the zone and informing all workers and subcontractors to avoid the zone and to do nothing to violate the burrow(s) in such a way as to make it collapse. Any violation or destruction will ~~place~~ subject the contractor ~~subject~~ to penalty. Such protection zone shall be removed upon completion of construction activities.

All protection plans shall be subject to review and approval by the city environmental specialist ~~of the community affairs department~~. The city may consider and utilize recommendations and letters of technical assistance of the FWC, and recommendations and guidelines of the USFWS, in issuing development orders on property containing wildlife species of special status. No development order will be effective until all required state and federal permits and authorizations have been obtained and submitted to the city.

- (5) All FWC and USFWS rules and guidelines relating to protection and/or taking procedures shall be followed if not described in this article.
- (6) The city will enforce trash and food waste management policies to protect listed species and control nuisance wildlife and human health threats. Trash bins must remain closed at all times and secured from wildlife entry. Discarding of food waste or other trash is prohibited anywhere outside proper receptacles.
- (7) Feeding any wildlife is prohibited in the city, except the use of bird feeders at least 300 feet from any designated conservation area.
- (8) State and federal protections will be enforced for bald eagles, ospreys, shorebirds, wading birds, brown pelicans, and their nests and roost sites, including required protection buffer zones.
- (9) State and federal protections for manatees will be enforced within the city, including manatee speed zones on waters of the city.
- (10) Mangroves, dunes and dune vegetation are protected from damage and destruction because of their value to listed species as habitat and the well-documented protection they provide from tropical storms and coastal inundation and erosion. Trimming of mangroves is regulated by the state department of environmental protection. Any permits issued for the removal of mangroves or any required mitigation related to mangrove impacts shall be administered by FDEP.
- (11) To protect the regionally significant populations of beach-nesting birds and migratory flocks within the city, the following policies are in effect:
 - a. No trespassing in posted or closed nesting or habitat areas (protection zones).
 - b. Fireworks, dogs and other lethal disturbance sources are prohibited on beaches.

- c. Drones, kites, and other aerial disturbances are prohibited within 500 feet of posted avian listed species nests or habitats.

Sec. 18-146. Enforcement and penalties.

The city is authorized to take the following steps in order to enforce the provisions of this article, to protect and post the species listed herein.

- (1) The city shall seek the property owner's permission to enter property for the purpose of inspection and monitoring of any protected species.
- (2) *Search warrant or administrative inspection warrant.* The city, ~~through the city attorney~~ may seek to obtain a search warrant or administrative inspection warrant, as may be appropriate, from the appropriate authority to gain access to private property for the purposes of inspection and monitoring if such lawful entry under of this section has previously been denied by the property owner.

~~(3) *Code enforcement.* Notwithstanding any of the above, the city manager or designate may cite any property owner to the city's Code enforcement special magistrate or county licensing board for violation of any provision of this article under F.S. § 162, part II. A violation of any condition or requirement under this article, or of a permit issued pursuant to this article, shall be a violation of this article.~~

~~(4) *Injunctive and other relief.* City council, through the city attorney, may file a petition in the name of the city in the circuit court of the county or such other courts as may have jurisdiction seeking the issuance of an injunction, damages, or other appropriate relief to enforce the provisions of this article or other applicable law or regulation.~~

~~*Remedies nonexclusive.* The remedies provided for in this article are not mutually exclusive. The city manager or designate may take any, all, or any combination of these actions against a noncompliant business/person.~~

~~Sec. 18-147. Penalties.~~

~~(3) *Civil penalties.* In addition to ~~and as a supplement to~~ any civil and criminal penalties provided by state and federal statutes, violations of this article shall be punishable under the penalties and procedures set forth in ch.14 of this code, including the following shall apply fines:~~

~~(1) Any person who is found to have violated any provision of this article or any condition of a permit issued pursuant to this division, shall be, upon conviction, subject to the following penalties:~~

- a. First offense—Minimum of \$150.00, not to exceed \$500.00 for each offense as provided for in F.S. § 162.22;
- b. Second offense—Minimum of \$500.00, not to exceed \$1,500.00, as provided for in F.S. § 162.09; and
- c. Third offense—Minimum of \$1,500.00, not to exceed \$2,000.00, as provided for in F.S. § 162.09.

~~(2) Each separate violation shall constitute a separate offense, and upon conviction of a specified ordinance violation, each day of violation shall constitute a separate violation.~~

~~In addition to the penalties provided herein, the city may recover reasonable attorney's fees, court costs, court reporter's fees and other expenses of litigation by appropriate suit at law against the person found to have violated this division or the orders, rules, regulations and permits issued hereunder.~~

Secs. 18-1487—18-170. Reserved.

ARTICLE VI. PALM LETHAL YELLOWING (PLY) DISEASE

Sec. 18-171. Intent and purpose.

It is the purpose of this article to establish regulations and management practices to protect the community from potential adverse impacts related to Palm Lethal Yellowing (PLY). It is the intent of this article to proactively identify and contain PLY within the city through a PLY suppression inoculation program for tree species susceptible to PLY and to mandate removal of PLY infected or carrier trees. Any tree infected with PLY, including without limitation, all species of coconut palm trees and any tree that is a carrier of the disease, is hereby declared a public nuisance.

Sec. 18-172. 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: These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.

Certified contractor means a contractor licensed by the State of Florida which license permits the contractor to inoculate trees with the antibiotic(s) for PLY.

Coconut palm tree means any and all varieties of palm trees of the genera *Cocos nucifera*.

Collier County owned disposal site means the Collier County Solid Waste Transfer Station located on Marco Island or the Collier County Landfill.

Localized state of emergency means a determination that PLY conditions exist within or proximate to a specific geographical area that require immediate waiver of procedures and formalities otherwise required in order to take whatever prudent action is necessary to ensure the public health, safety and welfare.

PLY (palm lethal yellowing) means the disease that is spread by an insect, the plant hopper, and is known to affect at least 38 species of palm trees.

~~*Public nuisance* shall mean any tree infected with a plant disease known as the PLY, including without limitation, all species of coconut palm trees and any tree that is a carrier of the disease.~~

Sec. 18-173. Declaration of localized palm lethal yellowing (PLY) emergency.

- (a) F.S. ch. 252 authorizes the waiver of procedures and formalities otherwise required in order to take whatever prudent action is necessary to ensure the health, safety and welfare of a community in the event of a state of emergency. In the case of PLY, city council shall make a determination that a localized state of emergency exists. However, if the threat is deemed imminent, the city manager ~~or designee~~ may make the declaration, subject to ratification by city council at the next regularly scheduled meeting. The city manager ~~or designee~~ shall provide city council with the boundary for the area(s) subject to the localized state of emergency.
- (b) Upon declaration, the localized state of emergency from the PLY shall continue until the city manager ~~or designee~~ determines that the threat of danger no longer exists and terminates the emergency. The declaration of termination of the localized state of emergency is subject to ratification or rejection by the city council at the next regularly scheduled meeting after the declaration or termination occurs.

Sec. 18-174. Emergency measures within designated areas.

In addition to any other powers conferred by law, the city manager, ~~or designee~~, may order and promulgate one or more of the following measures to be effective within designated areas during the period of such declared

emergency, and with such limitations and conditions as may be deemed appropriate to protect against damage or loss of property by PLY:

- (1) Require the mandatory inoculation of all coconut palm trees.
- (2) Require removal of palm trees found to be infected by, or a carrier of PLY, by the property owner within five days from the date the tree(s) are found to be diseased or as determined by the city manager ~~or designee~~.
- (3) Utilize all available resources of the city government as reasonably necessary to cope with the emergency, including expenditures for the survey of the existing coconut palm tree population, the inoculation of city-owned coconut palm trees, the removal of infected trees on city-owned property and on private property when the owner has failed to comply with mandated inoculation or removal thereof, and to make other reasonable expenditures in implementing this code.
- (4) Have suspected trees inoculated or ~~have such trees~~ removed in lieu of mandating inoculation or removal by landowner.
- (5) Curtail the transportation of coconut palm trees into or out of the city.

The city manager ~~or designee~~ shall set boundaries for the areas requiring mandatory inoculation.

Sec. 18-175. Unlawful activities and mandatory inoculation.

- (a) Upon declaration of a localized state of emergency, it shall be unlawful for any owner of ~~any parcel of~~ land within an area designated for mandatory inoculation to keep or maintain any coconut palm tree, Christmas palm tree or other carrier of PLY without providing inoculation and/or treatment documentation as approved by the city manager ~~or designee~~.
- (b) If inoculation of a tree(s) is mandated pursuant to this article, it shall be the duty and responsibility of ~~the property owners of any such property or parcel of land containing such tree~~ the property owners to have the trees on their property inoculated, pursuant to this section, with an antibiotic approved by the city manager ~~or designee~~.
- (c) Inoculations shall be performed a minimum of three times a year, at the intervals of every 100 to 120 days, with inoculation to begin within 15 days after public notification of the mandatory inoculation. Trees which were inoculated within 90 days prior to public notification of the state of local emergency may continue inoculations at intervals of 100 to 120 days from the last inoculation, provided proof of that inoculation is given to the city ~~manager or designee~~ within 30 days after public notification. The inoculation schedule may be modified by the city manager ~~or designee~~ as necessary to affect the intent and purpose of this article.

Sec. 18-176. Public notice.

At least 15 days prior to the mandated inoculation periods, the city ~~manager or designee~~ shall inform property owners of their duties and responsibilities under this article by ~~place a providing~~ public notice in a newspaper of general circulation published within the city, ~~a notice shall be posted~~ in city hall and on the city's website ~~to inform property owners of their duties and responsibilities under this code~~.

Sec. 18-177. Determination of compliance with mandatory inoculation; inoculations by owner.

- (a) Certified contractors that inoculate affected palms must ~~submit provide the city with~~ submit provide the city with a list of inoculated palms within five days of inoculation ~~to the city manager or designee~~. These lists ~~should shall~~ include the name of the contractor, license number, the name of the property owner, property address, number and species of palms located on the property, and the number of palms inoculated.

- ~~(b)~~ After the 15-day time period for compliance with provisions for inoculation described in this code, the city manager or designee may make a determination of and compile a list of those persons owning land or parcels of property upon which susceptible palm trees are located who have not complied with the requirement of this code or have not submitted a certificate of compliance.
- ~~(be)~~ A property owner may at any time inoculate the property owner's trees; however if any such inoculation is required, the antibiotic and treatment procedures used must be in accordance with generally accepted inoculation practices.
- ~~(ce)~~ Property owners who inoculate trees after the city manager or designee has determined such inoculation is required, shall within ten days of having the treatment performed, provide to the city manager or designee written proof of purchase for materials and equipment used in this treatment and execute a certificate of compliance.
- ~~(de)~~ Examples of PLY susceptible palm species within the city shall include without limitation, the following:

Coconut	Date	Jamaican Tall
Christmas	Malayan Dwarf	<i>Pritchardia</i> sp.
Clustering Fishtail	Malayan	Maypan cultivar
Windmill	Screwpine	Panama Tall

Note: PLY does not attack Cabbage, Royal, Mexican ~~W~~washingtonia, Foxtail, Alexandra, Thatch or Queen palms.

Sec. 18-178. Disposal of PLY trees.

It ~~shall be~~ unlawful for any property owner ~~of any parcel of land within the city~~ to permit or retain ~~on said property~~ any tree infected with PLY. Trees determined to be infected with PLY by the city manager or designee must be removed and disposed of by burial at a county owned disposal facility within five days after notification to owner.

Sec. 18-179. Liability of owner for costs.

- ~~(a)~~ ~~Within the time period referred to in this article for mandated inoculation, the property owner of any parcel of land within the city on which said trees are located must inoculate or make provision for inoculation of trees by persons who have been approved by the city manager or designee to provide the treatment necessary to abate PLY.~~
- ~~(ab)~~ If a property owner fails to provide for inoculation, the city may inoculate or have its agent inoculate such trees and the property owner shall be liable for the expenses incurred by the city, its agents or contractors, in treating the affected palms. The expenses of inoculation shall constitute a lien on the real property upon which the inoculation has taken place in accordance with section 18-180.
- ~~(be)~~ If infected trees have not been removed by owner within five days after notification, the city shall abate the nuisance and shall, through its employees, agents or contractors, be authorized to enter upon the property and take steps as are reasonably required to effect abatement. The expenses of tree removal shall constitute a lien on the real property upon which the tree removal has taken place, in accordance with section 18-180.

Sec. 18-180. Assessment for work done by city.

- (a) For abatement work performed by the city as provided for in section 18-179 ~~(b) and (c)~~, an invoice shall be mailed to the property owner for all costs associated with the inoculation or tree removal, including any administrative costs actually incurred by the city.
- (b) If the property owner fails to pay the invoice within a 20-day period, the city may assess ~~such the invoiced~~ costs against ~~such the~~ parcel. ~~The costs shall be reported to the city council. Thereupon, the city council,~~ by

resolution ~~of the city council, may assess the costs against such parcel.~~ The resolution shall describe the land and show the cost of inoculation(s) and/or tree removal, and administrative costs actually incurred by the city. Such assessment shall be a legal, valid, and binding obligation which shall run with the property until paid. The assessment shall be due and payable 20 days following the mailing of the notice of assessment, after which interest shall accrue at the rate of 12 percent per annum on any unpaid portion thereof.

- (c) The city ~~manager~~ shall mail a notice to the owner of record of each of the parcels of land described in the resolution, at the last available address for such owner, ~~which notice shall be in substantially the following form:~~

~~City of Marco Island~~

~~Legal Notice of Assessment of Lien, Date, Lien Number~~

~~Legal Description:~~

~~You, as the owner of record of the property above described, are hereby advised that the City of Marco Island, Florida, did, on the _____ day of _____, ___ order the _____ of trees on said property.~~

~~A copy of such order has been heretofore sent to you or the owners of record at that time. Failure to comply with Palm Lethal Yellow (PLY) regulations required actions by the City of Marco Island at a direct cost of \$_____ and administrative costs of \$_____, for a total cost of \$_____.~~

~~Such costs by a resolution of City Council have been assessed against the above property on _____, ___ and shall become a lien on the property twenty (20) days after such assessment.~~

- ~~(d) If an owner fails to pay any such assessment within 20 days after said assessment has been made, the city manager shall cause a certified copy of the assessment resolution to be recorded in the public records and the assessment shall constitute a lien on the property as of the date of the recording.~~
- ~~(e) After the expiration of one year from the date of recording of the assessment of lien, as provided for in this section, a suit may be filed to foreclose the lien. Such foreclosure proceedings shall be instituted, conducted, and enforced in conformity with the procedures for foreclosure on municipal special liens as set forth in F.S. ch. 173, which provisions are hereby incorporated in this section in their entirety to the same extent as if such provisions were set forth in this section verbatim.~~
- ~~(f) The liens for delinquent assessments imposed under this section shall remain liens coequal with the lien of all state, county, district and municipal taxes, superior in dignity to all other filed liens and claims, until paid as provided in this section.~~

Sec. 18-181. Introduction of diseased trees or carriers prohibited.

No person shall knowingly sell, offer for sale, transport into the city for sale, plant or cause to be planted, trees with or carriers of PLY. ~~The city manager or designee~~ Code compliance officials are authorized to conduct reasonable inspections to verify that this code section is not being violated.

Sec. 18-182. Violations and penalties.

Violations of this article shall be punishable according to the procedures and penalties set forth in chapter 14 of this code. ~~(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 exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days, or by both such a fine or imprisonment. Each violation or noncompliance shall be considered a separate and distinct offense. Further, each day of continued violation or noncompliance shall be considered as a separate offense.~~

~~(b) Nothing contained in this section 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. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.~~

- (c) Further, nothing in this section shall be construed to prohibit the city from prosecuting any violation of this article by means of a code enforcement board established pursuant to the authority of F.S. ch. 162, and chapter 14, article II of this Code.
- (d) All remedies and penalties provided for in this section shall be cumulative and independently available to the city, and the city shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law.

Secs. 18-183—18-199. Reserved.

~~ARTICLE VII. SEXUAL OFFENDERS AND SEXUAL PREDATORS~~

~~Sec. 18-200. Sexual offender and sexual predator residency prohibition.~~

~~(a) Findings and intent.~~

~~(1) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.~~

~~(2) It is the intent of this article to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the city by creating areas around locations where children regularly gather and can be stalked or observed in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence.~~

~~(b) 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.~~

~~*Permanent residence* means a place where the person abides, lodges, or resides for 14 or more consecutive days.~~

~~*Reside or residence* means to have a place of permanent residence or temporary residence.~~

~~*Sexual offender* shall have the meaning ascribed to such term in F.S. § 943.0435.~~

~~*Sexual predator* shall have the meaning ascribed to such term in F.S. § 775.21.~~

~~*Temporary residence* means a place where the person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.~~

~~(c) Sexual offender and sexual predator residency prohibition.~~

~~(1) It is unlawful for any person who has been convicted of a violation of F.S. § 794.011 (sexual battery), § 800.04 (lewd and lascivious acts on/in presence of persons under age 16), § 827.071 (sexual performance by a child), § 847.0135(5) (sexual acts transmitted over computer) or § 847.0145 (selling or buying of minors for portrayal in sexually explicit conduct), or a similar law of another jurisdiction within the United States, in which the victim or apparent victim of the offense was less than 16 years of age, to reside within 2,500 feet of any school, child care facility, park, playground or designated public school bus stop.~~

~~(2) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary~~

~~residence to the nearest outer property line of a school, child care facility, park, playground or designated public school bus stop.~~

~~(d) — *Penalties.* A person who violates subsection 18-200(c)(1) shall be punished by a fine not to exceed \$500.00 or by imprisonment for a term not to exceed 60 days, or by both such fine and imprisonment.~~

~~(e) — *Exceptions.*~~

~~(1) — A person residing within 2,500 feet of any school, child care facility, park, playground or designated public school bus stop does not commit a violation of subsection 18-200(c)(1) if any of the following apply:~~

~~a. — The person established the permanent residence prior to the effective date of this article (April 20, 2015).~~

~~b. — The person was a minor when the person committed the offense and was not convicted as an adult.~~

~~c. — The school, child care facility, park, playground or designated public school bus stop within 2,500 feet of the person's permanent residence was opened after the person established the permanent residence.~~

~~(2) — The exceptions in subsections 18-200(c)(1)a. and c. shall not apply to a sexual offender or sexual predator who is convicted of a subsequent sexual offense as an adult after residing at a registered residence within 2,500 feet of school, child care facility, park, playground or designated public school bus stop.~~

~~(f) — *Property owner violation.* It shall be a violation of the City Code for a landlord or owner of residential property in the city to rent or lease a residence to a sexual offender or sexual predator, if the sexual offender or sexual predator intends to reside at the property and if the property is located within 2,500 feet of a school, child care facility, park, playground or designated public school bus stop, unless the landlord or owner can establish that, prior to entry of a lease, he or she used reasonable due diligence and was unable to determine that the tenant is a sexual offender or sexual predator. Any person violating this subsection (f) is subject to the code enforcement procedures set forth in the City of Marco Island Code Compliance Ordinance.~~

Secs. 18-201—18-209. Reserved.

ARTICLE VIII. STORMWATER REGULATIONS

Sec. 18-210. Short title.

This article shall be known and may be cited as the "Stormwater Control Ordinance".

Sec. 18-211. 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: [These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.](#)

Best management practices or *BMPs* means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other

management practices, to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control erosion, site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. BMPs include but are not limited to geosynthetic barriers, temporary or permanent vegetation, sediment traps, silt fences, turbidity barriers, or inlet protection measures.

Clean Water Act or CWA means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction activity means any on-site activity that results in a substantial change to the property, which will result in the creation of a new stormwater discharge, including the building, assembling, expansion, modification or alteration of the existing contours of the site, the erection of buildings or other structures, or any part thereof, or land clearing.

Department means the city's public works department.

Design storm means a selected rainfall pattern of specified amount, intensity, duration, and frequency, that is used as a basis for design.

Detention means the collection and temporary storage of stormwater with subsequent release, at a specified rate, into a downstream system.

Developer means ~~and includes any person one who develops/developing a parcel of~~ land, an applicant for a city permit to develop ~~a parcel of~~ land, ~~and the owners of land being developed property owner, and a contractor on a parcel of land.~~

Development shall be as defined in F.S. § 163.3164.

Dwelling and dwelling unit shall be as defined in section 30-10 of the land development code.

Emergency means, ~~as provided in section 10-1 of this Code, any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.~~

Engineer means a professional engineer registered in the state, or other person exempted pursuant to the provisions of F.S. ch. 471.

Erosion is the action of surface processes such as water flow or wind that remove soil, rock, or dissolved material from one location, then transport it away to another location.

Exfiltration means a stormwater management procedure, which stores runoff in a subsurface collection system and disposes of it by percolation into the surrounding soil.

Filtration means the selective removal of suspended matter from stormwater by passing the water through at least two feet of suitable fine textured granular media such as porous soil, uniformly graded sand and gravel, or other natural or artificial aggregate, which may be used in conjunction with filter fabric and underdrain pipe.

Hazardous substances mean any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment, when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit connection means ~~a connection to the city's MS4 that does not comply with the terms of this article either of the following: 1) any drain or conveyance, whether on the surface or subsurface, which allows an illegal or discharge to enter the MS4 including but not limited to any conveyances that allow any non-stormwater discharge, including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the department; or 2) any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by the department.~~

~~Illicit discharge or illegal discharge or illegal dumping~~ means any discharge to the city's MS4 which is not compliant with the terms of this article, composed entirely of stormwater, unless exempted pursuant to this article, or the discharge to the city's MS4 which is not in compliance with federal, state or local permits.

Impervious means land surfaces which do not allow, or minimally allow, the penetration of water; included as examples are building roofs, normal concrete, paver driveways, paver sidewalks, and asphalt pavements and some fine-grained soils such as clays.

Industrial activities mean activities at facilities identified by the United States Environmental Protection Agency as requiring an NPDES stormwater permit in accordance with 40 CFR § 122.26(b)(14) ~~or amendments thereto~~, or any unit operation, complex, area, or multiple of unit operations, that produce, generate, handle, process, or cause to be processed, any materials which may cause water pollution.

Maintenance means routine custodial maintenance needed to ensure the functioning of a stormwater management system to meet original design criteria.

MS4 (see Municipal separate storm sewer system)

Municipal separate storm sewer system or MS4 means a conveyance, storage area or system of conveyances and storage areas (including, but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, treatment ponds, and other structural BMPs) owned and operated by a local government that discharge to waters of the United States or to other MS4s, that are designed solely for collecting, treating or conveying stormwater, and that are not part of publicly owned treatment works (POTW) as defined by 40 CFR § 122.2 ~~or any amendments thereto~~.

National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit means a permit issued by the Florida Department of Environmental Protection (FDEP) that authorizes the discharges of pollutants to waters of the United States.

Non-stormwater discharge means any discharge to the storm drain system that is not composed entirely of stormwater.

~~*Person* means an individual, corporation, limited liability company, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.~~

Pollutant means anything that causes or contributes to pollution. Pollutants may include, but are not limited to paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that the same may cause or contribute to pollution; floatables; pesticides; herbicides; fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Project site means the area being modified or altered in conjunction with a proposed activity.

Receiving waters or receiving channel means any water bodies, watercourses and wetlands into which surface waters flow.

~~*Rendered or rendition* means the issuance of a written order, including approval, approval with conditions, or denial of a determination by the city council, the department director, the city manager (or said manager's designee), or other administrative official, effective upon the date of signing by the authorized city official of such order or final letter of determination and its filing in the records of the city council or said department director, city manager (or said manager's designee), or other administrative official.~~

Retention means the prevention of discharge of a given volume of stormwater runoff by complete on-site storage with subsequent release through accepted water treatment facilities or underdrains.

Roadway means a designated travel pathway, either public or private, which is designed for vehicular traffic and is not used primarily as a driveway access to a property.

Sediment means material that settles to the bottom of a liquid.

SFWMD means ~~the Big Cypress Basin~~ South Florida Water Management District.

Short-circuiting means flow characteristics of a detention pond in which a direct flow path exists between the inflow and outflow points, thus diminishing the velocity reduction and settling capability of the pond.

Solid waste means sludge unregulated under the federal Clean Water Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

Special waste means solid wastes that can require special handling and management, including, but not limited to, white goods, waste tires, used oil, lead-acid batteries, construction and demolition debris, ash residue, yard trash, and biological wastes.

Storm sewer system means a stormwater collection and transmission system consisting primarily of inlets and storm sewers.

Stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

Stormwater management system means the designed features of the property which collect, convey, channel, hold, inhibit, or divert, the movement of stormwater.

~~*Swale* means excavated areas that can be either used for water conveyance, retention or any combination of the two. A roadway swale means a depression along a roadway used to retain and/or convey the movement of surface water runoff. The roadway swale is generally the area between the edge of the pavement of a roadway and the sidewalk or right-of-way limit.~~

Temporary soil stabilization means the use of seeding, mulching, netting, blankets, or other approved methods, to prevent erosion during construction activities.

Underdrain means a system of pipes, gravel, sand, and filter cloth used to recover retention volumes from stormwater ponds or lower the water table under roads or stormwater ponds.

Waters or *water body* means any natural or artificial pond, lake, reservoir, or other area, which ordinarily or intermittently contains water, and which has a discernible shoreline.

Watercourse means any natural or artificial stream, creek, channel, ditch, canal, waterway, gully, ravine, or wash, in which water flows in a definite direction, either continuously or intermittently, and which has a definite channel, bed or banks.

Sec. 18-212. Illicit discharges.

- (a) *Purpose and intent.* The purpose of this section is to provide for the health, safety, and general welfare of the citizens of the city by minimizing discharge of pollutants through the regulation of non-stormwater discharges to the city's municipal separate storm sewer system (MS4) to the maximum extent practicable. This section establishes methods for controlling the introduction of pollutants into the city's MS4 within the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this section are:
- (1) To regulate the contribution of pollutants to the city's MS4 by from stormwater discharges by any user;
 - (2) To prohibit illicit connections and discharges to the city's MS4; and
 - (3) To establish legal authority to carry out all inspection and monitoring procedures, necessary to ensure compliance with this section.
- (b) *Applicability; interconnected MS4s.* This section shall apply to the entire city's MS4, unless explicitly exempted by the city in writing.

- (c) *Ultimate responsibility.* The standards set forth herein, and promulgated pursuant to this section, are minimum standards. This section does not intend or imply that compliance by any person will ensure there will be no contamination, pollution, nor unauthorized discharge of pollutants.
- (d) *Control of pollutant contributions from interconnected MS4s.* Interconnected MS4s, including MS4s not owned by the city, shall be controlled so that they do not impair the operation of the receiving MS4 or contribute to the failure of the receiving MS4 to meet any applicable local, state, or federal law or regulation. Owners of sections of an interconnected MS4 shall be responsible for the quality of stormwater within their portion of the system and shall coordinate with the owners of the downstream segments.
- (e) *Prohibitions; illicit, ~~illegal~~ discharges ~~and illegal dumping.~~*
- (1) It is a violation of this article to ~~No person shall throw, drain, or otherwise discharge, cause, or allow, continue, or maintain~~ others under such person's control to similarly discharge into the city's MS4 that is not composed entirely of stormwater or otherwise in compliance with federal, state or local permits, any pollutants or waters containing any pollutants, other than stormwater, whether such discharges occur through piping connections, runoff, exfiltration, infiltration, seepage, or leaks. Polluting matter includes, but is not limited to, the following:
 - a. Petroleum products, including, but not limited to oil, gasoline, grease;
 - b. Solid waste;
 - c. Paints;
 - d. Steam cleaning waste;
 - e. Pesticides, herbicides or fertilizers, or as regulated by existing ordinance;
 - f. Degreasers, solvents;
 - g. Sanitary sewage;
 - h. Chemically treated cooling water;
 - i. Antifreeze and other automotive products;
 - j. Lawn clippings, leaves, branches, or yard trash;
 - k. Animal carcasses;
 - l. Recreational vehicle gray waters;
 - m. Dyes;
 - n. Construction materials and waste;
 - o. Any liquids in quantity or quality that are capable of causing a violation of the city's NPDES stormwater permit; and
 - p. Solids in such quantities or of such size capable of causing interference or obstruction to the flow of the city's MS4.
 - (2) No lawn mowing, clipping or other such discharge of debris is permitted towards or into waterbodies or watercourse(s).
 - (3) No direct discharge of roof drains to the city's canal system is permitted.
- (f) *Prohibitions; illicit connections.*
- (1) It is a violation of this article to ~~No person may~~ maintain, use, or establish, any direct or indirect connection to the city's MS4 that introduces non-stormwater discharge or results in any discharge in violation of any provision of federal, state, or local governmental law, rule, regulation, including:

- a. Any drain or conveyance, whether on the surface or subsurface, which allows a discharge in violation of this article to enter the MS4, including but not limited to any conveyances that allow any non-stormwater discharge, including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the department; or
 - b. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by the department.
- (2) ~~Any~~ This subsection is effective upon adoption of the ordinance and applies to illicit connections to the city's MS4 made prior to March 5, 2018 (the effective date of the ordinance from which this article is derived) that does not comply with this article is prohibited and shall be made to comply, regardless of whether made under a permit or other authorization, or whether permissible under laws or practices applicable or prevailing at the time the connection was made.
- ~~(3) A person is considered to be in violation of this section, if the person connects a line conveying sewage to the city's MS4 or allows such a connection to continue.~~
- (g) *Violation of permits.* Any discharge into the city's MS4 ~~in violation of any federal, state, or local governmental law, rule, regulation or permit is prohibited,~~ except those discharges as set forth authorized in this article or in accordance with a valid NPDES permit.
- (h) *Stormwater discharges from commercial, industrial or construction activities to the MS4 or regulated waters.*
- (1) Stormwater from areas of any commercial activity, industrial activity, or construction activity shall be controlled, treated and managed on-site using best management practices so as not to cause ~~an illicit or illegal~~ discharge to the city's MS4 or regulated waters in violation of this article.
 - (2) All erosion, pollutant, and sediment controls required by this city code or by any applicable local, state, or federal permit, including elements of a stormwater pollution prevention plan required under an NPDES permit, shall be properly implemented, installed, operated, and maintained.
 - (3) Authorized discharges to the city's MS4 shall be controlled so that they do not impair the operation of the city's MS4 or contribute to the failure meet any applicable local, state, or federal law or regulation.
 - (4) Authorized discharges to regulated waters as defined by the Clean Water Act, shall be controlled so that they do not adversely impact the quality or beneficial uses of those waters, or result in violation of any applicable local, state, or federal law or regulation.
 - (5) Any person who has been issued an NPDES permit authorizing discharges to the city's MS4 shall submit a complete copy of the permit to the city's building department ~~within 30 days after March 5, 2018 (the effective date of the ordinance from which this article is derived),~~ or within 30 days after the issuance of a permit.
- (i) *Authorized exemptions.* The following commencement, conduct, or continuance of any illicit or illegal discharges to the city's MS4 is ~~prohibited~~ are not a violation of this article, except as described as follows:
- (1) Water line flushing;
 - (2) Flushing of reclaimed water lines;
 - (3) Street cleaning;
 - (4) Diverted stream flows;
 - (5) Rising ground waters;
 - (6) Foundation and footing drains;
 - (7) Dechlorinated swimming pool discharges;

- (8) Uncontaminated ground water infiltration (as defined at 40 C.F.R. § 35.205(20));
 - (9) Uncontaminated pumped ground water;
 - (10) Discharges from potable water sources;
 - (11) Air conditioning condensate;
 - (12) Irrigation water, including landscaping and lawn water;
 - (13) Springs;
 - (14) Individual residential car washing;
 - (15) Flows from riparian habitat and wetlands; and
 - (16) Discharges or flows from emergency firefighting activities and emergency response activities done in accordance with an adopted spill response/action plan.
- (j) *Non-application of prohibitions.* The prohibitions provided in this section shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Florida Department of Environmental Protection; provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations.
- (k) *Emergency conditions.*
- (1) Notwithstanding any other provisions of this section, whenever the city manager, ~~or said manager's designee~~, or as otherwise provided pursuant to section 10-3 of this Code, determines that emergency conditions or activities require immediate action to protect the public health, safety or welfare, or to provide for compliance with these regulations, city approved construction plans, city inspectors and employees are authorized to enter at a reasonable time in or upon any property, consistent with subsection (l) of this ~~section provision~~, for the purpose of testing, inspecting, investigating, measuring, sampling and correcting such emergency conditions. Failure to admit personnel responding to emergency conditions, shall constitute a separate violation of this section only if actual violation is determined.
 - (2) Suspension due to illicit discharges in emergency conditions. The city manager, ~~or said manager's designee~~, may, without prior notice, suspend MS4 discharge access ~~to a person such suspension is when the manager deems~~ necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4. If the violator fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.
 - (3) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this section may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. ~~It is considered an offense of this section, if the person reinstates~~ Reinstatement of MS4 access to premises terminated pursuant to this section is prohibited without ~~the prior city approval of the city.~~
- (l) *Inspection and monitoring for compliance.* City code inspectors may request access for inspection of facilities discharging or suspected of discharging to the city's MS4 to effectuate the provisions of this section and to investigate violations or potential violations of any of the terms herein of this article.
- (m) *Reporting requirements.* ~~Illicit discharges to the city's MS4 are prohibited.~~ Any person owning or occupying a premise or facility who has knowledge of a discharge of pollutants from those premises or facilities or other type of evidence which might result in a violation of the prohibitions found in this section shall immediately take action to abate the discharge of pollutants and shall notify the department and city code enforcement department within 24 hours of the discharge of pollutants. The initial notification may be by telephone, but

the person responsible shall submit a written report within 72 hours of discovery. The written report shall include a description of the discharge volume, content, frequency, discharge point location to the MS4, measures taken or to be taken to terminate the discharge, and the name, address and telephone number of the person who may be contacted for additional information.

- (n) ~~Penalty. Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 14 of this code; additional remedies. Enforcement of this article shall be conducted pursuant to F.S. ch. 162. Penalties for violations of this article shall be as specified therein, or any other appropriate remedy provided by law. The city may seek enforcement action against the owner or developer of record, any person in actual or constructive possession, and any person or entity responsible for carrying out any prohibited action. The provisions of this section are an additional and supplemental means of enforcing city codes and ordinances. Nothing in this section shall prohibit the city from enforcing this code by injunctive relief, or by any other means provided by law.~~
- (o) ~~Appeals. Appeals relating to of any administrative decision or determination made to concerning implementation or application of the provisions of this article section shall be made in accordance with the procedures and requirements in section 1-15 of this code of ordinances. filed in writing within 30 calendar days after the decision is rendered by the city council, city manager (or said manager's designee), department director, or building official, all as provided for herein. Appeal of the decision of the city manager's designee, department director, or building official will be considered by the city manager. Appeal of the city manager's decision will be considered by the city council.~~
- ~~(p) Injunctive and other relief. City council, through the city attorney, may file a petition in the name of the city in the circuit court of the county or such other courts as may have jurisdiction seeking the issuance of an injunction, damages, or other appropriate relief to enforce the provisions of this article or other applicable law or regulation. Suit may be brought to recover any and all damages suffered by the city as a result of any action or inaction of any person who causes or suffers damage to occur to the city's storm sewer system, or for any other expense, loss or damage of any kind or nature suffered by the city.~~

Sec. 18-213. Stormwater pollution prevention for construction.

- (a) *Activities; purpose and intent.* The purpose of this section is to provide for the health, safety, and general welfare of the citizens of the city through the regulation of potential pollution from construction activities. These activities would include connections or areas not connected to the city's MS4 system.
 - (1) No building permit shall be issued for any building in the city, unless a site plan is submitted with the application for such building permit illustrating ~~the location of driveways, sidewalks if required by this code, parking strips consistent with this code and a~~ perimeter retaining structures or a surface water management plan which provides for containment of runoff on-site with surplus routed to rights-of-way or right-of-way swales for drainage as applicable.
 - (2) Site plans for construction projects in all zoning districts shall be reviewed and administratively approved by staff for on-site erosion control per applicable code provisions outlined herein. Appropriate erosion control devices must be planned, implemented, and maintained in accordance with the best management practices (BMPs) described in the Florida Department of Environmental Protection's "Erosion & Sediment Control Designer & Reviewer Manual," most current edition, and required as part of any permit review, approval, and compliance. If approved BMPs are not working properly, it is the responsibility of the developer or contractor to utilize new BMP methods as necessary to provide erosion and sediment control.
- ~~(b) Erosion and sediment control. Construction activity can result in the generation of significant amounts of pollutants, which may reach surface or ground waters. One of the primary pollutants of surface waters is sediment due to erosion. Excessive quantities of sediment which reach water bodies of floodplains have been shown to adversely affect their physical, biological, and chemical properties. Transported sediment can obstruct stream channels, reduce the hydraulic capacity of water bodies of floodplains, reduce the design capacity of culverts and other works, and eliminate benthic invertebrates and fish spawning substrates by~~

~~siltation. Excessive suspended sediments reduce light penetration and, therefore, reduce primary productivity. Therefore, the minimum standards set forth in subsection (c) below shall apply to any construction activity within the city.~~

(be) Erosion and sediment control ~~Minimum~~ standards. In order to protect surface waters and their marine organisms from the physical, biological, and chemical, obstructive, and hydraulic impacts of excessive sediment load from construction sites, ~~the following minimum standards shall apply to any construction activity within the city.~~ The minimum standards referenced in subsection (b) include:

- (1) Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place;
- (2) All sediment control measures are to be adjusted to meet field conditions at the time of construction and be constructed prior to any grading or disturbance of existing surface material on the balance of site. Perimeter sediment barriers shall be constructed to prevent sediment or trash from flowing or floating on to adjacent properties;
- (3) Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Where practicable, temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain undisturbed for longer than 30 days. Permanent stabilization shall be applied to areas that are to be left undisturbed for more than 90 days;
- (4) During construction of a project, soil stock piles shall be stabilized or protected with sediment trapping measures. The developer is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as soil intentionally transported from the project site;
- (5) A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that, in the opinion of the city's reviewer, is uniform and mature enough to survive and will inhibit erosion;
- (6) Stabilization measures shall be applied to earthen structures, such as dams, dikes and diversions immediately after installation;
- (7) After any significant rainfall, sediment control structures will be inspected for integrity. Any damaged devices shall be corrected immediately;
- (8) Concentrated runoff shall not flow down, cut, or fill slopes, unless contained within an adequate temporary or permanent channel, flume or slope drain structure;
- (9) Whenever water seeps from a slope face, adequate drainage or other protection shall be provided;
- (10) Sediment ~~will~~ shall be prevented from entering any storm drain system, ditch, or channel. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered, or otherwise treated, to remove sediment;
- (11) Before temporary or newly constructed stormwater conveyance channels are made operational, adequate outlet protection, and any required temporary or permanent channel lining, shall be installed in both the conveyance channel and receiving channel;
- (12) When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area to the greatest extent possible during construction. Non-erodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by non-erodible cover materials;
- (13) When a live watercourse must be crossed by construction vehicles, a temporary stream crossing constructed of non-erodible material shall be provided;

- (14) The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed;
 - (15) Periodic inspection and maintenance of all sediment control structures must be provided to ensure the intended purpose is accomplished. The developer shall be continually responsible for all sediment leaving the property. Sediment control measures shall be in working condition at the end of each working day;
 - (16) Underground utility lines shall be installed in accordance with the following standards in addition to other applicable criteria:
 - a. No more than 500 linear feet of trench may be opened at one time;
 - b. Excavated material shall be placed on the uphill side of trenches;
 - c. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both, and discharged in a manner that does not adversely affect flowing streams or off-site property; and
 - d. Re-stabilization shall be accomplished in accordance with these regulations;
 - (17) Where construction vehicle access routes intersect paved public roads, provisions shall be made to minimize the transport of sediment by tracking onto the paved surface. Where sediment is transported onto a public road surface with curbs and gutters, the road shall be cleaned thoroughly at the end of each work day. Sediment shall be removed from the roads by shoveling or sweeping and [then](#) transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual subdivision lots as well as to larger land-disturbing activities;
 - (18) All temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed, in the opinion of the city's reviewer. Disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation;
 - (19) Properties and waterways downstream from construction sites shall be protected from sediment deposition and erosion;
 - (20) Phased projects should be cleared in conjunction with construction of each phase;
 - (21) The city permit reviewer may approve modifications or alternate plans to these erosion control criteria due to site specific conditions.
- ([ce](#)) *Development of an erosion and sediment control plan.* An erosion and sediment control plan must be submitted as part of the building permit application that include land disturbing activities. This plan and its implementation is a way of providing reasonable assurance that water quality standards will not be violated during the construction phase of a project. The plan must identify the location, relative timing, and specifications for all erosion and sediment control and stabilization measures that will be implemented as part of the project's construction. This plan can be prepared on a site plan/plot plan depicting the improvements proposed. The plan must illustrate methods that would provide reasonable assurances that no offsite discharges of pollutants will be allowed. Said plan shall be prepared by a state licensed professional engineer. The preparer will certify the plans to and for reliance by the city with the submittal that they are familiar with state stormwater best management practices, and that the proposed plan meets or exceeds those criteria.
- ([de](#)) *Development of a stormwater pollution prevention plan (SWPPP) for NPDES requirements.* Applicants are advised that preparation and adherence to a SWPPP is required where the permitted activity also requires an NPDES construction permit pursuant to F.A.C. § 62-621.300(4). Namely, those construction activities resulting in greater than one acre of soil disturbance discharging to waters of the state or a permitted MS4 must also apply for and receive coverage from Florida Department of Environmental Protection under

Florida's NPDES Generic Permit for Stormwater Discharge from Large and Small Construction Activities (CGP) before disturbing the soil.

Sec. 18-214. Maintenance of stormwater management systems.

Proper maintenance of a stormwater management system shall include at a minimum the following items:

- (1) Retention/detention system or pond side slopes shall be vegetated or other approved methods for erosion control;
- (2) Retention/detention system storage volume and geometry shall be maintained to the dimensions shown on the approved plans;
- (3) Littoral zone coverage with wetland plants shall be maintained to SFWMD standards;
- (4) Vegetation shall be mowed frequently enough to provide easy access to the ponds for inspections and maintenance;
- (5) Weirs and orifices shall be kept clear of debris to allow their proper functioning;
- (6) Skimmer blades shall be maintained to minimize floating debris and oils from leaving the ponds and allow unrestricted flow through the control structure;
- (7) The dimensions and elevations of control structures shall be preserved;
- (8) Underdrains shall be properly functioning;
- (9) Channel dimensions and geometry shall be maintained to approved designs;
- (10) Vegetation in dry ponds and channels shall be kept to a minimum to maintain flow and storage capacities; and
- (11) Underground stormwater management systems (exfiltration systems, underdrains, and similar types of structures and systems) shall be maintained and kept clear of debris to allow for their proper functioning, as designed. If stormwater management system effluent degradation is identified, effluent testing can be directed by city department or environmental staff.

Sec. 18-215. Stormwater management design criteria.

- (a) *Applicability.* This article shall apply to any development not specifically exempted by subparagraph (b) below.
- (b) *Exemptions.* The following are exempt from the requirements of this section:
 - (1) Construction of, or related to, one One single family home dwelling containing not more than three dwelling units, on an individual site, a lot of record not shared or approved to be shared with any other dwelling, and that is not part of a site plan that includes any adjacent lots of record used for housing.
 - ~~(2) One duplex structure, on an individual site, used for housing.~~
 - ~~(3) One triplex structure, on an individual site, used for housing.~~
 - ~~(4) Storage buildings, sheds, swimming pools, and other accessory structures constructed on (1), (2), or (3) above.~~
 - ~~(5) Model homes. Additional temporary parking spaces may be installed as long as they are removed when the model home use changes.~~
 - ~~(6) Fences.~~
 - ~~(7) Agricultural related activities, which cause insignificant hydrological impacts as determined by the city engineer.~~

- (c) ~~Special circumstances~~ Development within approved master stormwater systems.
- (1) Any development located within a subdivision or other area that has a city or county approved master stormwater system is only subject to review for compliance with parameters of the approved master stormwater management plan.
- (d) *Stormwater plan.* It shall be unlawful to engage in any development activity prior to obtaining approval of a stormwater plan by the city engineer in accordance with the provisions of this section.
- (e) *Minimum design standards for stormwater plans.*
- (1) The design for the stormwater management facility shall be consistent with the requirements of the SFWMD and furthermore shall include hydrologic analysis acceptable to the city engineer. Design of control structures and detention/retention facilities shall be based on both the 10-year, 1-hour and 25-year, 72-hour return periods and peak flows controlled to meet the pre-development discharge rates. All retention systems will need to demonstrate full recovery within 72 hours. Finished floor elevations shall be based off available Federal Emergency Management Agency ("FEMA") data. If no FEMA model/data is available (i.e., Zone X), the greater of 100 year-72-hour zero discharge calculation or 18 inches above crown elevation of city road shall be used.
 - (2) All stormwater calculations, reports, and plans shall be signed and sealed by a Florida registered professional engineer.
 - (3) Stormwater pond slopes above actual water surface and swales shall be stabilized.
 - (4) Construction of private stormwater storage facilities ~~are~~ is prohibited in public rights-of-way and/or easements.
 - (5) Artificial watercourses shall be designed considering soil type to prevent erosion.
 - (6) Stormwater outfalls should discharge into a city-approved drainage system. Whenever the discharge structure/outfall pipe does not abut a city/county/state or similar facility, the applicant shall submit documentation demonstrating legal rights to convey discharge across private property.
 - (7) Water quality treatment to follow all current FDEP/SFWMD requirements, including nutrient loading analyses.
- (f) *Performance standards for stormwater plans.* To ensure attainment of the objectives of this section and that performance standards will be met, the design, construction, and maintenance of stormwater systems shall, at a minimum, be consistent with the following standards:
- (1) Channeling untreated runoff directly into off-site water bodies is prohibited.
 - (2) Discharge of runoff from detention ponds shall not exceed the calculated predevelopment rate, or rate determined by a basin study, whichever is less, as determined by the city engineer.
 - (3) The banks of detention and retention areas shall be stabilized and maintained to the approved design.
 - (4) Vegetated areas shall be created, or where practicable, retained in their natural state along the banks of all watercourses, water bodies, or wetlands. The width of these areas shall be sufficient to prevent erosion, trap the sediment or overload runoff, provide access to the water body, and allow for periodic flooding without damage to structures.
 - (5) Intermittent watercourses such as swales and ditches shall be vegetated.
 - (6) The use of the stormwater facilities and vegetated buffer zones as open space, recreation, and conservation areas shall be encouraged, and wetlands, lakes, and other natural water bodies shall not be used as primary sediment traps.
 - (7) Those areas that are not to be disturbed shall be protected by an adequate barrier from construction activity. Whenever possible, natural vegetation shall be retained and protected.

- (8) Control of erosion by sedimentation facilities shall be established prior to development and receive regular maintenance to ensure that they continue to function properly.
 - (9) Disturbed areas shall be revegetated, stabilized and protected from erosion as soon as possible.
 - (10) Design to resist saltwater intrusion by adhering to applicable best management practices.
 - (11) Stormwater facilities are required to be maintained to design parameters.
- (g) *Content of stormwater plans.* All stormwater plans must be signed and sealed by a Florida professional engineer. These plans will present, at the minimum:
- (1) The existing hydrological conditions of the site and of receiving water shall be described where appropriate, including the following:
 - a. The direction, flow rate, and volume of flow of surface water runoff under predevelopment conditions for both the 10 year-1 hour and 25 year-72-hour return periods.
 - b. The location of areas on the site where surface waters collect.
 - c. A description of all watercourses, wetlands, and water bodies on or adjacent to the site.
 - d. Groundwater levels, including seasonal fluctuations, using U.S. Soil Conservation Service ("SCS") methodology or other appropriate means. (Give elevations based on North American Vertical Datum ("NAVD") wherever possible.)
 - e. A map and description of the 100-year floodplain.
 - f. Plans ~~drawn shall be~~ at a scale acceptable to the city engineer.
 - g. Elevations in floodplains shall be NAVD.
 - h. A current boundary description ~~is required as~~ prepared by a professional land surveyor.
 - i. A site plan ~~is required~~ showing any easements of records.
 - j. ~~The engineer of record shall provide a~~ soil percolation rate and an estimated wet season groundwater elevation ~~from the engineer of record, including and shall describe~~ the methodology used ~~for~~ determining each, which shall be consistent with the application submittal.
 - k. ~~Provide a~~ topographic survey, which is needed to accommodate review of stormwater management facilities.
 - l. Dimensions used in stormwater computation shall be shown on plans.
 - m. Other information and data may be required by the city engineer.
 - (2) All components of the stormwater system and measures for the detention, retention or infiltration of water and control structures shall be described where appropriate, including:
 - a. The channel, direction, flow rate and volume of surface water that will be conveyed from the site, with a comparison of predevelopment conditions.
 - b. Detention and retention areas, including plans for discharge of contained water. These measures are to be designed to control both the 10 year-1 hour and 25 year-72-hour storm events.
 - c. A plan for the control of erosion and sedimentation, which specifies the type and location of control measures, the stage of development at which they will be put into place or used, and provisions for the maintenance of them.
 - d. Any other information that the engineer of record and the city engineer consider necessary for an evaluation of a proposed development.

- (3) The city engineer, after reviewing the stormwater plan, may require additional information to evaluate the plan on its impact on water resources and/or maintenance of the stormwater system.

Chapter 22 FIRE PREVENTION AND PROTECTION

ARTICLE I. IN GENERAL

Secs. 22-1—22-30. Reserved.

ARTICLE II. FIRE PREVENTION AND PROTECTION CODE

Sec. 22-31. NFPA codes and standards adopted.

The standards and ~~code~~ sections of the "National Fire Codes" as published by the National Fire Protection Association (NFPA), as adopted by the rules of the Division of the State Fire Marshal Section 69A-3.012, 69A-60.005 Florida Administrative Code or reference ~~d~~ by the 2018 Edition of NFPA 1 or NFPA 101 and those listed below by standard number and edition and as amended herein, are hereby adopted by reference and made a part of the City of Marco Island Fire Prevention and Protection Code, intended to protect the public health, safety and welfare, common interest, and convenience of the citizens, visitors and residents of the City of Marco Island Florida.

Sec. 22-32. Amendments to NFPA 1, Fire Prevention Code.

The National Fire Codes, NFPA 1, Fire Prevention Code, 2018 edition, is hereby amended by local amendment as follows:

(A) Chapter 1 Administration

(1) Fire Code Board of Appeals

(i) Add to 1.10.1.1.1 to Read as Follows:

The City Council may serve as the Fire Code Board of Appeals in all matters concerning this code and enforcement.

(2) Notice of Violations and Penalties

(i) Amend 1.16.4 Penalties as Follows:

1.16.4.1 Any person who fails to comply with the provisions of this Code or who fails to carry out an order made pursuant of this Code or violates any condition attached to a permit, approval, or certificate shall be subject to the penalties established by this jurisdiction.

Nothing herein contained is intended to prevent the City of Marco Island from taking such other lawful action in any court of competent jurisdiction, as the City deems necessary to prevent or remedy any violation. Such other lawful action shall include, but shall not be limited to, any equitable action for injunction relief or action or law for damages. The City of Marco Island shall have the power to enforce the provisions of this Code and Ordinances by any lawful means as authorized by Florida law or equity, means of the City of Marco Island Code Enforcement Board.

(3) Purpose

- (i) Amend Section 1.2, Purpose to read as follows:

1.2 The purpose of this Code is to prescribe minimum requirements necessary to establish a reasonable level of fire and life safety and property protection from the hazards created by fire and explosion and dangerous conditions, as well as potential biological, chemical and/or radioactive events.

(4) Application

- (i) Subsection 1.3.2 Referenced Standards, is amended to read as follows:

Subsection 1.3.2.1 is amended to read as follows:

1.3.2.1 Details regarding processes, methods, specifications, equipment testing and maintenance, design standards, performance, installation, or other pertinent criteria contained in those codes and standards listed in Chapter 2 of this Code shall be considered a part of this Code; as well as those adopted pursuant to Chapter 22 of the City Code of Ordinances and those adopted pursuant to the City of Marco Island Fire Prevention and Protection Code Section 22-31 shall be considered a part of this code.

(5) Authority

- (i) Subsection 1.7.17 Standby and Fire Watch Personnel, is amended to read as follows:

1.7.17.1: The City of Marco Island shall have the authority to require standby Fire and EMS personnel or an approved fire watch for a permitted event, or when potentially hazardous conditions or a reduction in a life safety feature exist due to the type of performance, display, exhibit, occupancy, contest or activity, an impairment to a fire protection feature, or the number of persons present.

(6) Permits and Approvals

- (i) Add to table 1.12.8 (a) Land Based Displays of 1.3G Fireworks Classification are prohibited within the City Limits. All 1.3G displays shall be barge based in open water. Fireworks and Pyrotechnic permits shall be issued for commercial type displays, located on or in commercial, state owned, county or city owned property or on open water adjacent to same with viewing and safeguard distance as set forth by the currently adopted edition of NFPA 1123 and 1126.

- a. Fireworks and Pyrotechnics shall not be permitted on residential type properties or waterways adjacent to residential type properties within City limits.

- (ii) Add Subsection to table 1.12.8 (a) Open burning is not allowed within City Limits, Cooking fires and small recreational fires not intended for vegetation or rubbish disposal, when conducted safely and on the property of the subject, are exempt and do not require a permit.

Exception: Training exercises conducted by the City Fire Department.

(7) Notice of Violations and Penalties.

Add Sub-Section 1.16.1.1 as follows:

Violations of this code are to be administered according to city's administrative construction code, section 6-111 of the city Code of Ordinances. Pursuant to F.S. § 162.22, a person found to be in violation of this code may be charged a fine, and all actual City costs incurred, and may be sentenced to a definite term of imprisonment, not to exceed 60 days. Violations of this code may

also be prosecuted before the code enforcement board, as established by the city, pursuant to chapter 14, article II of the city Code of Ordinances, or its successor. Nothing herein contained is intended to prevent the City from taking such other lawful action in any court of competent jurisdiction as the department deems necessary to prevent or remedy any violation. Such other lawful action shall include, but shall not be limited to, any equitable action for injunctive relief or action at law for damages. The Fire-Rescue department shall also retain the power to enforce the provisions of this code and ordinances by means of the State Fire Marshal's Office.

- (8) Plan Review
 - (i) Amend Subsection 1.14.2 to add condition (4) as follows:
 - (4) Where required by the Fire Department, pre-fire plans shall be provided prior to a Building "Notice of Fire Compliance" being issued.
- (B) Chapter 4 General Requirements
 - (1) Conditions for Occupancy.
 - (i) Amend Subsection 4.5.4 to Add Condition (4)
 - (4) All tenants and occupants shall obtain a "Notice of Fire Compliance" certificate from the Fire Rescue Department prior to occupancy and use of a new or existing building as evidence of compliance with the City Fire Prevention and Protection Code. Such original certificate shall be displayed in a prominent location within the structure, building, or portion thereof. A copy of the Compliance Certificate shall be forwarded to the Collier County [Tax Collector, Business Tax Receipt Office](#)~~Occupational License Department~~ for processing.
 - Exception: Occupants of one and two-family dwellings and residential tenants in multi-family buildings are exempt from the requirement of obtaining a "Notice of Fire Compliance."
- (C) Chapter 10 General Safety Requirements
 - (1) Open Flames, Candles, Open Fires, and Incinerators. (i) Amend Subsection 10.10.1, Permits, to read as follows:
 - 10.10.1.1.1 Permits. The burning or igniting of refuse, rubbish or vegetation as a manner of disposal, land clearing or other intent, is prohibited within the City of Marco Island.
 - (2) Special Outdoor Events, Carnivals and Fairs
 - (ii) Amend Subsection 10.14.3, Life Safety Evaluation to read as follows:
 - 10.14.3 Life Safety Evaluations of medium to high attendance, outdoor and indoor, events are required and shall be in accordance with 12.4.1 of NFPA 101 Life Safety Code. The evaluation shall be submitted to the AHJ a minimum of two weeks prior to the starting date of the event.
 - (iii) Amend Subsection 10.14.4 to read as follows:
 - 10.14.4 The authority having jurisdiction is hereby authorized to assess and collect compensation for services rendered to public assemblages and events covered by the provisions of section 1.7 Authority, as it may deem necessary.
 - (iv) Add Subsection 10.18.7 to read as follows:
 - Fuel containers shall not be stored within or under multifamily or commercial structures unless otherwise permitted within the parameters of NFPA 30.
- (D) CHAPTER 13 FIRE PROTECTION SYSTEMS

(1) Section 13.2

- (i) Add Subsection 13.2.2.2 to read as follows:

13.2.2.2 Any building five stories or more in height and not otherwise classified as a high rise building as defined by the Florida Building Code 2001 Edition or its successor, shall have an automatic wet standpipe system in accordance with NFPA 14 capable of supplying the required gallons per minute with a residual pressure of 65 psi at the uppermost hose connection.

- (ii) Add Subsection 13.2.2.4.3 to read as follows:

13.2.2.4.3 Fire department valves on standpipe systems shall not be pressure-reducing valves. Pressure restricting devices shall be installed on any valve with pressure in excess of 175 psi. Pressure restricting devices shall be so as to be readily removable, leaving hose threads acceptable to the authority having jurisdiction.

(E) CHAPTER 18 FIRE DEPARTMENT ACCESS ROADS AND WATER SUPPLY

(1) Subsection 18.2.2.2

- (i) Amend Subsection 18.2.2.2 to add:

This section is intended to apply to all gate installations EXCEPT those serving individual single-family residences.

18.2.2.2.1 Any gate that obstructs Fire Department access shall be installed with electronic controlled access. All electronic access control gates to structures and properties that may require emergency services that restrict the free ingress and egress of emergency vehicles and are not constantly attended 24 hours per day shall be provided with an electronic transmitter/receiver system capable of being programmed with a unique activation code and frequency approved by the authority having jurisdiction. Such code or frequency shall not be used by or provided to other gate users. Existing installations shall comply within 180 days subsequent to the notification date by the authority having jurisdiction.

- (ii) Add Subsection 18.2.2.2.2 to read as follows:

18.2.2.2.2. All electronic access control gates under section 18.2.2.2.1 shall be compatible with the uniform countywide transmitters. Said transmitters are carried only within emergency vehicles.

- (iii) Add Subsection 18.2.2.2.3 to read as follows:

18.2.2.2.3 All electronic access control gates shall have a battery backup with a failsafe override.

Exception No. 1 Any other override system acceptable to the City of Marco Island.

Exception No. 2 Gates serving individual single-family residences are recommended to install access control systems for emergency use by the Fire, Police and EMS Departments.

- (iv) Add Subsection 18.2.2.2.4 to read as follows:

18.2.2.2.4 All temporary non-electronic access control gates to construction sites, structures and properties that may require emergency services that restrict the free ingress and egress of emergency vehicles shall be provided with a key box per section 18.2.2.1

Exception No. 1 - Gates serving individual single-family residences.

Add Subsection 18.2.2.2.5 to read as follows:

18.2.2.2.5 All electronic gates are required to receive a building permit with fire review prior to installation.

(2) Subsection 18.2.3.5.1 Dimensions

- (i) Amend subsection 18.2.3.5.1.2 to read as follows:

18.2.3.5.1.2 Fire department access roads shall have an unobstructed vertical clearance of not less than 14 ft.

- (ii) Amend subsection 18.2.3.5.3.1 to read as follows:

18.2.3.5.3.1 Turning radii for fire lanes not exceeding a 90-degree turn where serving buildings shall be 25 ft. inside and 49 ft. outside and turning radii for fire lanes serving parking lots only shall be 25 ft. inside and 45 ft. outside. Where turns exceed 90 degrees the standards for turnarounds shall apply.

- (iii) Amend subsection 18.2.3.5.4 to read as follows:

18.2.3.5.4 The turnaround shall have a minimum centerline radius of 40 feet (12.7m). The grade surface and location of the fire lane shall be approved by the authority having jurisdiction. At least one elevation of each building shall be accessible to the fire department

- (iv) Amend Subsection 18.2.3.5.7 to read as follows:

18.2.3.5.7 Fire lanes, private and public roads shall be maintained free of all obstructions at all times inclusive of speed humps/bumps and traffic calming devices which could delay response to scene or hospital, damage equipment or injure patients.

Sec. 22-33. Amendments to the Life Safety Code.

NFPA 101 code for Safety to Life from Fire in buildings and structures, 2018 Edition, is amended as follows:

(A) CHAPTER 9: BUILDING SERVICE AND FIRE PROTECTION EQUIPMENT

(1) SECTION 9.6: FIRE DETECTION, ALARM, AND COMMUNICATIONS SYSTEMS

(I) 9.6.1 GENERAL

- (i) Add Subsection 9.6.2.7.1 to read as follows:

9.6.2.7.1 The authority having jurisdiction may approve and shall have the authority to require listed manual fire alarm box covers or listed double action pull stations to be installed where manual fire alarm systems are susceptible to malicious false alarms.

Sec. 22-34. Permit fee schedule; ~~Intent.~~

~~It is the intent of the City of Marco Island, city council that all~~ All construction and alteration of commercial and multifamily structures ~~and projects being built new, or being altered, and/or added to~~ requiring a permit ~~shall~~ are subject to a fee for each of the following categories ~~applicable to the~~ of work being done ~~as established and amended from time to time by the city council.~~ as established and amended from time to time by the city council. The fee rate schedule will be evaluated annually to make adjustments to keep the income generated in line with expenses. This will be done at the time the city's normal budget process is being considered. The city council may change, delete or add to the listed fees by resolution.

A. Fire Code Compliance Plan Review Fees

B. Fire code compliance inspection fees through permit process

C. Special events fee

D. New or change of occupancy inspections

1) Architectural plan review fees:	
Less than or equal to \$120,000.00	.60% of job value
Greater than \$120,000.00 and less than or equal to \$600,000.00	.057% of job value
Greater than \$600,000.00 and less than or equal to \$1,200,000.00	.082% of job value
Greater than \$1,200,000.00	.037% of job value
2) Fire Sprinkler Systems:	\$52.00 + \$0.98 per head
3) Underground Fire Line	\$103.00 + \$0.21 per foot
	(Rounded Up)
4) Standpipes	\$52.00 + \$6.00 per riser
5) Fire Pumps	\$285.00 each
6) Generators	\$285.00 each
7) Pre-engineered Fire Suppression Systems (new)	\$67.00 + \$21.00 per Bottle of Suppression Agent
8) Pre-engineered Systems (existing)	\$67.00 + \$2.10 per head altered or added
9) Kitchen Hood Ventilation Systems	\$103.00 per system
10) Fire Alarm Systems (zoned systems)	\$93.00 + \$16.00 per zone
11) Fire Alarm Systems (intelligent system) Includes Wireless Monitoring Permits	\$93.00 + \$0.67 per device
12) Monitoring Only (excludes wireless)	\$42.00
13) Low Voltage Wiring (All Except Fire Alarm)	\$42.00
14) Fuel Storage Systems Including LPG (Install, Removal or Abandonment)	\$72.00 + \$52.00 per tank
15) Commercial Hurricane Shutters impacting:	
2 Egress and/or access points	Initial \$50.00
Each additional egress or access point	\$2.00
16) Back Flow Prevention Devices	\$50.00
17) Docks (New, Replace or Repair)	\$100.00
18) Minimum Review Fee and Items Not Listed Above	\$42.00
19) Fast Track Permit Review Fee (After Hours/Weekends, Subject to availability)	Time and one half, plus 30%
20) Technology Fee on all Plan Reviews, Revisions, SDP/SIP/CU, Inspections:	5% of fee up to maximum of \$10,000.00
21) All fees listed above include the initial review and one re-review. Additional re-reviews will be provided in accordance with the following schedule-	
— 2 nd Re-Review	10% of Original Review \$42.00 minimum
— 3 rd Re-Review	25% of Original Review \$52.00 minimum
— 4 th Re-Review	50% of Original Review \$103.00 minimum
— 5 th Re-Review	100% of Original Review \$206.00 minimum
22) Revisions/Additions to original or previously approved plans	25% of Original Review \$42.00 minimum
23) Administrative fee for correcting plans	\$52.00
(Removing, adding or copying required information not done properly by submitter)	
24) Fire Permit Extension (90 Days)	\$52.00
25) Expired Fire Permit Re-issuance Fee	Original review fee × 30% not to exceed \$500.00

26) SDP (Site Development Plan)	\$206.00
SDPA (Site Development Plan Amendment)	\$155.00
SIP (Site Improvement Plan), CU (Conditional Use) and all others	\$155.00

B. — Fire Code Compliance Inspection Fees Through Permit Process:

1. SITE PLAN INSPECTION (All Categories)	\$206.00
2. BUILDINGS— Square footage is defined as the total area of the structure(s) under roof.	
Construction Types I, II, III, IV, & V:	
New Single Story:	\$309.00 + \$0.03 per sq. ft.
New Multi Story:	\$155.00 per floor, per tower + \$0.03 per sq. ft.
Construction Type VI:	\$309.00 per floor + \$0.04 per sq. ft.
Remodels and Alterations	
Commercial: Multiple Units or Floors	\$270.00 per floor, per tower + \$0.16 per sq. ft.
Commercial: Individual Units	\$258.00 per unit + \$0.16 per sq. ft.
Plumbing Stack Replacements Fire Stop Insp.	\$150.00 per unit stack
Single Apartment Units	\$103.00 per unit + \$0.16 per sq. ft.
3. FIRE SPRINKLERS	
New:	\$309.00 per floor, per tower + \$0.67 per head
Remodels:	\$206.00 per floor, per tower + \$1.03 per head
15 Heads or less relocated or added	\$103.00 + \$1.03 per head
4. FIRE ALARM SYSTEMS	
New:	\$309.00 per floor, per tower + \$0.67 per device
Remodels:	\$206.00 per floor, per tower + \$1.03 per device
4 Devices or less relocated or added	\$103.00 + \$1.00 per device
Monitoring including Wireless:	\$103.00 per system
5. LOW VOLTAGE WIRING	\$103.00 per floor
6. KITCHEN HOODS	\$206.00 + \$1.03 per foot of duct
7. SUPPRESSION SYSTEMS	\$52.00 per bottle + \$2.06 per head
	Total Flood & Pre-Engineered
8. SPRAY BOOTHS	\$52.00 per bottle + \$.52 per sq. ft.
9. UNDERGROUND FIRE LINES	\$103.00 + \$1.03 per linear ft.
10. STANDPIPES (New or Replacement)	\$150.00 per independent riser
11. FIRE PUMPS	\$309.00 each
12. GENERATORS	\$309.00 each
13. FUEL STORAGE TANK AND LPG TANK INSTALLATIONS	
Above Ground:	
Up to 1,000 gal.	\$103.00 per tank
1,001 gals. to 3,000 gals.	\$155.00 per tank
3,001 gals. to 4,000 gals.	\$206.00 per tank
Larger than 4,000 gals.	\$206.00 + \$31.00 for each additional 1,000 gals.
Under Ground:	
Up to 1,000 gals.	\$155.00 per tank
1,001 gals. to 3,000 gals.	\$206.00 per tank
3,001 gals. to 4,000 gals.	\$257.50 per tank
Larger than 4,000 gals.	\$257.50 + \$31.00 for each additional 1,000 gals.
14. HYDRANT RESTRAINTS AND BREAKAWAY PADS	\$52.00 per hydrant

15. HYDRANT/BACKFLOW ACCEPTANCE TEST	\$77.00 per device
16. HYDRANT FLOW TEST: Initial Flow Point	\$77.00
Each Additional Flow Point	\$36.00
17. COMMERCIAL HURRICANE SHUTTERS:	
2-egress and/or access points	\$52.00
Each additional egress or access point	\$6.00
18. MISCELLANEOUS & MINIMUM INSPECTION FEES:	
Fire Retardant Spray Application	\$103.00 Each Structure
	\$26.00 Per Interior Assembly Application
Fire Dept. Access Lock Box Key Exchange	\$26.00 each event
Emergency Access/Electric Gates	\$16.00 each event
Minimum Inspection Fee Not Otherwise Noted	\$103.00
19. TIME SPECIFIC INSPECTIONS	\$103.00 each inspection
	Subject to availability
20. SPECIAL DUTY (Fire Watch, Fire Alarm/Sprinkler Standby, Special Investigations etc.)	
	Time and one half + 30%
21. SINGLE FAMILY RESORT DWELLING INSPECTIONS	
Inspection and one re-inspection per unit	\$77.00
2 nd Re-inspection	\$52.00
3 rd Re-inspection	\$77.00
4 th Re-inspection	\$103.00
5 th and subsequent re-inspections:	\$206.00
23. YELLOW TAGS (re inspections of permitted work)	
1 st Fail: per unit	\$77.00
2 nd Fail: per unit	\$108.00
3 rd Fail: per unit	\$144.00
4 th Fail: per unit	\$360.00
5 th Fail & each subsequent fail	\$515.00
24. RED TAGS – Construction areas or sites – (Immediate stop work order) (re-inspections 2x fee)	

- Working without Permit Card on site.
- Safety violations on site.
- Combustibles on site without water supply (hydrants/approved alternative water supply).
- Job sites inaccessible to fire apparatus.
- Working without Marco Island Building or Fire Permit (4x permit fee)

C. — SPECIAL EVENTS FEE:

Commercial Fireworks Display, per display.	\$309.00
Small Outdoor/Indoor Event (Up to 500 participants and/or 25 vendors)	\$103.00
Large Special Events indoor or outdoor including circuses, fairs, carnivals concerts, exhibits, and trade shows. (Over 500 participants and/or over 25 vendors)	\$155.00
Carnival/Mechanical rides, fun houses and game tents or trailers	\$31.00 Each
Tents 400 sq. ft. or larger and covered stages, including trailer stages	\$103.00 Each
Food Concessions (Tent or Tailor)	\$31.00 Each
Motorized Vehicles Utilized as Vending or Concessions including Food Concessions.	\$31.00 Each

Sec. 22-35. ~~Inspection Fees: New, change of, or existing occupancies~~Reserved.

- ~~1. A fee will be assessed for a notice of fire compliance certificate inspection for all new commercial and/or change of ownership of commercial occupancies, or those required to be inspected on a recurring basis.~~
- ~~2. Each occupancy type is assessed a fee based upon its use. Properties with multiple structures or uses will incur a fee for each structure or use inspected.~~

~~Apartments and condominiums: Defined as "a building having three or more living units with independent cooking and bathroom facilities."~~

~~Fee per Apartment/ Condominium Building:~~

Up to 2 stories	\$75.00
3 to 5 stories	\$82.00
6 to 9 stories	\$103.00
10 stories and taller	\$206.00

~~Assembly Occupancies:~~

50 to 99 Persons	\$100.00
100 to 300 Persons	\$130.00
301 to 1,000 Persons	\$162.00
Over 1,000 Persons	\$320.00

~~Assisted Living Facilities:~~

Up to 16 Persons (Small Facility)	\$110.00
Over 16 Persons (Large Facility)	\$140.00

~~Business Occupancies:~~

1,500 to 3,000 sq. ft.	\$75.00
3,001 to 5,000 sq. ft.	\$85.00
5,001 to 10,000 sq. ft.	\$110.00
10,001 to 50,000 sq. ft.	\$336.00
Fueling Facilities Add	\$55.00

~~Day Care Centers and Nursery Schools:~~

3 to 6 Clients	\$75.00
7 to 12 Clients	\$85.00
Over 12 Clients	\$95.00

~~Hotels, Motels, Dormitories, Lodging and Rooming Houses:~~

Each building having up to 30 units under the same management in which there are sleeping accommodations.	\$130.00
Each additional unit over 50	\$2.25

~~Industrial/Manufacturing Occupancies:~~

Up to 1,000 sq. ft.	\$75.00
1,001 to 5,000 sq. ft.	\$100.00
5,001 to 10,000 sq. ft.	\$135.00
10,000 to 50,000 sq. ft.	\$206.00

Marinas:	
Docking facilities	\$155.00
Fueling facilities add	\$55.00
Associated facilities such as storage and mercantile incur separate fees in accordance with this schedule.	

Nursing Homes/Health Care Facilities:	
Up to 100 Beds	\$205.00
Each additional bed over 100	\$2.50
Maximum \$925.00	

Mercantile:	
1,000 to 3,000 sq. ft.	\$75.00
3,001 to 5,000 sq. ft.	\$80.00
5,001 to 10,000 sq. ft.	\$110.00
10,001 to 25,000 sq. ft.	\$165.00
25,001 to 50,000 sq. ft.	\$215.00

Storage Occupancies:	
1,000 to 5,000 sq. ft.	\$100.00
5,001 to 10,000 sq. ft.	\$130.00
10,001 to 25,000 sq. ft.	\$155.00
25,001 to 50,000 sq. ft.	\$205.00

Exception:

New or renovated construction in which a building permit has been issued for the occupancy or if a final fire inspection has been issued within six months of application for an occupational license no fee will be charged.

3. Re-inspection Fees All Occupancies.

a. First re-inspection:

1. No fee if all violations are corrected or other arrangements have been made with the fire prevention bureau.
2. A fee of \$75.00 if violations still exist.

b. Second re-inspection and each additional re-inspection: \$100.00 fee if violations still exist.

Sec. 22-36. Fees for response to malfunctioning fire alarm, detection and suppression systems.

- (a) The fee schedule for malfunctioning or nuisance fire alarms, detection and suppression systems is established by resolution of the city council, as amended from time to time, will be evaluated annually to make adjustments to keep the fee generated in line with expenses. This will be done at the time the city's normal budget progress is being considered. The city may change, delete or add to the listed fees by resolution.
- (b) There is a need for proper operation and maintenance of fire alarm, fire detection and fire suppression systems. The response of fire rescue and other city personnel and equipment to structures with these systems that have malfunctioned causes an added burden on the resources of the city and endangers the lives of the public and employees.

- (1) It shall be the responsibility of the owner/agent or occupant of the structure or premises having a system to have such systems maintained by a qualified contractor at all times. It is also the responsibility of the owner/agent or occupant to have an owner/manager or qualified contractor on site within one hour of a fire department request.
- (2) Any continued malfunction, failure to make needed improvements, ~~or~~ failure to protect against malicious activation, of a fire alarm, fire detection and/or fire suppression system in a structure to which ~~department a fire responds~~ department emergency response is made will be handled in the following manner:
 - a. First response: The fire department will not charge for the first fire alarm response provided that corrective action is taken by the property owner or agent in the form of system repair or evaluation by a licensed fire alarm contractor. Should no corrective action be taken and the units are called back for the same alarm within a 48 hour period there shall be a charge ~~of \$75.00~~ in addition to the charge \$75.00 for a second response, as established and amended from time to time by resolution of the city council.
 - b. Fines for subsequent responses shall be as established and amended from time to time by resolution of the city council. Second response during the same budget year: \$75.00.
 - ~~c. Third and fourth responses shall be \$350.00.~~
 - ~~d. Fifth and sixth responses shall be \$550.00.~~
 - ~~e. All additional responses shall be \$750.00 per occurrence.~~
- (c) Fees are due within 45 days following notice from the fire rescue department. The failure to pay the applicable fee within 45 days is a violation of this article that may be enforced as provided in chapter 14 of this code and through the city's code enforcement or civil citation process as a civil infraction in accordance with F.S. § 633.214 (ordinances pertaining to firesafety; definitions; penalties).
- (d) Any person found resetting or in any way interfering with the reporting of a fire alarm before arrival of fire personnel shall be in violation of F.S. § 806.10 (false alarms of fires) and shall be guilty of a felony of the third degree.

Sec. 22-37. Recovery of costs associated with hazardous material, suspicious or incendiary fires, investigations, violations of law, and weapons of mass destruction incidents.

- (a) *Definitions.* ~~{~~The following words terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:~~}~~ These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.

Cost recovery means those necessary and reasonable costs incurred by the city or its agents in connection with rescue, emergency medical services, mitigation, health, life and safety issues, suppression and investigation of suspicious or incendiary fires, violations of law or city code, mitigating, minimizing, removing or abating hazardous material or weapons of mass destruction incidents, city, county, state, or federal declared disasters including but not limited to the following: actual labor and benefit costs of personnel or its authorized agents, costs and operation of equipment, necessary rental, or subcontracting, or purchase and costs of expendable items, etc.

Declared disaster means any disaster that a declaration of emergency or disaster has been declared by the city, county, state or federal government and requires essential employees to be available prior, during and/or after an event as directed by the department director and city manager.

Forfeiture means as defined in F.S. §§ 893.12, 932.701—932.704.

Hazardous substance means any substance or material in a quantity or form which, in the determination of the fire chief or the chiefs authorized designee, poses an unreasonable and imminent risk to the life, health, safety or welfare of persons or property within the city and shall include but not be limited to those hazardous

substances listed in the N.F.P.A. Guide on Hazardous Materials, the EPA's list of extremely hazardous substances and the Emergency Response Guide from DOT, or 49 CFR.

Release means any intentional or unintentional action or omission resulting in the attempted or actual release, spill, pumping, pouring, emitting, emptying or dumping of a suspected or actual hazardous, biological, chemical, explosive, radioactive substance or material upon public or private property located within or outside the corporate limits of the city.

Restitution means as defined in F.S. § 775.089.

Suspicious or incendiary fire means any fire not of natural or accidental cause.

Weapons of mass destruction means any nuclear, biological, explosive or chemical event related to an act of terrorism.

(b) *Authority of city.*

- (1) The fire department is hereby authorized to take such steps as necessary, to protect the life, safety and health of the public and to take all such steps necessary to respond and abate emergencies and recover all associated costs as outlined within this section, including but not limited to the following: actual labor costs of personnel or its authorized agents, costs and operation of equipment, necessary rental, subcontracting, or purchase and costs of expendable items, etc.
- (2) The city manager ~~or designee~~ is hereby authorized to collect and recover costs associated with such services and work, including forfeiture and restitution pursuant to the procedures established in chapter 14 of this code.
- (3) ~~The city manager or designee shall be is authorized to adopt administrative policies regarding the collection of the fees, assessments, and liens.~~ Costs will be based on the applicable schedule of rates provided by: the current FEMA table; the Florida Fire Chiefs Association; the Collier County Fire Chiefs Association cost recovery schedules; and actual costs for consumables, equipment, response and fill in personnel, subcontractors, and other city departments requested by fire-rescue.

(c) *Liability for costs.*

- (1) Any person ~~(s), property owner, renter or agent~~ charged with a violation of: the this city's Code of Ordinances code, or Florida Statutes, including driving under the influence of drugs and/or alcohol, or otherwise responsible for action by the fire department or its authorized agents in accordance with provisions of this section, shall reimburse the city as provided in subsection (b)(3) above.
- (2) ~~Reimbursement for expenses is due upon invoice from the city. Failure to pay the cost recovery invoice within 30 days will constitute a civil infraction with this article and as such will be shall be enforced in accordance with the procedures in established in chapter 14 of this code enforceable in accordance with this article, this Code, and state law.~~

(d) *Additional remedies.*

- (1) The remedy provided for in this section shall be supplemental ~~to and in addition~~ to all other available remedies at law and equity, inclusive of forfeiture and restitution as defined in state statute, and may be negotiated or waived by the city manager when in the best interest of the city.
- (2) Actions of a juvenile resulting in fire rescue response under this article shall be the responsibility of the legal guardian. The city manager may waive charges upon the enrollment of the child in an approved juvenile fire setters or counseling program.

Sec. 22-38. Fire Sprinkler Protection of New Construction.

- (1) New construction shall be equipped with automatic fire sprinkler systems installed according to NFPA 13, NFPA 13D, or NFPA 13R as applicable in the following classifications of occupied structures: assembly, educational, health care, detention and correctional, mercantile, residential, business, industrial, and storage with the exception of the following:
 - a. Those detached structures less than 1,250 square feet.
 - b. Structures built on single-family lots (i.e., single-family house, shed, garage).
 - c. Detached one-story unenclosed structures.
 - d. For the purpose of this section, new construction shall mean construction of an entirely new detached structure on a location where no structure existed at the time of permitting. Additionally, new construction shall refer to any structure for which the scope of work permitted exceeds 50 percent of the net value of the existing structure, or for which the additional square footage is equal to or greater than the square footage of the existing structure for which the permit is issued.

Secs. 22-39—22-50. Reserved.

ARTICLE III. FIREFIGHTERS' PENSION PLAN

Sec. 22-51. Established.

The city firefighters' pension plan is established as a local law pension plan pursuant to F.S. ch. 175. An excise tax on property insurance premiums is hereby assessed and imposed pursuant to F.S. § 175.101, in the manner and amounts specified therein, for the purpose of this pension plan.

(Ord. No. 00-08, § 2, 7-17-2000)

Sec. 22-52. 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. [These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.](#)

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

Actuarial equivalent means a benefit or amount of equal value, based upon the 1983 Group Annuity Mortality Table with a 50 percent blending of male and female mortality rates and an interest rate of seven percent per annum.

Average final compensation means one-twelfth of the average salary of the five best years of the last ten years of credited service prior to retirement, termination, or death, or the career average as a full-time firefighter and member of this plan, whichever is greater. A year shall be 12 consecutive months.

Beneficiary means the person or persons entitled to receive benefits hereunder upon the death of a member who has or have been designated in writing by the member and filed with the board in accordance with the provisions of this pension plan.

Board means the board of trustees, which shall administer the pension plan as provided herein.

~~*City* means the City of Marco Island.~~

Code means the U.S. Internal Revenue Code of 1986, as amended from time to time.

Credited service means the total number of years and fractional parts of years of employment as a city firefighter and contributing member of this pension plan on or after January 1, 1996, omitting intervening years or fractional parts of years when such firefighter may not be employed by the city. If a member accumulates service as both a full-time firefighter and as a volunteer firefighter, credited service shall be calculated separately for full-time and volunteer service, with the sum of all years and fractional parts of years of service used only for vesting and benefit eligibility purposes. A firefighter may voluntarily leave his or her contributions in the pension fund for a period of five years after leaving the employment of the city pending the possibility of being rehired. A firefighter who withdraws his or her contributions upon termination of employment may, upon reemployment as a city firefighter, receive credited service for the period of prior service by repaying into the fund the amount of contributions withdrawn, plus interest as determined by the board of trustees, within 90 days following reemployment. When a firefighter leaves city employment (other than employment in temporary position) in order to:

- (1) Perform training and service in the Armed Forces of the United States or the United States Merchant Marine; or
- (2) Report for the purpose of being inducted into, entering, or determining, by preinduction or other examination, physical fitness to enter the Armed Forces, whether or not voluntarily, the firefighter shall receive credited service for the years or fractional parts of years that he or she was engaged in such Armed Forces or Merchant Marine activities in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as amended, if the member leaves his or her contributions in the pension fund during his absence. Except as otherwise provided by the (USERRA), the firefighter shall receive credited service for the period of military service on the following conditions:
 - a. The firefighter must return to his employment in accordance with the provisions of USERRA.
 - b. The firefighter must deposit into the pension fund the same sum that the member would have contributed if he or she had remained a firefighter, from the date of original employment to the date of deposit, in accordance with USERRA.
 - c. The maximum credit for military service shall be five years.

Effective date means the date on which the first member joins this pension plan.

Firefighter means a full-time employee of the city who is certified as a firefighter as a condition of employment in accordance with the provisions of F.S. § 633.35, and whose duty it is to extinguish fires, protect life and protect property.

Fund means the pension fund established as part of this pension plan.

Member means an actively employed firefighter who fulfills the prescribed participation requirements.

Pension plan or plan means the City of Marco Island Firefighters' Pension Plan, as set forth in this article and any amendments thereto.

Retirement means a member's separation from city employment with eligibility for and actual receipt of benefits under the pension plan.

Salary means a member's monthly compensation for work performed for the city arising from the member's employment as a firefighter, including overtime payments paid from a salary fund to the extent permitted under F.S. § 175.032(3).

Spouse means the lawful wife or husband of a member.

Volunteer firefighter shall have the same meaning as the term defined at F.S. § 175.032(8)(b).

Sec. 22-53. Membership.

All full-time firefighters hired by the city on or after January 1, 1996, and volunteer firefighters who become active members of the city on or after January 1, 1996, shall be members of this pension plan. All members shall be required to complete a medical examination as may be prescribed by the city, and provide complete and accurate information concerning their health status as requested by the board. Any material misstatements or omissions of requested health or medical information by an applicant or member shall be grounds for denial of benefits. Based upon medical evidence of any pre-existing adverse health condition, resulting from the prescribed examination or other medical records or history, the board may determine any member ineligible for disability benefits hereunder, as related to such pre-existing condition. A member may be declared ineligible for disability benefits at the time of the initial examination provided in this section, or at a later date if the committee establishes that a condition existed at the time of the member's employment or date of membership. The procedures followed and the determination of the board as to a pre-existing condition shall be on a uniform, non-discriminatory basis, with all members in similar situations being treated alike. The fire chief may elect not to participate in this plan by submitting a written notice of non-participation to the board of trustees within 60 days of initial employment or the adoption of this amendment, whichever is later. A fire chief who elects not to participate in this plan shall not thereafter be eligible to accrue or receive benefits through this plan.

Sec. 22-54. Board of trustees.

- (a) The sole and exclusive administration of and responsibility for the proper operation of the pension plan and for making effective the provisions of this article are hereby vested in a board of trustees. However, the board of trustees is not empowered to amend the provisions of the pension plan.
- (b) The board of trustees shall consist of five persons. Two trustees, unless otherwise prohibited by law, shall be legal residents of the city who shall be appointed by the city council, one of whom shall be the city clerk, or if the city clerk is not a legal resident of the city, a designee who is a legal resident of the city. Two trustees shall be full-time firefighter members of the pension plan, who shall be elected by a majority of the firefighters who are members of the pension plan. The fifth trustee shall be chosen by a majority of the previous four trustees as provided for herein, and such person's name shall be submitted to the city council. Upon receipt of the fifth person's name, the city council shall, as a ministerial duty, appoint such person to the board of trustees. The fifth trustee shall have the same rights as each of the other four trustees appointed or elected as herein provided, and shall serve a four-year term, unless the office is sooner vacated, and may succeed himself in office. Each resident trustee shall serve as trustee for a period of four years, unless sooner replaced by the city council at whose pleasure the trustee shall serve, and may succeed himself as a trustee. Each firefighter trustee shall serve as trustee for a period of four years, unless he sooner leaves the employment of the city as a firefighter or otherwise vacates his office as trustee, whereupon a successor shall be chosen in the same manner as the departing trustee. Each firefighter trustee may succeed himself in office. The board of trustees shall meet at least quarterly each year.
- (c) The trustees shall, by a majority vote, elect a chairman and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. Additionally the secretary of the board shall keep a record of all persons receiving benefit payments under the provisions of this article, in which it shall be noted the time when such pension benefit was approved and when the pension benefit ceased to be paid. This record shall include a list of all firefighters employed by the city showing the name, address, date of employment, and date of termination of each firefighter. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by state law.
- (d) Each trustee shall be entitled to one vote on the board. Three affirmative votes shall be necessary for any decision by the trustees at any meeting of the board. A trustee shall have the right to abstain from voting as the result of a conflict of interest, provided that trustee complies with the provisions of F.S. § 112.3143.

- (e) The city attorney shall give advice to the board in all matters pertaining to its duties in the administration of the pension plan whenever requested. The city attorney shall represent and defend the board as its attorney in all suits or legal actions that may be brought against it, and bring all suits and actions at the direction of the board. However, if the board so elects, it may employ independent legal counsel at the pension fund's expense for the purposes contained herein. The board may also engage such professional, technical or other advisers as it deems necessary to administer the pension plan. The board may choose to use the city's actuary or other professional, technical, or other advisors, but must do so only under terms and conditions acceptable to the board. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the pension plan shall be paid from the pension fund at such rates and in such amounts as the board shall agree. The board must, at least every three years, retain a professionally qualified independent consultant, as defined in F.S. ch. 175, who shall evaluate the performance of any existing professional money manager and make recommendations to the board regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board at its next regularly scheduled meeting, which will be advertised in the same manner as any meeting of the board.
- (f) The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:
 - (1) To construe the provisions of the pension plan and determine all questions arising thereunder;
 - (2) To determine all questions relating to eligibility and membership;
 - (3) To determine and certify the amount of all retirement allowances or other benefits hereunder;
 - (4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the pension plan;
 - (5) To distribute to members, at regular intervals, information concerning the pension plan;
 - (6) To receive and process all applications for benefits;
 - (7) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the pension plan and fund; or
 - (8) To perform such other duties as are specified in this article.
- (g) Notwithstanding anything contained herein to the contrary, "legal resident" members appointed by the Marco Island City Council to the board of trustees of the City of Marco Island Firefighters' Pension Plan pursuant to paragraph (b) of this section, shall serve in the same capacity on the board of trustees of the City of Marco Island Police Officers' Pension Plan.

Sec. 22-55. Finances and fund management.

- (a) As part of the pension plan, there is hereby established a fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the pension plan.
- (b) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board. Payment of benefits and disbursements from the fund shall be made by the disbursing agent but only upon written authorization from the board.
- (c) All funds and securities of the pension fund may be deposited by the board with the finance officer of the city, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he is liable for the safekeeping of city funds. However, any funds and securities so deposited with the finance officer of the city shall be kept in a separate fund or clearly identified as funds and securities of the pension plan. In lieu thereof, the board shall deposit the funds and securities of the pension fund in a qualified public depository as defined in F.S. § 280.02, which depository with regard to such funds and securities shall conform to and be bound by all of the provisions of F.S. ch. 280. In order to fulfill its investment responsibilities as set forth herein, the board may retain the services of a custodian bank, an investment

advisor registered under the Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.

- (d) All funds and securities of the pension plan may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:
 - (1) Current amounts of accumulated contributions of members on both an individual and aggregate account basis;
 - (2) Receipts and disbursements;
 - (3) Benefit payments;
 - (4) Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city;
 - (5) All interest, dividends and gains (or losses) whatsoever; and
 - (6) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.
- (e) If the assets of the fund are \$250,000.00 or more, an independent audit shall be performed annually by a certified public accountant who may, in the board's discretion, be the accountant retained by the city for the city audit. The audit shall be for the most recent fiscal year of the city showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete valuation of assets on both a cost and market basis, as well as other items normally included in a certified audit. If the fund has less than \$250,000.00 in assets, an annual certified statement of accounting must be prepared in accordance with F.S. § 175.261(1)(a)2.
- (f) The board shall have the following investment powers and authority:
 - (1) All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.
 - (2) All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be limited to:
 - a. Annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the members in the fund shall be entitled under the provisions of this pension plan, and to pay the initial and subsequent premiums thereon.
 - b. Time or savings accounts of a national or state bank insured by the bank insurance fund, or a savings, building and loan association insured by the savings association insurance fund which is administered by the Federal Deposit Insurance Corporation, or a state or federally chartered credit union whose share accounts are insured by the national credit union share insurance fund.
 - c. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.
 - d. Bonds issued by the State of Israel.
 - e. Bonds, stocks, commingled funds administered by national or state banks, or evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided that the corporation is traded on a nationally recognized exchange and in the case of bonds holds a rating in one of the three highest classifications by a major rating service, and if such

investments are made in a pooled fund administered by a state or national bank, then the rating of each issue in the pooled fund shall hold a rating within the top three rating classifications of a major rating service.

- f. Real estate.
 - g. The board shall identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in F.S. § 215.473, and proceed to sell, redeem, divest, or withdraw all publicly-traded securities it may have in such company beginning January 1, 2010, and shall thereafter be prohibited from purchasing or holding such securities. The divestiture of any such security must be completed by September 30, 2010. In accordance with Ch. 2009-97, Laws of Florida, no person may bring any civil, criminal, or administrative action against the board or any employee, officer, director, or advisor of such board based upon the divestiture of any security pursuant to this paragraph.
- (3) The board shall not invest more than five percent of its assets in the common stock, capital stock or convertible securities of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent of the outstanding capital stock of that company; nor shall the aggregate of its investments in common stock, capital stock and convertible securities at cost exceed 65 percent of the assets of the fund.
 - (4) The board may retain in cash such amounts of the fund as it may deem advisable, having due regard for the cash requirements of the pension plan.
 - (5) No person or entity shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due to his or its own negligence, willful misconduct or lack of good faith.
 - (6) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain such securities unregistered and in a form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.
 - (7) The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stocks or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be in the best interest of the fund to exercise.
 - (8) The board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.
 - (9) Where any action which the board is required to take or any duty or function which it is required to perform, either under the terms herein or under the general law applicable to it as trustee under this article, can reasonably be taken or performed only after receipt by it from a member, the city, or any other entity, of specific information, certification, direction or instruction, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.
 - (10) Any overpayments or underpayments from the fund to a member or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board. Overpayments shall be charged against payments next succeeding the correction. Underpayments shall be made up from the fund.

- (11) In any application to or proceeding or action in the courts, only the board shall be a necessary party, and no member or other person having an interest in the fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.
- (12) Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agents.
- (13) The board shall not invest more than five percent at cost of its assets in real property or real estate and there shall be no investment in a limited partnership or trust.
- (14) The board shall not invest more than 25 percent of the fund's assets on a market-value basis in foreign securities or certificates of indebtedness, except as specifically authorized herein.
- (15) The board shall not invest more than ten percent of the fund's assets in foreign securities or certificates of indebtedness, except as specifically authorized herein.

Sec. 22-56. Contributions.

(a) *Member contributions.*

(1) *Amount.* Prior to July 1, 2022, members of the pension plan shall be required to make regular contributions to the fund in the amount of one percent of their salary. Effective July 1, 2022, members of the pension plan shall be required to make regular contributions to the fund in the amount of three percent of their salary. Member contributions withheld by the city on behalf of the member shall be deposited with the board every pay period. The contributions made by each member to the fund may be designated by the city as employer contributions pursuant to Section 414(h) of the Code. Such designation is contingent upon a resolution adopted by the city council and the contributions being excluded from the member's gross income for federal income tax purposes. For all other purposes of the pension plan, such contributions shall be considered to be member contributions.

(2) *Method.* Member contributions shall be made by payroll deduction.

(b) *Insurance premium tax revenues and other contributions received by operation of state law.* Insurance premium tax revenues collected and distributed pursuant to F.S. ch. 175, and any other monies received by operation of the laws of the state for the express purpose of funding and paying for retirement benefits for firefighters of the city, shall be deposited into the pension fund within five days after receipt by the city. In conjunction with the city's adoption of a resolution implementing this pension plan pursuant to F.S. § 175.351, the insurance premium tax revenues received pursuant to F.S. § 175.101, shall be deposited into and become an integral part of this pension fund, and not used for any other purpose. The allocation of insurance premium tax revenues under F.S. ch. 175 shall be determined by mutual consent between the city and the collective bargaining representative of the members. Pursuant to such mutual consent, and until such mutual consent changes, insurance premium tax revenues shall be allocated as follows.

(1) Effective October 1, 2015, through June 5, 2022, insurance premium tax revenues received up to the base premium tax revenue amount of \$73,936.00 shall be applied to reduce the city's annual required contribution as specified by the plan's actuary in its most recent actuarial valuation report. All insurance premium tax revenues in excess of \$73,936.00 shall be used to fund the firefighter share plan as set forth in section 22-61(h) of this Code. Notwithstanding, should the annual cost to fully fund the pension plan as determined by the plan's actuary in its most recent actuarial valuation report in any fiscal year exceed the sum of city contributions plus member contributions plus insurance premium tax revenues up to \$73,936.00, then the amount of insurance premium tax revenues that exceeds \$73,936.00 necessary to fund such deficiency shall be applied to reduce such contribution shortfall. Prior to increasing of member contributions, any shortfall as described herein shall first be addressed by applying 175 funds accordingly. Should the available 175 funds for such fiscal year be insufficient to cover the shortfall, then member contributions shall be increased accordingly subject to the provisions articulated herein.

- (2) Effective June 6, 2022, 32.5 percent of the premium tax revenue funds received annually shall be used by the city to offset its annual required pension contribution and 67.5 percent of the premium tax revenue funds received shall be credited to the firefighter share plan and shall be disbursed among share plan participants in accordance with the plan's share plan distribution rules.
- (c) *City contributions.* So long as this pension plan is in effect, the city shall make quarterly contributions to the fund in an amount equal to the difference each year between the total contributions from all other sources for the year, and the total cost for the year, as shown by the most recent actuarial valuation of the pension plan. The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability over a 30-year period, commencing with the fiscal year in which the effective date of this pension plan occurs. Effective October 1, 2015, the city's annual contribution shall be 43.72 percent of total salary of all active members of the plan. Notwithstanding the foregoing, on or before September 30, 2018, the city shall pay off the pension plan's entire unfunded liability as determined in the adopted actuarial valuation report for the plan year ending October 1, 2015. Should total insurance premium tax revenues plus required city contributions plus member contributions be insufficient to maintain the pension plan fully funded in a given fiscal year, the city shall contribute the remaining shortfall amount and shall bear ultimate responsibility for ensuring that the pension plan remains fully funded every fiscal year as determined by the plan's actuary in its most recent actuarial valuation report.
- (d) *Other.* Private donations, gifts and contributions may be deposited into the fund.

Sec. 22-57. Benefit amounts and eligibility.

- (a) *Normal retirement date.* A member's normal retirement date hired by the city prior to July 1, 2022, shall be the first day of the month coincident with or next following the attainment of age 55 and the completion of ten years of credited service, the vesting period for members in this plan for normal retirement date shall be reduced from ten years to six years effective July 1, 2001, provided that the member is "employed in a regularly established position" on that date. If not so employed on that date a member must be "employed in a covered position for at least one work year after July 1, 2001", or upon attaining 25 years of credited service regardless of age. A member's normal retirement date hired by the city on or after July 1, 2022, shall be the first day of the month coincident with or next following the attainment of age 55 and the completion of ten years of credited service, or upon attaining 25 years of credited service regardless of age. The vesting period shall be ten years. A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become 100 percent vested in his accrued benefit on the member's normal retirement date. Normal retirement under the pension plan is retirement from employment with the city on or after the normal retirement date.
- (b) *Normal retirement benefit.* A member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on his retirement date and be continued thereafter during the member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. The monthly retirement benefit shall equal three percent of average final compensation for each year of credited service.
- (c) *Early retirement benefit.* A member may retire on his early retirement date, which shall be the first day of the month coincident with or next following the attainment of age 50 and the completion of ten years of credited service, the vesting period for members in the reduced from ten years to six years effective July 1, 2001, provided that the member is "employed in a regularly established position" on that date. If not so employed on that date a member must be "employed in a covered position for at least one work year after July 1, 2001". Early retirement under the pension plan is retirement from employment with the city on or after the early retirement date and prior to the normal retirement date.
- (d) *Early retirement benefit.* A member retiring hereunder on his early retirement date shall receive a monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in subsection (b) above, which is

actuarially reduced from the amount to which he would have been entitled had he retired on the date which would have been his normal retirement date had he continued employment as a firefighter, and with the same number of years of credited service as of the time his benefits commence and based on his average final compensation at that date. In no event, however, shall the early retirement reduction exceed three percent for each year by which the member's age at retirement precedes the member's normal retirement age.

- (e) *Cost of living adjustment.* For credited service earned before October 1, 2022, each January 1 following the later of the member's termination date or otherwise normal retirement date, retirees (including disability retirees), beneficiaries and joint pensioners of deceased members or retirees who are receiving monthly benefit payments shall receive a three percent increase in their monthly benefit amount. For credited service earned on and after October 1, 2022, each January 1 following the later of the member's termination date or otherwise normal retirement date, retirees (including disability retirees), beneficiaries and joint pensioners of deceased members or retirees who are receiving monthly benefit payments shall receive an increase in an amount equal to the COLA under title II of the Social Security Act, with a minimum percentage not to go below one percent and a maximum percentage not to exceed one and one half percent.

Sec. 22-58. Pre-retirement death benefits.

- (a) *Prior to vesting or eligibility for retirement.* The beneficiary of a deceased member who was not receiving monthly benefits or who was not yet vested or eligible for early or normal retirement shall receive a refund of 100 percent of the member's accumulated contributions.
- (b) *Deceased members vested or eligible for retirement.* The beneficiary of any member who dies while actively employed and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:
- (1) If the member was vested, but not eligible for normal or early retirement, the beneficiary shall receive a benefit payable for ten years, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable. The beneficiary may also elect to receive an immediate benefit, payable for ten years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date.
 - (2) If the deceased member was eligible for normal or early retirement, the beneficiary shall receive a benefit payable for ten years, beginning on the first day of the month following the member's death or at the deceased member's otherwise normal retirement date, at the option of the beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable.
 - (3) A beneficiary may not elect an optional form of benefit, however, the board may elect to make a lump sum payment pursuant to section 22-61(g).
 - (4) A beneficiary may, in lieu of any benefit provided for in subsection (1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions.
- (c) *Death while performing USERRA-qualified active military service.* In the case of a member who dies on or after January 1, 2007 while performing "Qualified Military Service" under Title 38, United States Code, Chapter 43, Uniformed Services Employment and Reemployment Rights Act ("USERRA") within the meaning of Section 414(u) of the Internal Revenue Code, any "additional benefits" (as defined by Section 401(a)(37) of the Internal Revenue Code) provided under the plan that are contingent upon a member's termination of employment due to death shall be determined as though the member had resumed employment immediately prior to his death. With respect to any such "additional benefits," for vesting purposes only,

credit shall be given for the period of the member's absence from covered employment during "Qualified Military Service".

Sec. 22-59. Disability benefits.

- (a) *Disability benefits on-duty.* Each firefighter who is a member in the pension plan and who shall have become totally and permanently disabled while an active member of the pension plan to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability was directly caused by the performance of his duties as a firefighter, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to three percent of his average final compensation multiplied by the total years of credited service, but in any event the minimum amount paid to the member shall be 42 percent of his average monthly salary at the time of disability, whichever is greater, minus any benefits that may be paid from time to time by any policy or plan of disability insurance or benefits maintained by the city or the pension plan. A firefighter must apply for benefits under such disability insurance or benefits as a condition of receiving disability benefits from this pension plan.
- (b) *Conditions presumed suffered in line of duty.* Any condition or impairment of health of a firefighter caused by hypertension or heart disease shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence, provided that such firefighter shall have successfully passed a physical examination upon entering into such service, including cardiogram, which examination failed to reveal any evidence of such condition; and provided further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance. A condition or impairment of health caused by hepatitis, meningococcal meningitis, or tuberculosis, that requires medical treatment and results in disability or death shall be presumed to have occurred in the line of duty, unless the contrary be shown by competent evidence, in accordance with F.S. § 112.181, as amended from time to time.
- (c) *Disability benefits off-duty.* Each firefighter who is a member in the pension plan with ten or more years of credited service who becomes totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability was not directly caused by the performance of his duties as a firefighter, shall be entitled to a monthly pension equal to three percent of his average final compensation multiplied by the total years of credited service, or 25 percent of his average monthly salary at the date of disability, whichever is greater, minus any benefits that may be paid from time to time by any policy or plan of disability insurance or benefits maintained by the city or the pension plan. Provided that effective July 1, 2000, service time required to qualify for non-service related disability benefits shall be reduced from ten to eight or more years of credited service. A firefighter must apply for benefits under such disability insurance or benefits as a condition of receiving disability benefits from this pension plan.
- (d) *Conditions disqualifying disability benefits.* A member may be disqualified from receiving disability benefits based on a pre-existing condition as determined by the board in accordance with this pension plan. Each firefighter who is claiming disability benefits must also establish, to the satisfaction of the board, that such disability was not occasioned primarily by:
 - (1) Excessive or habitual use of any drugs, intoxicants, or alcohol.
 - (2) Injury or disease sustained while willfully and illegally participating in fights, riots, or civil insurrections.
 - (3) Injury or disease sustained while committing a crime.
 - (4) Injury or disease sustained while serving in any branch of the Armed Forces.
 - (5) Injury or disease sustained after his employment as a firefighter with the city shall have terminated.
 - (6) Willful, wanton or gross negligence of the member.
 - (7) Injury or disease sustained by the firefighter while working for anyone other than the city and arising out of such employment.

- (e) *Medical examination requirement.* A member shall not be eligible for disability benefits unless and until he undergoes a medical examination by a qualified physician or physicians selected by the board for that purpose. The member will be required to authorize the release of all relevant medical records to the physician or physicians who conduct the medical examination. Any member receiving disability benefits under provisions of this article may be periodically reexamined by a qualified physician or physicians and/or surgeon or surgeons who shall be selected by the board, to determine if such disability has ceased to exist. If the board finds that a member receiving disability benefits is no longer permanently and totally disabled to the extent that the member is able to render useful and efficient service as a firefighter, disability benefit payments to the member shall be discontinued. The cost of the medical examination and/or re-examination of a member claiming and/or receiving disability benefits shall be borne by the pension fund.
- (f) *Reentry into service after recovery from disability.* If a member recovers from disability and reenters the service of the city as a firefighter, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the city will not be considered as credited service for purposes of the pension plan.
- (g) *Authority of board.* The board shall have the power and authority to make the final decisions regarding all disability claims.
- (h) *Disability payments.* The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. Disability retirement benefits shall be payable for 120 months or the member's lifetime, whichever is longer, or until the member recovers from disability, in which case the last payment shall be the payment due next preceding the date of such recovery.
- (i) *Workers' compensation.* When a member is receiving a disability pension and workers' compensation benefits pursuant to F.S. ch. 440, for the same disability, and the total monthly benefit received from both exceed 100 percent of the member's final monthly salary, excluding overtime, the disability pension benefit shall be reduced so that the total monthly amount received by the member does not exceed 100 percent of such salary; provided that in no event shall the resulting disability retirement income payable from the pension plan be less than the member's accrued benefit or 42 percent of average monthly salary, whichever is greater. In the case of a lump sum workers' compensation settlement, the disability retirement income payable from the pension plan shall be adjusted as follows:
 - (1) The amount of the lump sum settlement shall be divided by the participant's remaining life expectancy (in months) as determined using standard actuarial tables approved by the actuary for the pension plan.
 - (2) If the number obtained in subsection (1) above, when added to the participant's monthly disability retirement income from the pension plan, exceeds the participant's final monthly compensation on the date of disability, the amount of the excess shall be deducted from the participant's monthly disability retirement income from the pension plan, for the duration of the participant's remaining life expectancy as determined in subsection (1) above.
 - (3) If the number obtained in subsection (1) above, when added to the participant's monthly disability retirement income from the pension plan, does not exceed the participant's final monthly compensation on the date of disability, there shall be no reduction of the participant's disability retirement income from the pension plan.

Sec. 22-60. Termination of employment prior to retirement.

If a member terminates city employment and is not eligible for any other benefits under this pension plan, the member shall be entitled to the following:

- (1) If the member has less than ten years credited service upon termination, the member shall be entitled to a refund of his accumulated contributions, or the member may leave them deposited with the pension fund for up to five years following termination. Provided that the vesting period for members in this plan for this benefit shall be reduced from ten years to six years effective July 1, 2001, provided that the member is "employed in a regularly established position" on that date. If not so employed on that date a member must be "employed in a covered position for at least one work year after July 1, 2001."
- (2) If the member has ten or more years of credited service upon termination, the member shall be entitled to a monthly retirement benefit determined in the same manner as for normal or early retirement based upon the member's credited service and average final compensation as of the date of termination, payable commencing at the member's normal or early retirement date; provided he does not elect to withdraw his accumulated contributions and provided the member survives to his normal or early retirement date. Provided that the vesting period for members in this plan for this benefit shall be reduced from ten years to six years effective July 1, 2001, provided that the member is "employed in a regularly established position" on that date. If not so employed on that date a member must be "employed in a covered position for at least one work year after July 1, 2001."

Sec. 22-61. Optional forms of benefits.

- (a) In lieu of the amount and form of retirement income payable as specified in this pension plan, a member, upon written request to the board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:
 - (1) A retirement income of a monthly amount payable to the member for his lifetime only.
 - (2) A retirement income of a modified monthly amount payable to the member during the lifetime of the member and, following the death of the member, 100 percent, 66⅔ percent, 75 percent or 50 percent of such monthly amount payable to a joint pensioner for his lifetime.
 - (3) If a member retires prior to the time at which social security benefits are payable, he may elect to receive an increased retirement benefit until such time as social security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of retirement. The amounts payable shall be as recommended by the actuaries for the pension plan, based upon the social security law in effect at the time of the member's retirement.
- (b) The member, upon electing any option provided in subsection (a) of this section, will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the pension plan in the event of the member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and the member's retirement income benefits have commenced, such member may thereafter change his designated joint pensioner or beneficiary up to two times as provided in F.S. § 175.333 without the approval of the board of trustees or the current joint annuitant or beneficiary. The member need not provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living. Upon any such new election, the member's final pension benefit shall be recalculated accordingly by the actuary with all costs resulting directly from the new election borne solely by the member.
- (c) The consent of a member's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously-designated beneficiaries to receive benefits under the pension plan shall thereupon cease.
- (d) Upon change of a member's beneficiary or joint pensioner in accordance with this section, the board shall adjust the member's monthly benefit by application of actuarial calculations to insure that the benefit paid is the actuarial equivalent of the member's then-current benefit. Any such member shall pay the actuarial

recalculation expenses and shall make repayment of any overage of previously-paid pension benefits as a result of said recalculations. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. In the event that no designated beneficiary survives the member, such benefits as are payable in the event of the death of the member subsequent to his retirement shall be paid as provided in section 22-62.

- (e) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:
- (1) If a member dies prior to his normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefit, if any, will be determined under section 22-58.
 - (2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement under the pension plan, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the member upon his retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the member prior to his retirement and within 90 days after the death of the beneficiary.
 - (3) If both the retired member and the beneficiary (or beneficiaries) designated by member die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection a of this section, the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 22-62.
 - (4) If a member continues beyond his normal retirement date pursuant to the provisions of section 22-57(a), and dies prior to his actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his death occurred.
- (f) A member may not change his retirement option after the date of cashing or depositing his first retirement check.
- (g) Notwithstanding anything herein to the contrary, the board in its discretion may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the remaining monthly income payments to be paid do not exceed \$3,500.00. Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the pension plan with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.
- (h) "Share plan." There is hereby provided, in addition to all other benefits provided in this article, an annual supplemental retirement benefit, which shall consist of an individual share account for each member of the pension plan employed as a firefighter for the city on or after the effective date hereof. The amount of which shall be determined annually, based upon the receipt by the fund of any "additional premium tax revenues," as defined in F.S. § 175.032(1), meaning, those insurance premium tax revenues in excess of base premium tax revenues equaling \$73,936.00. By December 1 of each year (or, if the premium tax revenues are received after October 2, within 60 days after receipt of the premium tax revenues from the state), each actively employed member of the pension plan employed as a firefighter for the city on or after the effective date of the ordinance from which this section is derived hereof, shall be paid a supplemental retirement benefit determined as follows:

Initial crediting. No later than 180 days after the adoption of the ordinance from which this section derives, each member's share account shall be credited retroactively from the member's date of hire to September 30, 2007. Each member who was employed during this time as a firefighter shall receive one share for each

month of credited service as defined in section 22-52, earned during the preceding fiscal year. The total value of each share shall be determined annually based on the total number of members at that time divided into the total additional premium tax revenues received during said fiscal year, plus interest at the pension plan's actual rate of investment return calculated from the pension plan's receipt of said revenue to September 30 of that year, to determine the amount to be initially credited to the share account of each eligible member. It is the intent of the city council that the initial payment under this section shall be made based on each separate year's accumulation and the status of each eligible member in those years. The crediting of shares for each year shall be based on the excess premium taxes received in that particular year and shall be payable only to persons who were eligible to receive a payment in the particular year in which the taxes were received. For purposes of implementing this share plan, a member's annual accrued benefit shall mean the amount allocable each fiscal year up to the corresponding annual prescribed Internal Revenue Code Section 415 limitation, beyond which any excess amount shall be deemed to accrue in the subsequent fiscal year.

Crediting effective December 2008 and thereafter for members hired prior to July 1, 2022. Share accounts shall be funded solely with additional premium tax revenues as defined herein. Effective October 1, 2015, should member contributions plus city contributions plus base premium tax revenues in the amount of \$73,936.00 be insufficient to fully fund the pension plan in a given fiscal year as determined by the plan's actuary in its most recent actuarial valuation report, additional premium tax revenues shall be allocated accordingly to fund such shortfall instead of funding member share accounts. Any additional premium tax revenue not utilized to fund such a shortfall shall be allocated to fund member share accounts accordingly.

Each member who was employed during the preceding calendar year shall receive one share for each month of credited service, as defined in section 22-52, earned during the preceding calendar year. The total number of shares thus determined shall be divided into the additional premium tax revenues received during said year, plus interest at the pension plan's actual rate of investment return, calculated from the pension plan's receipt of said revenue to December 31 of that year, to determine the amount to be credited to the share account of each eligible member.

Effective January 1 of each calendar year, each member's share account shall be credited or debited with earnings based upon the amount in the share account at the close of the next preceding calendar year (e.g., the amount credited in 2008 shall be based upon the amount in the share account as [of] December 31, 2006, since the interest on the additional premiums tax revenues credited to the account during 2007 was already added to the amount distributed in 2007) at a rate equal to the pension plan's net investment return for the preceding calendar year (e.g., effective January 1, 2008, the amount in each share account as of December 31, 2006, shall be credited with the net investment rate of return for 2007.) Upon attaining 12 years of credited service, a member may thereafter make a one-time irrevocable election to have interest credited to his or her share account at the rate earned by the pension fund from a money market mutual fund selected by the board of trustees rather than credited or debited at the pension fund's actual rate of return.

Prior to June 6, 2022, a member who reaches age 55 or who attains at least 20 years of credited service shall be eligible to receive the balance in the member's share account upon actual termination of employment with the city.

Prior to June 6, 2022, a member with at least 15, but less than 20 years of credited service, shall be eligible to receive 75 percent of the balance in the member's share account upon actual termination of employment with the city.

Prior to June 6, 2022, a member with at least six but less than 15 years of credited service upon termination of employment shall be eligible to receive one-half of the balance in the member's share account upon termination of employment.

Effective June 6, 2022, a member with at least with six or more years of credited service shall be eligible to receive 100 percent of the balance in the member's share account upon actual termination of employment with the city.

No benefit shall be payable to a member who terminates covered employment with less than six years of credited service. The share account balances of such nonvested terminated members shall be redistributed into the allocation for the next fiscal year. The designated beneficiary of a member who dies shall receive the accumulated total of the deceased member's share account and a member awarded a disability pension from the pension plan shall receive the accumulated total of the disabled member's share account. There shall be no forfeiture of a member's share account based on member's death, disability, or layoff. Payment of share account benefits shall be by lump sum, which shall consist of the accumulated total of the member's share account or can be rolled over in accordance with section 22-72, with an additional payment made for any amount credited in the year following the member's termination of employment. Any additional costs of additional minimum or mandated pension benefits required by changes to state law that take effect after the date of the ordinance from which this section derived shall be paid from the additional premium tax revenues before any remaining additional premium tax revenues are allocated to the share accounts hereunder.

Crediting for members hired on or after July 1, 2022. members hired on or after July 1, 2022, shall not receive any shares of credited service into their individual share accounts. Instead, the amount or value associated with such shares of credited service will be used by the city to offset its required contribution to the plan. However, these members hired on or after July 1, 2022, shall be eligible to enter into the deferred retirement option plan (DROP), as defined in section 22-74, upon reaching normal retirement eligibility.

Sec. 22-62. Beneficiaries.

- (a) Each member may, on a form provided for that purpose, signed and filed with the board, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his death; and each designation may be revoked by such member by signing and filing with the board a new designation-of-beneficiary form.
- (b) If a deceased member fails to name a beneficiary in the manner prescribed in subsection (a) of this section, or if the beneficiary (or beneficiaries) named by a deceased member predeceases the member, the death benefit, if any, which may be payable under the pension plan with respect to such deceased member, shall be paid to the estate of the member.

Sec. 22-63. Reports to division of retirement.

No later than March 15 each year, the chairman or secretary of the board shall file a report with the division of retirement in accordance with F.S. § 175.261(2).

Sec. 22-64. Roster of retirees.

The secretary of the board shall keep a record of all persons receiving benefits under the provisions of this article, in which it shall be noted the time when the benefits commence and when the same shall cease to be paid. Additionally, the secretary shall keep a record of all members employed by the city in such a manner as to show the name, address, date of employment, and date such employment is terminated.

Sec. 22-65. Internal Revenue Code compliance.

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

The annual pension as defined in paragraph (2) below otherwise payable to a member at any time shall not exceed the dollar limitation for the member multiplied by a fraction whose value cannot exceed

one, the numerator of which is the member's number of years (or part thereof, but not less than one year) of service with the city and the denominator of which is ten. For this purpose, no more than one year of service may be credited for any plan year. If the benefit the member would otherwise accrue in a limitation year would produce an annual pension in excess of the dollar limitation, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the dollar limitation.

- (2) "Annual pension" means the sum of all annual benefits, payable in the form of a straight life annuity. Benefits payable in any other form shall be adjusted to the larger of:
- a. For limitation years beginning on or after July 1, 2007:
 - 1. The straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit, or
 - 2. The actuarially equivalent straight life annuity commencing at the same annuity starting date, computed using a 5.00 percent interest rate and the mortality basis prescribed in [Internal Revenue] Code Section 415(b)(2)(E)(v).
 - b. For limitation years beginning before July 1, 2007:
 - 1. The actuarially equivalent straight life annuity commencing at the same annuity starting date, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan for the particular form of payment, or
 - 2. The actuarially equivalent straight life annuity commencing at the same annuity starting date, computed using a 5.00 percent interest rate and the mortality basis prescribed in [Internal Revenue] Code Section 415(b)(2)(E)(v).

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this subsection (a), and the amount payable under the form of benefit in any limitation year shall not exceed the limits of this subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the [Internal Revenue] Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

- (3) "Dollar limitation" means, effective for the first limitation year beginning after January 1, 2001, \$160,000.00, automatically adjusted under [Internal Revenue] Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The dollar limitation shall be further adjusted based on the age of the member when the benefit begins as follows:
- a. For annuity starting dates in limitation years beginning on or after July 1, 2007.
 - 1. If the annuity starting date for the member's benefit is after age 65.
 - (i) If the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement.

The dollar limitation at the member's annuity starting date is the annual 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).

- (ii) If the plan does have an immediately commencing straight life annuity payable at both age 65 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 65, both determined without applying the limitations of this subsection (a), and (bb) the limitation determined under subparagraph (3)a.1.(i) of this subsection (a). For this purpose, the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan to a hypothetical member who is age 65 and has the same accrued benefit as the member.

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

- (i) If the plan does not 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 annual 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).

- (ii) 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 (a), and (bb) the limitation determined under subparagraph (3)a.2.(i) of this subsection (a).

- b. 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.	

- (4) With respect to clause (3)a.1.(i), clause (3)a.2.(i) and paragraph (3)b. 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 death if the plan does not charge members for providing a qualified preretirement survivor annuity, as defined in [Internal Revenue] Code Section 417(c), upon the member's death.
- (5) The term "limitation year" is the 12 month period which is used for application of the limitations under [Internal Revenue] Code Section 415 and shall be the calendar year.
- (6) The limitations set forth in this subsection (a) shall not apply if the annual pension does not exceed \$10,000.00 provided the member has never participated in a defined contribution plan maintained by the city.
- (7) Cost-of-living adjustments in the dollar limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section 415(d) of the [Internal Revenue] Code.
- (8) In the case of a member who has fewer than ten years of participation in the plan, the dollar limitation set forth in paragraph (3) of this subsection (a) shall be multiplied by a fraction - (i) the numerator of which is the number of years (or part thereof) of participation in the plan, and (ii) the denominator of which is ten.
- (9) Any portion of a member's benefit that is attributable to mandatory member contributions (unless picked-up by the city) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the [Internal Revenue] Code.
- (10) Should any member participate in more than one defined benefit plan maintained by the city, in any case in which the member's benefits under all such defined benefit plans (determined as of the same

age) would exceed the dollar limitation applicable at that age, the accrual of the member's benefit under this plan shall be reduced so that the member's combined benefits will equal the dollar limitation.

- (11) For a member who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to 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 Income Tax Regulations.
 - (12) The determination of the annual pension under paragraph (a)(2) of this subsection (a) [sic] shall take into account (in the manner prescribed by the regulations under Section 415 of the [Internal Revenue] Code) Social Security supplements described in Section 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant [to] Section 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.
 - (13) The above limitations are intended to comply with the provisions of Section 415 of the [Internal Revenue] Code, as amended, so that the maximum benefits provided by plans of the city shall be exactly equal to the maximum amounts allowed under Section 415 of the [Internal Revenue] Code and regulations thereunder. If there is any discrepancy between the provisions of this subsection (a) and the provisions of Section 415 of the [Internal Revenue] Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the [Internal Revenue] Code. The value of any benefits forfeited as a result of the application of this subsection (a) shall be used to decrease future employer contributions.
 - (14) For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, compensation shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in this subsection (a), compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code. For limitation years on or after July 1, 2007, compensation shall include payments that otherwise qualify as compensation and that are made by the later of: (a) two and one-half months after severance from employment with the employer, and (b) the end of the limitation year that includes the date of severance. With respect to plan years beginning on or after December 31, 2008, compensation shall also include differential wage payments within the meaning of Section 3401(h)(2) of the Internal Revenue Code.
- (b) *Required beginning date.* Notwithstanding any other provision of the plan, payment of a participant's retirement benefits under the plan shall commence not later than the participant's required beginning date, which is defined as the later of:
- April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of 70½ years; or
 - April 1 of the calendar year that next follows the calendar year in which the participant retires.
- (c) *Required minimum distributions.*
- (1) *Required beginning date.* The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date as defined in subsection (b) of this section 22-65.
 - (2) *Death of participant before distributions begin.*

- a. If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - 1. If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.
 - 2. If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.
 - 3. If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
 - b. The participant's entire interest shall be distributed as follows:
 - 1. *Participant survived by designated beneficiary.* If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in subparagraph (2)a. above, over the life of the designated beneficiary or over a period certain not exceeding:
 - (i) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or
 - (ii) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.
 - 2. *No designated beneficiary.* If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
 - c. *Death of surviving spouse before distributions to surviving spouse begin.* In any case in which (i) the participant dies before the date distribution of his or her interest begins, (ii) the participant's surviving spouse is the participant's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, subparagraphs (2)a. and (2)b. above shall apply as though the surviving spouse were the participant.
- (3) *Requirements for annuity distributions that commence during participant's lifetime.*
- a. *Joint life annuities where the beneficiary is not the participant's spouse.* If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

- b. *Period-certain annuities.* Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this subparagraph (3)b., or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.
- (4) *Form of distribution.* Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subparagraphs (4)a., (4)b. and (4)c. below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.
- a. *General annuity requirements.* If the participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:
1. The annuity distributions will be paid in periodic payments made at intervals not longer than one year;
 2. The distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in paragraphs (2) or (3) above, whichever is applicable, of this subsection (c);
 3. Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
 4. Payments will either be non-increasing or increase only as follows:
 - (i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - (ii) To the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the [Internal Revenue] Code;
 - (iii) To provide cash refunds of employee contributions upon the participant's death; or
 - (iv) To pay increased benefits that result from a plan amendment.

- b. *Amount required to be distributed by required beginning date.* The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under subparagraph (2)a.1. or (2)a.2., whichever is applicable) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.
 - c. *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
- (5) *[Distributions.]* For purposes of this subsection (c), distributions are considered to begin on the participant's required beginning date. If annuity payments irrevocably commence to the participant (or to the participant's surviving spouse) before the participant's required beginning date (or, if to the participant's surviving spouse, before the date distributions are required to begin in accordance with subparagraph (2)a. above), the date distributions are considered to begin is the date distributions actually commence.
- (6) *Definitions.*
- a. *Designated beneficiary.* The individual who is designated as the beneficiary under the plan and is the designated beneficiary under Section 401(a)(9) of the [Internal Revenue] Code and Section 1.401(a)(9)-4 of the Treasury regulations.
 - b. *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to paragraph 2. of this subsection (c).
 - c. *Life expectancy.* Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (d) (1) *[Rollover distribution.]* Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (2) *Definitions.* The following definitions apply to this section:
- a. *Eligible rollover distribution.* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
 1. 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;
 2. Any distribution to the extent such distribution is required under Section 401(a)(9) of the [Internal Revenue] Code;
 3. The portion of any distribution which is made upon hardship of the member; and

4. The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the [Internal Revenue] Code, 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.
- (3) *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 annuity contract described in Section 403(b) of the [Internal Revenue] Code, a qualified trust described in Section 401(a) of the [Internal Revenue] Code, an eligible plan under Section 457(b) of the [Internal Revenue] Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of [Internal Revenue] Code Section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.
- (4) *Distributee.* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the [Internal Revenue] Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in Section 401(a)(9)(E) of the [Internal Revenue] Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in Section 408(a) of the [Internal Revenue] Code or an individual retirement annuity described in Section 408(b) of the [Internal Revenue] Code shall be considered a distributee.
- (5) *Direct rollover.* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.
- (e) *[Maximum amount of mandatory distribution.]* Notwithstanding any other provision of this plan, the maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the [Internal Revenue] Code, payable under the plan shall be \$1,000.00.
- (f) *Compensation limitations under 401(a)(17).* In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to the contrary, the annual compensation of each participant taken into account under the plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is \$200,000.00, as adjusted by the commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the [Internal Revenue] Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.
- Any reference in the plan to the limitation under Section 401 (a)(17) of the [Internal Revenue] Code shall mean the EGTRRA annual compensation limit set forth in this provision.
- (g) *[Use of funds.]* At no time prior to the satisfaction of all liabilities under the plan with respect to members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

Sec. 22-66. Commencement of benefits.

- (a) Unless the member otherwise elects, with such election being in writing and delivered to the board and specifying the form of retirement income and date on which the retirement income is to commence, the payment benefits under the pension plan to the member shall commence not later than the sixtieth day after the close of the year of the pension plan in which the latest of the following events occur:
 - (1) The attainment by the member of age 65;
 - (2) The tenth anniversary of the date on which the member commenced participation in the pension plan; or
 - (3) The termination of the member's service with the city.
- (b) If the payment of a member's retirement income cannot begin on the date required under subsection (a) of this section because the board either cannot ascertain the amount of the member's retirement income or cannot locate the member after making reasonable efforts to do so, the payment of the member's benefits shall begin not later than 60 days after the date on which the amount can be ascertained or the member is located, whichever is applicable. Any such payment shall be made retroactive to a date which is not earlier than the date on which the payment of the member's benefits was scheduled to begin but which is not later than the date specified under subsection (a) of this section.

Sec. 22-67. Distribution of benefits.

Notwithstanding any other provision of this pension plan to the contrary, a form of retirement income payable from this pension plan, after the effective date of this pension plan, shall satisfy the following conditions:

- (1) If the retirement income is payable before the member's death:
 - a. It shall either be distributed or commence to the member not later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½, or the calendar year in which the member retires; or
 - b. The distribution shall commence not later than the calendar year defined above; and
 - 1. Shall be paid over the life of the member or over the lifetimes of the member and spouse, issue or dependent; or
 - 2. Shall be paid over the period extending not beyond the life expectancy of the member and spouse, issue or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the member dies before his entire interest in the pension plan has been distributed, the remaining portion of such interest in the pension plan shall be distributed no less rapidly than under the form of distribution in effect at the time of the member's death.

- (2) If the member's death occurs before the distribution of his interest in the pension plan has commenced, the member's entire interest in the pension plan shall be distributed within five years of the member's death, unless it is to be distributed in accordance with the following rules:
 - a. The member's remaining interest in the pension plan is payable to his spouse, issue or dependent;
 - b. The remaining interest is to be distributed over the life of the spouse, issue or dependent or over a period not extending beyond the life expectancy of the spouse, issue or dependent; and
 - c. Such distribution begins within one year of the member's death unless the member's spouse, issue or dependent shall receive the remaining interest, in which case the distribution need not begin before the date on which the member would have attained age 70½, and if the spouse,

issue or dependent dies before the distribution to the spouse, issue or dependent begins, this section shall be applied as if the spouse, issue or dependent were the member.

Sec. 22-68. Repeal or termination of pension plan.

- (a) This article establishing the pension plan and fund, and subsequent resolutions pertaining to said pension plan and fund, may be modified, terminated, or amended, in whole or in part; provided, however, that if this or any subsequent resolution shall be altered, amended, or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the member or beneficiary shall not be affected thereby.
- (b) If this article shall be repealed, or if contributions to the pension plan are discontinued, the board shall continue to administer the pension plan in accordance with the provisions of this article, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this article who are designated by any of said members. In the event of repeal, or if contributions to the pension plan are discontinued, there shall be full vesting (100 percent) of benefits accrued to the date of repeal. The board shall determine the date of distribution and the asset value required to fund all nonforfeitable benefits after taking into account the expenses of such distribution. The board shall inform the city, or then current plan sponsor, if additional assets are required, in which event the city, or then current plan sponsor, shall continue to financially support the pension plan until all nonforfeitable benefits have been funded.
- (c) The board of trustees shall determine the method of distribution of the asset value, that is, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each firefighter entitled to benefits under the plan as specified in subsection F.S. § 175.361(3).

Sec. 22-69. Exemption from execution and non-assignability.

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

Sec. 22-70. Pension validity.

The board shall have the power to examine the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. Said board is empowered to purge the pension rolls of any person heretofore granted a pension under prior or existing law or heretofore granted under this article if the same is found to be erroneous, fraudulent or illegal for any reason and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under this article be erroneously, improperly or illegally classified.

Sec. 22-71. Forfeiture of pension.

- (a) Any member who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this pension plan, except for the return of his accumulated contributions as of the date of termination.
- (b) Specified offenses are as follows:
 - (1) The committing, aiding or abetting of an embezzlement of public funds;
 - (2) The committing, aiding or abetting of any theft by a public officer or employee from employer;
 - (3) Bribery in connection with the employment of a public officer or employee;
 - (4) Any felony specified in F.S. ch. 838;
 - (5) The committing of an impeachable offense;
 - (6) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his public office or employment.
- (c) As used in this section:
 - (1) "Conviction" means an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the senate of an impeachable offense.
 - (2) "Court" means any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the board shall hold a hearing on which notice shall be given to the member whose benefits are being considered for forfeiture. Said member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present his case against forfeiture.
- (d) Any member who has received benefits from the pension plan in excess of his accumulated contributions after the member's rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions. The board may implement all legal action necessary to recover such funds.

Sec. 22-72. Direct transfers of eligible rollover distributions.

- (a) Notwithstanding any provision of the pension plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) As used in this section:
 - (1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not 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 Code; and the portion of any distribution that is not includible in gross income.

- (2) "Eligible retirement plan" means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
- (3) "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.
- (4) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

Sec. 22-73. Retiree health insurance subsidy.

Each eligible retiree or beneficiary who is a spouse or financial dependent shall receive a monthly retiree health insurance subsidy payment equal to the number of years of credited service completed at the time of the member's retirement multiplied by \$3.00; however, no retiree or beneficiary may receive a subsidy payment of more than \$90.00 or less than \$30.00.

Sec. 22-74. Deferred retirement option plan (DROP).

A deferred retirement option plan ("DROP") shall be created for all 175-member participation as soon as practicable after June 6, 2022. Eligibility to participate in the DROP is based upon eligibility for normal service retirement and subject to the below.

- (1) The maximum period of DROP participation is five years. Members entering the DROP must submit an irrevocable letter of termination or resignation, effective not later than 60 months after the commencement of DROP participation. Upon entry into the DROP, the member's average final compensation and accrued benefits shall be calculated. No change in the plan benefits made subsequent to entry into the DROP shall apply to the member unless otherwise applicable to retired pension members.
- (2) Payment shall be made into the member's DROP account in an amount determined by the member's selection of the payment option as if the member had terminated employment in the city.
- (3) The interest in a member's account in the DROP program shall accrue at an effective annual rate of 1.3 percent, compounded monthly, on the prior month's accumulated ending balance, up to the month of termination or death.
- (4) All interest will be credited to the member's DROP account at the end of the DROP period.
- (5) A member must terminate service with the city at the conclusion of years in the maximum DROP participation period. Upon termination of service with the city, a member may receive payment or defer payment until a time not later than the latest date authorized by Section 401(a)(9) of the Internal Revenue Code at the option of the employee.
- (6) No payment may be made from the DROP until the member actually separates from service with the city.
- (7) If a member dies during participation in the DROP, the member will be treated as any other retired pension member and shall not be entitled to pre-retirement death benefits.

Chapter 26 FLOODS

ARTICLE I. IN GENERAL

Secs. 26-1—26-30. Reserved.

ARTICLE II. FLOODPLAIN MANAGEMENT

DIVISION 1. ADMINISTRATION

Sec. 26-31. General.

- (a) *Title.* These regulations shall be known as the Floodplain Management Ordinance of the City of Marco Island, hereinafter referred to as "this ordinance."
- (b) *Scope.* Unless otherwise specified, the provisions of this ordinance shall apply to all development that is wholly within or partially within any flood hazard area, including, but not limited to, the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the Florida Building Code; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development. Section 26-90 shall apply to areas outside of the flood hazard area established in section 26-32(c).
- (c) *Intent.* The purposes of this ordinance and the flood load and flood-resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:
 - (1) Minimize unnecessary disruption of commerce, access and public service during times of flooding;
 - (2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
 - (3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;
 - (4) Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
 - (5) Minimize damage to public and private facilities and utilities;
 - (6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;
 - (7) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and
 - (8) Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.
- (d) *Coordination with the Florida Building Code.* This ordinance is intended to be administered and enforced in conjunction with the Florida Building Code. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the Florida Building Code.
- (e) *Warning.* The degree of flood protection required by this ordinance and the Florida Building Code, as amended by this community, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the flood insurance study and shown on flood

insurance rate maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this ordinance.

- (f) *Disclaimer of liability.* This ordinance shall not create liability on the part of the Marco Island City Council, the City of Marco Island, by any officer or employee thereof for any flood damage that results from reliance on this ordinance or any administrative decision lawfully made thereunder.

Sec. 26-32. Applicability.

- (a) *General.* Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.
- (b) *Areas to which this ordinance applies.* This ordinance shall apply to all applications for development, including building permit applications and subdivision proposals within the flood hazard areas within the City of Marco Island, as established in subsection 26-32(c) of this ordinance.
- (c) *Basis for establishing flood hazard areas.* The flood insurance study for Collier County, Florida, and incorporated areas dated May 16, 2012, and all subsequent amendments and revisions, and the accompanying flood insurance rate maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at City Hall.
 - (1) *Submission of additional data to establish flood hazard areas.* To establish flood hazard areas and base flood elevations, pursuant to section 26-35 of this ordinance, the floodplain administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the community indicates that ground elevations:
 - a. Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of this ordinance and, as applicable, the requirements of the Florida Building Code.
 - b. Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a letter of map change that removes the area from the special flood hazard area.
- (d) *Other laws.* The provisions of this ordinance shall not be deemed to nullify any provisions of local, state or federal law.
- (e) *Abrogation and greater restrictions.* This ordinance supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances, including, but not limited to, land development regulations, zoning ordinances, or stormwater management regulations, or the Florida Building Code. In the event of a conflict between this ordinance and any other ordinance, the more restrictive shall govern. This ordinance shall not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall also be governed by this ordinance.
- (f) *Interpretation.* In the interpretation and application of this ordinance, all provisions shall be:
 - (1) Considered as minimum requirements;
 - (2) Liberally construed in favor of the governing body; and
 - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

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

- (a) *Designation.* The city manager ~~or his designee~~ is designated as the floodplain administrator. The floodplain administrator may delegate performance of certain duties to other employees.
- (b) *General.* The floodplain administrator is authorized and directed to administer and enforce the provisions of this ordinance. The floodplain administrator shall have the authority to render interpretations of this ordinance consistent with the intent and purpose of this ordinance and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this ordinance without the granting of a variance pursuant to section 26-37 of this ordinance.
- (c) *Applications and permits.* The floodplain administrator, in coordination with other pertinent offices of the community, shall:
 - (1) Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
 - (2) Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this ordinance;
 - (3) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation;
 - (4) Provide available flood elevation and flood hazard information;
 - (5) Determine whether additional flood hazard data shall be obtained from other sources or shall be developed by an applicant;
 - (6) Review applications to determine whether proposed development will be reasonably safe from flooding;
 - (7) Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code, when compliance with this ordinance is demonstrated, or disapprove the same in the event of noncompliance; and
 - (8) Coordinate with and provide comments to the building official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this ordinance.
- (d) *Substantial improvement and substantial damage determinations.* For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the floodplain administrator, in coordination with the building official, shall:
 - (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
 - (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of "substantial improvement;" and
 - (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the Florida Building Code and this ordinance is required.
- (e) *Modifications of the strict application of the requirements of the Florida Building Code.* The floodplain administrator shall review requests submitted to the building official that seek approval to modify the strict application of the flood load and flood resistant construction requirements of the Florida Building Code to determine whether such requests require the granting of a variance pursuant to section 26-37 of this ordinance.
- (f) *Notices and orders.* The floodplain administrator shall coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this ordinance.
- (g) *Inspections.* The floodplain administrator shall make the required inspections as specified in section 26-36 of this ordinance for development that is not subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. The floodplain administrator shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit.
- (h) *Other duties of the floodplain administrator.* The floodplain administrator shall have other duties, including, but not limited to:
- (1) Establish, in coordination with the building official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to subsection 26-33(d) of this ordinance;
 - (2) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);
 - (3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the flood insurance rate maps if the analyses propose to change base flood elevations or flood hazard area boundaries; such submissions shall be made within six months of such data becoming available;
 - (4) Review required design certifications and FEMA Elevation Certificates specified by this ordinance and the Florida Building Code and this ordinance to determine that such certifications are complete;
 - (5) Notify the Federal Emergency Management Agency when the corporate boundaries of the City of Marco Island are modified; and
 - (6) Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on flood insurance rate maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."
- (i) *Floodplain management records.* Regardless of any limitation on the period required for retention of public records, the floodplain administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this ordinance and the flood-resistant construction requirements of the Florida Building Code, including flood insurance rate maps; letters of map change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and FEMA Elevation Certificates specified by the Florida Building Code and this ordinance; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood-

carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this ordinance and the flood-resistant construction requirements of the Florida Building Code. These records shall be available for public inspection at City Hall.

Sec. 26-34. Permits.

- (a) *Permits required.* Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this ordinance, including buildings, structures and facilities exempt from the Florida Building Code, which is wholly within or partially within any flood hazard area shall first make application to the floodplain administrator, and the building official if applicable, and shall obtain the required permit(s) and approval(s). No such permit or approval shall be issued until compliance with the requirements of this ordinance and all other applicable codes and regulations has been satisfied.
- (b) *Floodplain development permits or approvals.* Floodplain development permits, or approvals shall be issued pursuant to this ordinance for any development activities not subject to the requirements of the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. Depending on the nature and extent of proposed development that includes a building or structure, the floodplain administrator may determine that a floodplain development permit or approval is required in addition to a building permit.
 - (1) *Buildings, structures and facilities exempt from the Florida Building Code.* Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals shall be required for the following buildings, structures and facilities that are exempt from the Florida Building Code and any further exemptions provided by law, which are subject to the requirements of this ordinance:
 - a. Railroads and ancillary facilities associated with the railroad.
 - b. Nonresidential farm buildings on farms, as provided in F.S. § 604.50.
 - c. Temporary buildings or sheds used exclusively for construction purposes.
 - d. Mobile or modular structures used as temporary offices.
 - e. Those structures or facilities of electric utilities, as defined in F.S. § 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
 - f. Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
 - g. Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
 - h. Temporary housing provided by the department of corrections to any prisoner in the state correctional system.
 - i. Structures identified in F.S. § 553.73(10)(k), are not exempt from the Florida Building Code if such structures are located in flood hazard areas established on Flood Insurance Rate Maps.
- (c) *Application for a permit or approval.* To obtain a floodplain development permit or approval the applicant shall first file an application in writing on a form furnished by the community. The information provided shall:
 - (1) Identify and describe the development to be covered by the permit or approval.
 - (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.

- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan or construction documents as specified in section 26-35 of this ordinance.
- (5) State the valuation of the proposed work.
- (6) Be signed by the applicant or the applicant's authorized agent.
- (7) Give such other data and information as required by the floodplain administrator.
- (8) A signed Declaration of Land Restriction (Nonconversion Agreement) shall be recorded in the County public records prior to issuance of the Certificate of Occupancy for the following:
 - a. An enclosure below a new or substantially improved elevated building and that is more than five feet in height.
 - b. A crawl/underfloor space that is more than five feet in height (measured from the lowest interior grade or floor to the bottom of the floor system above).
 - c. A garage or detached accessory structure that is not elevated and is larger than 120 square feet in area.
- (d) *Validity of permit or approval.* The issuance of a floodplain development permit or approval pursuant to this ordinance shall not be construed to be a permit for, or approval of, any violation of this ordinance, the Florida Building Codes, or any other ordinance of this community. The issuance of permits based on submitted applications, construction documents, and information shall not prevent the floodplain administrator from requiring the correction of errors and omissions.
- (e) *Expiration.* A floodplain development permit or approval shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each shall be requested in writing and justifiable cause shall be demonstrated.
- (f) *Suspension or revocation.* The floodplain administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this ordinance or any other ordinance, regulation or requirement of this community.
- (g) *Other permits required.* Floodplain development permits and building permits shall include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including, but not limited to, the following:
 - (1) The South Florida Water Management District; F.S. § 373.036.
 - (2) Florida Department of Health for onsite sewage treatment and disposal systems; F.S. § 381.0065 and Chapter 64E-6, F.A.C.
 - (3) Florida Department of Environmental Protection for construction, reconstruction, changes, or physical activities for shore protection or other activities seaward of the coastal construction control line; F.S. § 161.141.
 - (4) Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; F.S. § 161.055.
 - (5) Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
 - (6) Federal permits and approvals.

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

- (a) *Information for development in flood hazard areas.* The site plan or construction documents for any development subject to the requirements of this ordinance shall be drawn to scale and shall include, as applicable to the proposed development:
- (1) Delineation of flood hazard areas, flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.
 - (2) Reserved.
 - (3) Reserved.
 - (4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas, new buildings shall be located landward of the reach of mean high tide.
 - (5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
 - (6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
 - (7) Delineation of the coastal construction control line or notation that the site is seaward of the coastal construction control line, if applicable.
 - (8) Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.
 - (9) Existing and proposed alignment of any proposed alteration of a watercourse.

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

- (b) Reserved.
- (c) *Additional analyses and certifications.* As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:
- (1) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in subsection 26-35(d) of this ordinance.
 - (2) For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (zone V), an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage.
- (d) *Submission of additional data.* When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a letter of map change from FEMA to change the base flood elevations or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

Sec. 26-36. Inspections.

- (a) *General.* Development for which a floodplain development permit or approval is required shall be subject to inspection.
- (b) *Development other than buildings and structures.* The floodplain administrator shall inspect all development to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.
- (c) *Buildings, structures and facilities exempt from the Florida Building Code.* The floodplain administrator shall inspect buildings, structures and facilities exempt from the Florida Building Code to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.
 - (1) *Buildings, structures and facilities exempt from the Florida Building Code, lowest floor inspection.* Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the Florida Building Code, or the owner's authorized agent, shall submit to the floodplain administrator a FEMA Elevation Certificate prepared and sealed by a Florida licensed professional surveyor.
 - (2) *Buildings, structures and facilities exempt from the Florida Building Code, final inspection.* As part of the final inspection, the owner or owner's authorized agent shall submit to the floodplain administrator a final FEMA Elevation Certificate; such certifications shall be prepared as specified in subsection 26-36(a)(1) of this ordinance.
- (d) *Manufactured homes.* The floodplain administrator or building official shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this ordinance and the conditions of the issued permit. Upon placement of a manufactured home, a FEMA Elevation Certificate certification of the elevation of the lowest floor shall be submitted to the floodplain administrator or building official.

Sec. 26-37. Variances and appeals.

- (a) *General.* The ~~Marco Island City~~ Council shall hear and decide on requests for appeals and requests for variances from the strict application of this ordinance. Pursuant to F.S. § 553.73(5), the ~~Marco Island City~~ Council shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the Florida Building Code. This section does not apply to Section 3109 of the Florida Building Code, Building.
- (b) *Appeals.* The ~~Marco Island City~~ Council shall hear and decide appeals pursuant to section 1-15 of this code of ordinances when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this ordinance. Any person aggrieved by the decision of ~~Marco Island the City~~ Council may appeal such decision to the circuit court, as provided by Florida Statutes.
- (c) *Limitations on authority to grant variances.* The ~~Marco Island City~~ Council shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in subsection 26-37(f) of this ordinance, the conditions of issuance set forth in section 26-37(g) of this ordinance, and the comments and recommendations of the floodplain administrator and the building official. The ~~Marco Island City~~ Council has the right to attach such conditions as it deems necessary to further the purposes and objectives of this ordinance.
- (d) *Historic buildings.* A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the Florida Building Code, Existing Building, Chapter 12 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's

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

- (e) *Functionally dependent uses.* A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this ordinance, is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.
- (f) *Considerations for issuance of variances.* In reviewing requests for variances, the ~~Marco Island City~~ Council shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this ordinance, and the following:
 - (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
 - (4) The importance of the services provided by the proposed development to the community;
 - (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
 - (6) The compatibility of the proposed development with existing and anticipated development;
 - (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
 - (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;
 - (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.
- (g) *Conditions for issuance of variances.* Variances shall be issued only upon:
 - (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this ordinance or the required elevation standards;
 - (2) Determination by the ~~Marco Island City~~ Council that:
 - a. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
 - b. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and
 - c. The variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (3) Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the office of the clerk of the court in such a manner that it appears in the chain of title of the affected parcel of land; and

- (4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the floodplain administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25.00 for \$100.00 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

Sec. 26-38. Violations.

- (a) *Violations.* Any development that is not within the scope of the Florida Building Code but that is regulated by this ordinance that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with this ordinance, shall be deemed a violation of this ordinance. A building or structure without a FEMA Elevation Certificate, other required design certifications, or other evidence of compliance required by this ordinance or the Florida Building Code is presumed to be a violation until such time as that documentation is provided.
- (b) *Authority.* For development that is not within the scope of the Florida Building Code but that is regulated by this ordinance and that is determined to be a violation, the floodplain administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.
- (c) *Unlawful continuance.* Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties [set forth in chapter 14 of this code, as prescribed by law.](#) Pursuant to F.S. § 162.22, a person found to be in violation of this article may be charged a fine not to exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days.
- ~~Violations of this article may also be prosecuted before a code enforcement board established by the city.~~

Secs. 26-39—26-60. Reserved.

DIVISION 2. DEFINITIONS

Sec. 26-61. General.

- (a) *Scope.* Unless otherwise expressly stated, the following words and terms shall, for the purposes of this ordinance, have the meanings shown in this section. [These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.](#)
- (b) *Terms defined in the Florida Building Code.* Where terms are not defined in this ordinance and are defined in the Florida Building Code, such terms shall have the meanings ascribed to them in that code.
- (c) *Terms not defined.* Where terms are not defined in this ordinance or the Florida Building Code, such terms shall have ordinarily accepted meanings such as the context implies.

Sec. 26-62. 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. These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or

materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Market value means the price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this ordinance, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, actual cash value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted to approximate market value by a factor provided by the property appraiser.

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

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

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

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

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

Special flood hazard area means an area in the floodplain subject to a one-percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 202.]

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

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

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

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

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

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

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

Secs. 26-63—26-89. Reserved.

DIVISION 3. FLOOD-RESISTANT DEVELOPMENT

Sec. 26-90. Building elevations.

- (a) The building elevations specified in this section apply in all areas of the [City](#).
- (b) In flood hazard areas, the lowest floor (Zone A) or bottom of lowest horizontal structural member of the lowest floor (Zone V and Coastal A Zone) shall be at or above the higher of:
 - (1) The base flood elevation plus one foot,
 - (2) Elevation nine feet, relative to the North American Vertical Datum.
 - (3) The elevation required by the Florida Building Code.
- (c) Outside of flood hazard areas (Zone X), the lowest floor shall be at or above:
 - (1) 18" above crown of nearest paved street or interior paved roadway system.
 - (2) 24" above the crown of ungraded or unfinished road.
- (d) Within projects that have water management routing and storage facilities designed and built for a 25-year, three-day storm event in accordance with South Florida Water Management District's criteria, the lowest floor shall be at or above the higher of the elevation required by (b) or (c), as applicable, or the 100-year zero discharge elevation determined for the project.

Sec. 26-91. Buildings and structures.

- (a) *Design and construction of buildings, structures and facilities exempt from the Florida Building Code.* Pursuant to subsection 26-34(b)(1) of this ordinance, buildings, structures, and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood-resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings shall comply with the requirements of section 26-97 of this ordinance.
- (b) *Buildings and structures seaward of the coastal construction control line.* If extending, in whole or in part, seaward of the coastal construction control line and also located, in whole or in part, in a flood hazard area:

- (1) Buildings and structures shall be designed and constructed to comply with the more restrictive applicable requirements of the Florida Building Code, Building Section 3109 and Section 1612 or Florida Building Code, Residential Section R322.
 - (2) Minor structures and non-habitable major structures as defined in F.S. § 161.54, shall be designed and constructed to comply with the intent and applicable provisions of this ordinance and ASCE 24.
- (c) Accessory structures are permitted below the base flood elevation provided the accessory structures are used only for parking or storage and:
- (1) If located in special flood hazard areas (Zone A/AE) other than coastal high hazard areas, are one-story and not larger than 600 square feet.
 - (2) If located in special flood hazard areas (Zone A/AE) other than coastal high hazard areas, have flood openings in accordance with Section R322.2 of the Florida Building Code, Residential.
 - (3) If located in coastal high hazard areas (Zone V/VE), are not located below elevated buildings and are not larger than 100 square feet.
 - (4) Are anchored to resist flotation, collapse or lateral movement resulting from flood loads.
 - (5) Have flood damage-resistant materials used below the base flood elevation plus one foot.
 - (6) Have mechanical, plumbing and electrical systems, including plumbing fixtures, elevated to or above the base flood elevation plus one foot.

Sec. 26-92. Subdivisions.

- (a) *Minimum requirements.* Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:
- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
 - (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
 - (3) Adequate drainage is provided to reduce exposure to flood hazards.
- (b) *Subdivision plats.* Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:
- (1) Delineation of flood hazard areas and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats; and
 - (2) Compliance with the site improvement and utilities requirements of section 26-93 of this ordinance.

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

- (a) *Minimum requirements.* All proposed new development shall be reviewed to determine that:
- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
 - (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
 - (3) Adequate drainage is provided to reduce exposure to flood hazards.
- (b) *Sanitary sewage facilities.* All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-

6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into floodwaters, and impairment of the facilities and systems.

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

Sec. 26-94. Manufactured homes.

- (a) *General.* All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to F.S. § 320.8249, and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this ordinance. If located seaward of the coastal construction control line, manufactured homes shall comply with the more restrictive of the applicable requirements.
- (b) *Foundations.* All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that:
 - (1) In flood hazards areas (zone A) other than coastal high hazard areas, are designed in accordance with the foundation requirements of the Florida Building Code, Residential Section R322.2 and this ordinance.
 - (2) In coastal high hazard areas (zone V), are designed in accordance with the foundation requirements of the Florida Building Code, Residential Section R322.3 and this ordinance.
- (c) *Anchoring.* All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.
- (d) *Elevation.* Manufactured homes that are placed, replaced, or substantially improved shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.3 (Zone A) or Section R322.3 (Zone V and Coastal A Zone).
- (e) *Enclosures.* Fully-enclosed areas below elevated manufactured homes shall comply with the requirements of the Florida Building Code, Residential Section R322.2 or R322.3 for such enclosed areas, as applicable to the flood hazard area.
- (f) *Utility equipment.* Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with the requirements of the Florida Building Code, Residential Section R322, as applicable to the flood hazard area.

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

- (a) *Temporary placement.* Recreational vehicles and park trailers placed temporarily in flood hazard areas shall:
 - (1) Be on the site for fewer than 180 consecutive days; or
 - (2) Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect-type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.
- (b) *Permanent placement.* Recreational vehicles and park trailers that do not meet the limitations in subsection 26-95(a) of this ordinance for temporary placement shall meet the requirements of section 26-94 of this ordinance for manufactured homes.

Sec. 26-96. Tanks.

- (a) *Underground tanks.* Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.
- (b) *Above-ground tanks, not elevated.* Above-ground tanks that do not meet the elevation requirements of subsection 26-96(c) of this ordinance shall:
 - (1) Be permitted in flood hazard areas (zone A) other than coastal high hazard areas, provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.
 - (2) Not be permitted in coastal high hazard areas (zone V).
- (c) *Above-ground tanks, elevated.* Above-ground tanks in flood hazard areas shall be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.
- (d) *Tank inlets and vents.* Tank inlets, fill openings, outlets and vents shall be:
 - (1) At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
 - (2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

Sec. 26-97. Other development.

- (a) *General requirements for other development.* All development, including manmade changes to improved or unimproved real estate for which specific provisions are not specified in this ordinance or the Florida Building Code, shall:
 - (1) Be located and constructed to minimize flood damage;
 - (2) Reserved.
 - (3) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
 - (4) Be constructed of flood damage-resistant materials; and

- (5) Have mechanical, plumbing, and electrical systems above the design flood elevation or meet the requirements of ASCE 24, whichever is greater, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.
- (b) *Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (zone V).* In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided the concrete slabs are designed and constructed to be:
- (1) Structurally independent of the foundation system of the building or structure;
 - (2) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and
 - (3) Have a maximum slab thickness of not more than four inches.
- (c) *Decks and patios in coastal high hazard areas (zone V).* In addition to the requirements of the Florida Building Code, in coastal high hazard areas decks and patios shall be located, designed, and constructed in compliance with the following:
- (1) A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the design flood elevation and any supporting members that extend below the design flood elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck.
 - (2) A deck or patio that is located below the design flood elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.
 - (3) A deck or patio that has a vertical thickness of more than 12 inches or that is constructed with more than the minimum amount of fill necessary for site drainage shall not be approved unless an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave run-up and wave reflection that would increase damage to the building or structure or to adjacent buildings and structures.
 - (4) A deck or patio that has a vertical thickness of 12 inches or less and that is at natural grade or on nonstructural fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave run-up and wave reflection.
- (d) *Other development in coastal high hazard areas (zone V).* In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate federal, state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave run-up and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include, but are not limited to:
- (1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
 - (2) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters; and

- (3) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.
- (e) *Nonstructural fill in coastal high hazard areas (zone V)*. In coastal high hazard areas:
 - (1) Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping and for drainage purposes under and around buildings.
 - (2) Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave run-up and wave reflection that would increase damage to adjacent buildings and structures.
 - (3) Where authorized by the Florida Department of Environmental Protection or applicable local approval, sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave run-up and wave reflection if the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.

Secs. 26-98—26-1320. Reserved.

~~*DIVISION 4. MISCELLANEOUS PROVISIONS*~~

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

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

~~**Sec. 26-132. Applicability.**~~

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