

DOUGLAS WOODWORTH <douglaswoodworth@comcast.net>

4/26/2026 1:00 PM

Meeting Request, Proactive Enforcement of Fertilizer and Landscape Debris Ordinances

To dsmith@cityofmarcoisland.com <dsmith@cityofmarcoisland.com> •
Tracy Frazzano <tfrazzano@cityofmarcoisland.com> Copy
jmartin@cityofmarcoisland.com <jmartin@cityofmarcoisland.com> Blind copy
Dave Rasmussen <deltarome21@gmail.com> • Robert Roth <rwr720@hotmail.com> •
Andrew Tyler <antylrdb@yahoo.com>

Dear Mr. Smith and Chief Frazzano,

I am writing to request a meeting with the two of you, together or separately, or with your designees, to discuss proactive enforcement of Marco Island's existing fertilizer and landscape debris ordinances. As a member of the Waterways Advisory Committee, I have been asked to develop this set of questions, answers and recommendations in advance of the next WAC meeting.

In advance of our meeting, I would also appreciate receiving a current copy of the list, or lists, of registered fertilizer vendors and licensed landscape applicators operating on Marco Island, along with the date each list was last updated.

The current focus on long term capital projects to address canal water quality is appropriate, but it should not crowd out enforcement of measures already on the books that are high impact, low cost, and immediately actionable. The ordinances exist; they need enforcement.

Attached is a summary of the actions I would like to discuss, followed by a list of questions I am hoping the meeting can help answer.

I appreciate that some of these questions may already have answers in existing City reports or procedures. To the extent that is the case, simply pointing me to the relevant documents would be very helpful and may shorten the meeting.

Please let me know what dates and times work over the next two to three weeks. I am flexible and happy to come to your offices, meet jointly, or meet separately, whichever you prefer. If a designee is the better point of contact for any portion of this discussion, I am glad to work with them directly.

Thank you for your time and for your continued service to Marco Island.

Respectfully,

Rick Woodworth
Member, Waterways Advisory Committee

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- Email_Smith_Frazzano_Fertilizer_Enforcement.docx (23 KB)

DOUGLAS WOODWORTH <douglaswoodworth@comcast.net>

5/7/2026 4:28 AM

Re: Meeting Request, Proactive Enforcement of Fertilizer and Landscape Debris Ordinances

To Daniel Smith <dsmith@cityofmarcoisland.com> • Tracy Frazzano <tfrazzano@cityofmarcoisland.com> • Justin Martin <jmartin@cityofmarcoisland.com> • krichter@cityofmarcoisland.com <krichter@cityofmarcoisland.com> Copy
Casey Lucius <clucius@cityofmarcoisland.com> • Joan Taylor <jtaylor@cityofmarcoisland.com> • rchampagne@marcocitycouncil.com <rchampagne@marcocitycouncil.com> Blind copy
Dennis Bartolucci <dbart444@gmail.com>

All,

Thank you for taking the time to meet with me yesterday. Overall I think it was a productive meeting with a good exchange of information. Follow up:

1. I will be following up with Joan to arrange a meeting with Amber to look at a sample, say 3, of landscaping vendor registration files.
2. I will ask Amber and Joan how to access the portal on the City website on how to review individual property files.
3. Someone will reach out to whoever the city liaison with the Beautification Committee is to follow up on implementing the twice per year requirement for educational seminars on fertilizer and landscape issues.
4. City will review my memo on right to inspect and test fertilizer and right to go on private property.
5. I have taken the liberty of preparing a revised memo on the cost and benefits of patrolling the canals. If there is anything else you want me to change, or provide me with your own analysis, please let me know.
6. I will prepare a follow up memo for the WAC on our meeting.

I will continue to be an advocate for funding adequate capital and operating budgets for all departments so you have the resources and tools you need to implement City policy, enforce our ordinances and continue our efforts to a multifaceted approach to improve canal water quality.

Thanks again.

Best,
Rick

On 05/05/2026 10:55 AM EDT Daniel Smith <dsmith@cityofmarcoisland.com> wrote:

Rick,

Any request for documents needs to go through the Clerk as a records request.

Dan

Daniel James Smith, AICP
Director of Community Affairs
City of Marco Island'
(239) 389-5021

Summary of Responses to May 6 Meeting with Chief Frazzono, Dan Smith, Justin Martin and Kieth Richter

Proposed Actions

Enforce the existing Fertilizer and landscape debris(Stormwater) ordinances rigorously.
Specific actions include:

- Ensure that all fertilizer vendors selling into Marco Island are registered with the City and that products comply with controlled application rates.
- Conduct regular random testing of vendor fertilizer products for phosphorus and nitrogen content.
- Stop landscapers from blowing lawn debris into canals and canal storm drains, and fine violators.
- Fund dedicated Code Enforcement resources to patrol canals for ordinance violations.
- Stop City overspray of reuse water onto Collier Boulevard medians, which sends nutrient laden water directly into the stormwater system.
- Encourage all landowners to voluntarily reduce fertilizer application by at least 50 percent, with progressive reductions in future years.

Taken together, these steps require no capital expenditure, can begin immediately, and will produce measurable benefits for canal water quality well in advance of any structural infrastructure project.

Questions for Discussion- Responses in Red

Vendor Registration and Licensing

- Who maintains the list of registered fertilizer vendors and licensed landscape applicators operating on Marco Island? **Growth Management**
- How often is that list updated, and where is it published? **Updated as need or every few months.**
- Who verifies the accuracy of the information submitted, including state licenses and BMP certifications? **Growth Management**
- Who is responsible for issuing and placing City registration stickers, decals, or identifiers on landscaper vehicles? **Growth Management issues, landscaper attaches.**
- How are unregistered or unlicensed operators identified in the field, and what is the process when one is found? **Code Enforcement inspects vehicles and checks for licenses.**
- Are fertilizer applicators tracked separately from mow and blow crews, and is the City able to distinguish between them in the field? **No. It was noted that landscapers who are licensed by the county or state do not have to register on Marco Island. (Affordable Landscaping is one.)**

Product Testing and Application Rates

- Has the City ever tested fertilizer products being sold or applied on Marco Island for phosphorus and nitrogen content? **No**
- If so, when, by whom, and what were the results? **None**

- If not, what would be required, in budget and staffing, to begin a regular random testing program? **Nothing is currently planned.**
- How does the City currently verify that controlled application rates are being followed? **Not done.**
- Are application records ever requested from licensed applicators, and if so, by whom? **No.**

Canal Patrol and Field Enforcement

- Have City canals ever been routinely patrolled, by water or land, for ordinance violations such as fertilizer application near the waterline, blown debris, or illicit discharges? **Not to date. Budget and action plan in place, waiting for boat and dock.**
- Which department, Code Enforcement, Police, Growth Management, or another, has primary responsibility for canal side ordinance enforcement? **Code Enforcement**
- How are complaints from residents about canal side violations currently received, logged, and resolved? **They follow current code enforcement and magistrate procedure. See state statute.**
- Do violations need to be personally witnessed by an enforcement officer to result in a citation, or are photographic, video, or other recorded evidence sufficient? **Yes but formal complaints by a citizen must be made if not witnessed and recorded by code enforcement officer.**
- Do citizens have to sign a formal written complaint in order for the City to act, or can violations be reported and pursued anonymously? **Must file formal complaint. No anonymous complaints.**
- How is enforcement coverage handled during the summer and early fall, when many seasonal residents are away and full time eyes on the water are reduced? **Coverage determined by Code Enforcement and Police.**
- What level of staffing and funding would be required to add dedicated canal patrol capacity? **See attached memo.**
- If a dedicated patrol boat and enforcement officer were authorized, which department's budget would those costs sit in, Police, Code Enforcement, Public Works, or Growth Management? **Police and Code enforcement.**
- Does the City have any preliminary cost estimate for a patrol boat plus a dedicated enforcement officer, including annual operating expense? **See attached memo**

Landscape Debris in Canals and Drains

- Has the City ever issued a citation for blowing or depositing landscape debris into a canal or canal storm drain? **Approximately 116 notices or citations over past 3 years or about 38 per year.**
- If so, how many citations have been issued in the past three years, and to whom? **Tracking difficult. Posted to individual homeowner record or must search Magistrate records. Discussed systems need to track differently.**
- Does any City system track infractions by landscaper or by property, so that repeat offenders can be identified? **See above**
- What is the current fine schedule for these violations, and is it actually being applied? **\$250-\$500, up to \$5,000 for serious violations.**
- When a violation occurs on private property, should both the homeowner and the landscaper receive a citation, and is that the City's current practice? **Yes.**

City Practices and Reuse Water

- Who oversees reuse water irrigation on Collier Boulevard medians and other City rights of way? **Public Works.**
- What controls are in place to prevent overspray onto pavement and into stormwater inlets? **Public works working with vendors.**
- How frequently are City contractors and crews audited for compliance with the same fertilizer and irrigation standards expected of private operators? **Not discussed.**

Voluntary Reduction Program

- Would the City be willing to support a public education and outreach program asking residents and HOAs to voluntarily reduce fertilizer application by at least 50 percent, with progressive reductions in future years? **Some discussion but no conclusion reached.**
- What existing City communication channels could be used to promote such a program? **Beautification Committee is already obligated to have Community Outreach meetings twice per year. Not enforced.**

Marco Island Canal Patrol Program

Operational Analysis & Environmental Enforcement Position Paper

Prepared by Rick Woodworth 5-7-26

Executive Summary

Marco Island's canal system is one of the community's defining environmental, recreational, and economic assets. The approximately 70 miles of canals throughout the city directly affect water quality, marine habitat, property values, recreational boating, and the overall character of Marco Island.

Based on revised operational assumptions discussed with Marco Island Police Department leadership, a structured canal patrol program appears operationally feasible using a single officer and one patrol vessel.

Under the revised operational model:

- Approximately 27.5 canal miles could be patrolled per day.
- A complete 70-mile canal circuit would require approximately 2.5 to 3 workdays.
- One complete patrol circuit would cost approximately \$733 in estimated direct operating expense.
- Assuming two complete canal patrol circuits per month, estimated annual direct operating expense would total approximately \$17,600.
- If patrols were conducted continuously during the regular 5-day workweek, approximately 102 complete canal patrol circuits could be completed annually at an estimated direct operating cost of approximately \$74,900 per year.

The purpose of the patrol program would be to:

- Identify landscapers illegally blowing or dumping lawn debris into canals.
- Observe and document fertilizer ordinance violations.
- Identify possible direct discharges from waterfront homes.
- Increase environmental compliance visibility.
- Provide deterrence against activities negatively affecting water quality.
- Support broader city water quality and environmental stewardship initiatives.

The revised assumptions materially reduce estimated operating costs from earlier conceptual models because:

- Canal mileage assumptions were reduced from 100 miles to 70 miles.
- Staffing assumptions were reduced from two officers to one officer.
- Patrol efficiency assumptions were improved through longer operational shifts.

The analysis indicates that the patrol program could potentially be implemented using existing personnel and existing marine assets or through a relatively modest increase in operational funding.

Importantly, the cost estimates in this analysis reflect only estimated direct operating expenses. Additional indirect costs not reflected in this analysis may include:

- Vessel replacement reserves
- Long-term maintenance and repair costs
- Insurance
- Administrative overhead
- Equipment replacement
- Docking and storage costs
- Training
- Supervision and management time
- Future capital replacement costs

Even accounting for indirect costs, the estimated operating expense appears comparatively modest relative to the scale of Marco Island's canal system and the potential environmental benefits associated with improved enforcement visibility and deterrence.

Purpose of Proposed Patrols

Marco Island's canal network represents one of the largest concentrations of waterfront residential properties in Southwest Florida. Thousands of homes directly interface with the canal system, creating ongoing environmental management challenges involving:

- Landscape debris entering canals
- Improper fertilizer applications
- Nutrient loading
- Stormwater runoff
- Potential direct discharges
- Illegal dumping activity
- General water quality degradation

A structured canal patrol program would provide visible environmental enforcement presence throughout the canal system while also increasing observation and documentation capabilities.

The patrol program would specifically focus on:

Landscape Debris Enforcement

One of the primary objectives would be identifying landscapers and contractors illegally blowing grass clippings, leaves, mulch, and landscape debris directly into canals.

Organic debris entering waterways contributes to:

- Nutrient loading
- Algae growth
- Dissolved oxygen reduction
- Sediment accumulation
- Canal water quality degradation

Visible patrol activity could create a substantial deterrent effect against these practices.

Fertilizer Ordinance Enforcement

The patrol program could also assist with observation and documentation of fertilizer ordinance violations.

Because many waterfront properties are directly adjacent to canals, improper fertilizer application has the potential to introduce nutrients directly into the canal system through runoff and stormwater transport.

Regular patrol visibility may improve compliance with:

- Seasonal fertilizer restrictions
- Buffer zone requirements
- Application limitations
- Storm-related restrictions

Identification of Potential Direct Discharges

The patrol program could also provide observation capability for possible direct discharges into canals from waterfront properties.

While enforcement of certain violations may require additional investigation or agency coordination, routine patrol presence could improve identification of:

- Suspicious discharges
- Illicit connections

- Unauthorized pumping activities
- Visible contamination events
- Other environmental violations

Environmental Stewardship & Deterrence

The patrol program’s value extends beyond issuance of citations.

Regularized patrol visibility itself could create a meaningful deterrent effect throughout the canal system by increasing awareness that environmental violations may be observed and documented.

This type of visible enforcement presence is commonly used in:

- Marine patrol operations
- Environmental compliance programs
- Shoreline management programs
- Waterway enforcement initiatives

Revised Operational Assumptions

Input	Value	Units	Notes
Total canal miles per full circuit	70.00	miles	Revised assumption
Average patrol speed	5.00	mph	Operational assumption
Officers per boat	1.00	officer	Revised assumption
Base hourly rate per officer	\$24.14	\$/hour	Assumption
Benefit / tax / overhead load	35.0%	% of wages	Revised assumption
Fully loaded hourly rate per officer	\$32.59	\$/hour	Calculated
Workday length	9.00	hours/day	Revised assumption
Paid workday	8.00	hours/day	Assumption
Breaks and lunch	1.00	hours/day	Assumption
Travel time back to dock for lunch	0.50	hours/day	Revised assumption
Start-up time	0.50	hours/day	Assumption
Finish-up time	0.50	hours/day	Assumption

Input	Value	Units	Notes
Tickets written per day	2.00	tickets/day	Assumption
Time per ticket	0.50	hours/ticket	Assumption
Ticket writing time per day	1.00	hours/day	Calculated
Net available patrol time per day	5.50	hours/day	Calculated
Fuel price	\$5.00	\$/gallon	Assumption
Fuel economy	5.00	miles/gallon	Assumption
Patrol miles covered per day	27.50	miles/day	Calculated
Patrol frequency	2.00	circuits/month	Baseline scenario

Operational Findings

Based on the revised assumptions:

- A complete 70-mile canal patrol circuit at 5 mph requires approximately 14 hours of actual on-water patrol time.
- After accounting for breaks, lunch, travel time, start-up, finish-up, and ticket-writing time, approximately 5.5 patrol hours per day remain available for active patrol operations.
- One patrol vessel staffed by a single officer could patrol approximately 27.5 canal miles per day.
- A complete canal circuit would therefore require approximately 2.5 to 3 workdays.

Using a fully loaded hourly labor rate of approximately \$32.59:

- Estimated labor cost per complete canal circuit is approximately \$663.
- Estimated fuel cost per complete canal circuit is approximately \$70.
- Estimated direct operating cost per complete canal circuit is approximately \$733 before indirect allocations.

Under the baseline scenario of two complete canal patrol circuits per month:

- Estimated annual direct operating expense would total approximately \$17,600.

Under a continuous weekday patrol model:

- Approximately 102 full canal patrol circuits could be completed annually.

- Estimated direct operating expense would total approximately \$74,900 annually before indirect allocations.
-

Policy Considerations

1. Water Quality Protection

Marco Island continues investing substantial public resources into:

- Water quality initiatives
- Canal management
- Nutrient reduction programs
- Stormwater improvements
- Advanced wastewater treatment discussions
- Environmental restoration efforts

A canal patrol program could complement these broader initiatives by increasing real-world enforcement visibility and environmental compliance monitoring.

2. Visible Enforcement Creates Deterrence

Many environmental violations occur because violators believe they are unlikely to be observed.

Routine patrol presence changes this perception.

The existence of regular patrol operations could discourage:

- Illegal landscape debris dumping
- Improper fertilizer applications
- Unauthorized discharges
- Other environmentally harmful practices

without requiring large numbers of citations.

3. Existing Resources May Be Sufficient

The revised assumptions suggest that a meaningful patrol program could potentially be implemented using:

- Existing personnel
- Existing marine assets
- Modified operational scheduling
- Limited additional operating expenditures

This substantially improves feasibility compared to earlier conceptual staffing assumptions.

4. Relatively Modest Cost Relative to Potential Benefits

Even under a continuous weekday patrol scenario, estimated direct operating costs remain modest relative to:

- Overall municipal operating budgets
- Canal system scale
- Waterfront property values
- Potential environmental benefits
- Long-term water quality protection goals

The baseline patrol model involving two complete circuits per month would cost substantially less.

Limitations of Analysis

This analysis is conceptual and intended primarily for policy discussion purposes.

The estimates reflect only direct operating expenses based on stated assumptions.

The analysis does not include:

- Vessel acquisition costs
- Vessel depreciation
- Long-term maintenance reserves
- Insurance costs
- Administrative overhead
- Capital replacement schedules
- Docking infrastructure costs
- Training costs
- Supervisory time
- Legal expenses
- Citation processing costs

Actual operational costs may vary depending on:

- Patrol routing
- Fuel consumption
- Enforcement activity levels

- Weather conditions
 - Staffing structures
 - Existing equipment availability
 - Seasonal operating conditions
-

Conclusion

Marco Island's canals are among the community's most valuable environmental and recreational assets.

A structured canal patrol program could provide increased environmental enforcement visibility and create meaningful deterrence against practices negatively affecting water quality.

The revised operational assumptions suggest that a practical patrol program could potentially be implemented at comparatively modest direct operating cost levels using a single officer and existing marine assets.

The patrol program's primary value may ultimately extend beyond citation issuance and instead derive from:

- Increased environmental compliance visibility
- Deterrence
- Improved observation capability
- Enhanced environmental stewardship
- Reinforcement of water quality protection efforts

Given Marco Island's continued emphasis on water quality, environmental protection, and canal stewardship, a structured canal patrol initiative appears worthy of serious policy consideration.

The Florida Senate

2025 Florida Statutes

<p><u>Title XI</u> COUNTY ORGANIZATION AND INTERGOVERNMENTAL RELATIONS</p>	<p><u>Chapter 162</u> COUNTY OR MUNICIPAL CODE ENFORCEMENT</p> <p>Entire Chapter</p>	<p>SECTION 21 Enforcement of county or municipal codes or ordinances; penalties.</p>
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162.21 Enforcement of county or municipal codes or ordinances; penalties.—

(1) As used in this section, “code enforcement officer” means any designated employee or agent of a county or municipality whose duty it is to enforce codes and ordinances enacted by the county or municipality.

(2) A county or a municipality may designate certain of its employees or agents as code enforcement officers. The training and qualifications of the employees or agents for such designation shall be determined by the county or the municipality. Employees or agents who may be designated as code enforcement officers may include, but are not limited to, code inspectors, law enforcement officers, animal control officers, or firesafety inspectors. Designation as a code enforcement officer does not provide the code enforcement officer with the power of arrest or subject the code enforcement officer to the provisions of ss. [943.085-943.255](#). Nothing in this section amends, alters, or contravenes the provisions of any state-administered retirement system or any state-supported retirement system established by general law.

(3)(a) A code enforcement officer is authorized to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance and that the county court will hear the charge.

(b) A code enforcement officer may not initiate an investigation of a potential violation of a duly enacted code or ordinance by way of an anonymous complaint. A person who reports a potential violation of a code or an ordinance must provide his or her name and address to the respective local government before an investigation may occur. This paragraph does not apply if the code enforcement officer has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources.

(c) Prior to issuing a citation, a code enforcement officer shall provide notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the time period, a code enforcement officer may issue a citation to the person who has committed the violation. A code enforcement officer does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if a repeat violation is found or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

(d) A citation issued by a code enforcement officer shall be in a form prescribed by the county or the municipality and shall contain:

1. The date and time of issuance.
2. The name and address of the person to whom the citation is issued.
3. The date and time the civil infraction was committed.
4. The facts constituting reasonable cause.
5. The number or section of the code or ordinance violated.
6. The name and authority of the code enforcement officer.
7. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
8. The applicable civil penalty if the person elects to contest the citation.
9. The applicable civil penalty if the person elects not to contest the citation.

10. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, the person shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

(4) After issuing a citation to an alleged violator, a code enforcement officer shall deposit the original citation and one copy of the citation with the county court.

(5) A county or a municipality is authorized to enforce codes and ordinances under the provisions of this section and may enact an ordinance establishing procedures for the implementation of such provisions, including a schedule of violations and penalties to be assessed by code enforcement officers. If a county or municipality chooses to enforce codes or ordinances under the provisions of this section, each code or ordinance or the ordinance enacted by the county or municipality establishing procedures for implementation of this section shall provide:

(a) That a violation of a code or an ordinance is a civil infraction.

(b) A maximum civil penalty not to exceed \$500.

(c) A civil penalty of less than the maximum civil penalty if the person who has committed the civil infraction does not contest the citation.

(d) For the issuance of a citation by a code enforcement officer who has reasonable cause to believe that a person has committed an act in violation of a code or an ordinance.

(e) For the contesting of a citation in county court.

(f) Such procedures and provisions as are necessary to provide for the enforcement of a code or an ordinance under the provisions of this section.

(6) Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer shall be guilty of a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(7) The provisions of this part shall not apply to the enforcement pursuant to ss. [553.79](#) and [553.80](#) of the Florida Building Code adopted pursuant to s. [553.73](#) as applied to construction, provided that a building permit is either not required or has been issued by the county or the municipality.

(8) The provisions of this section are additional and supplemental means of enforcing county or municipal codes or ordinances and may be used for the enforcement of any code or ordinance, or for the enforcement of all codes and ordinances. Except as provided in paragraph (3)(b), nothing contained in this section shall prohibit a county or municipality from enforcing its codes or ordinances by any other means.

History.—s. 11, ch. 89-268; s. 7, ch. 94-291; s. 1444, ch. 95-147; s. 3, ch. 96-385; s. 4, ch. 98-287; s. 115, ch. 2000-141; s. 35, ch. 2001-186; s. 4, ch. 2001-372; s. 4, ch. 2021-167.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes.

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Landscaper Registration

5/1/2026

1 LL-22-000266	11/18/2027 A Cut Above Tree Service of Collier County, Inc.
2 LL-22-000191	3/27/2027 A LORAS LAWN SERVICE LLC
3 LL-23-000189	4/15/2026 ABEL MILIAN HERNANDEZ-LANDSCAPE REGISTRATIOI
4 LL-23-000129	3/28/2027 ACUNTO LANDSCAPE & DESIGN
5 LL-23-000048	2/24/2027 ADILIO'S LAWN SERVICE LLC
6 LL-24-000114	5/21/2028 ANYTOWN TREE SERVICES, LLC
7 LL-23-000011	1/10/2027 B. LANGFORD LAWN SERVICES INC
8 LL-15-002618	6/16/2027 BAUTISTA, VICENTE
9 LL-23-000216	4/21/2027 BENJAMIN LAWN CARE LLC
10 LL-23-000149	4/24/2026 BOUGAINVILLEA HOME LAWN SERVICE
11 LL-25-000087	5/12/2027 C.A. Landscaping & Tree Service LLC
12 LL-24-000138	6/26/2026 CARIBBEAN LAWN & GARDEN OF SW NAPLES FL INC
13 LL-23-000113	3/30/2026 CASTANEDA LAWN SERVICE INC
14 LL-23-000097	3/19/2026 CHUY'S LAWN CARE INC
15 LL-24-000027	2/4/2028 Coastline Partners LLC
16 LL-19-001008	1/7/2027 COLLIER TROPICAL INC (LANDSCAPE)
17 LL-23-000148	4/1/2028 CUSTOM LAWNS OF MARCO LANDSCAPE REGISTRATI
18 LL-25-000053	3/11/2026 DRAKE'S PRO PEST SOLUTIONS LLC
19 LL-25-000163	9/5/2027 ELITE PRO LANDSCAPING LLC
20 LL-23-000273	6/9/2028 ELIZONDO LAWN SERVICES LLC
21 LL-25-000117	6/16/2026 ESTEBAN SANTIAGO LAWN SERVICES INC
22 LL-25-000224	12/12/2027 EVERGREEN GROUNDS LANDSCAPING
23 LL-23-000169	4/4/2027 FIDDLEWOOD
24 LL-25-000145	8/8/2027 FORESTRY RESOURCES ECOLOGICAL INC
25 LL-22-000011	1/23/2027 FORTUNES LANDSCAPE SERVICES
26 LL-26-000030	2/11/2028 FRANK BENITEZ LAWN CARE
27 LL-24-000091	4/27/2026 FTL FAMILY TREE & LANDSCPNG INC
28 LL-23-000136	3/31/2027 GOMEZ HANDYMAN SERVICE
29 LL-23-000112	6/3/2027 GREEN PRO ENTERPRISES INC
30 LL-23-000096	3/19/2027 GREEN WORX LAWN CARE SWFL LLC
31 LL-19-001036	12/21/2027 Greenscapes of Southwest Florida Inc
32 LL-24-000206	9/14/2026 HOREB Lawn Care Service LLC
33 LL-23-000146	4/4/2027 HSC LAWN CARE LLC
34 LL-23-000178	4/9/2027 HUGHES EXTERMINATORS
35 LL-25-000167	9/10/2027 Hurricane Tree Services Inc.
36 LL-23-000105	3/25/2027 INFINITE LANDSCAPING LLC LANDSCAPE REGISTRATI
37 LL-23-000047	2/20/2027 ISLAND LANDSCAPE SERVICE LLC
38 LL-25-000199	10/31/2027 J. SANTOYO SERVICES
39 LL-23-000238	5/2/2028 JR'S LAWN & GARDEN LLC
40 LL-23-000195	4/16/2027 JUNIPER LANDSCAPING

41 LL-23-000316	7/14/2027 KEEP'N IT GREEN INC
42 LL-23-000158	5/10/2027 LANDCARE USA LLC
43 LL-23-000190	4/15/2028 LANDCARE USA, LLC
44 LL-24-000094	5/1/2026 LANDSCAPE REGISTRATION
45 LL-26-000012	1/14/2028 LUXURY HOMES OF SWFL
46 LL-23-000163	4/3/2027 M & J LAND DESIGNS INC
47 LL-23-000134	3/31/2027 M MARTINEZ LAWN SERVICES LLC LANDSCAPE REGIS
48 LL-25-000120	6/24/2027 MANGO'S LAWN MAINTENANCE, LLC.
49 LL-23-000082	3/13/2028 MARCO GREEN LAWNS LLC
50 LL-23-000079	3/13/2027 MARCO ROCK INC
51 LL-25-000153	8/25/2027 MAURICE'S LAWN CARE SERVICES
52 LL-25-000169	9/15/2027 MC LANDSCAPING SERVICES INC
53 LL-23-000212	4/18/2026 MTZ LAWN AND MAINTENANCE LLC
54 LL-23-000083	3/13/2027 N&E LAWN SERVICE
55 LL-23-000110	4/27/2026 NINAS LAWN SERVICE LLC
56 LL-23-000070	3/7/2028 ORCHID LAWN SERVICE INC LANDSCAPE REGISTRATI
57 LL-24-000183	8/18/2027 ORTIZ CHAVES LLC
58 LL-24-000059	3/27/2026 Prestige Landscape Management LLC
59 LL-25-000148	8/13/2027 R & R LAWN CARE SWFL CORP
60 LL-23-000147	4/1/2027 RISE AND SHINE LANDSCAPING LLC
61 LL-24-000205	9/14/2026 RM Gardens Landscaping LLC
62 LL-26-000045	3/11/2028 ROOTS UP TREE SERVICE
63 LL-25-000104	5/27/2026 SANCHEZ LAWN CARE SERVICE LLC
64 LL-23-000121	3/28/2027 SEAN MCGUINNESS INC DBA EARTHCARE LANDSCAP
65 LL-25-000019	1/25/2027 Sean's Lawns SWFL LLC
66 LL-25-000067	4/3/2027 SOLIMINI ENTERPRISE INCORPORATED
67 LL-25-000178	10/3/2027 SQUARE'S LAWN MAINTENANCE
68 LL-25-000186	10/14/2027 SUPERIOR LANDSCAPING & LAWN SERVICE
69 LL-17-003676	12/14/2027 The Davey Tree Expert Company
70 LL-23-000089	3/14/2026 TOTAL HOME SERVICE INC
71 LL-23-000227	4/30/2027 TREVINOS LANDSCAPING OF SWFL
72 LL-25-000185	10/14/2027 WILDER LAWN CARE SERVICES LLC

ORDINANCE 16-02

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA AMENDING CHAPTER 18, ENTITLED "ENVIRONMENT", ESTABLISHING ARTICLE III, ENTITLED "FERTILIZER REGULATIONS", SECTIONS 18-61 THROUGH 18-100, INCLUSIVE; AMENDING ARTICLE IV, ENTITLED "MARCO ISLAND LAWN AND LANDSCAPING MAINTENANCE CERTIFICATION REGULATIONS" IN CHAPTER 8, ENTITLED "BUSINESSES", IN THE MARCO ISLAND CODE OF ORDINANCES; REVISING THE REGISTRATION AND PERMITTING REQUIREMENTS FOR LAWN AND LANDSCAPING BUSINESSES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida Statutes, the City of Marco Island is authorized to protect the public health, safety and welfare of its residents and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, Section 1.01 of the Marco Island Charter empowers the City to adopt, amend, or appeal ordinances, resolutions and codes as may be required for the benefit of the City; and

WHEREAS, the Marco Island City Council desires to regulate the use of fertilizers containing nitrogen or phosphorous to minimize the negative environmental effects these fertilizers have in and on the waterbodies within and around the City of Marco Island, which degrade the quality of life, and jeopardize the health, safety, and welfare of the citizens of Marco Island; and

WHEREAS, Marco Island City Council finds it to be in the best interests of its citizens to amend the Marco Island Code of Ordinances accordingly.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA¹ :

SECTION 1. Recitals.

The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true, correct and reflective of the legislative intent underlying this Ordinance.

SECTION 2. Amendment Adding Fertilizer Regulations.

The Code of Ordinances, Marco Island, Florida, is hereby revised by establishing Article III, entitled "Fertilizers Regulations", Sections 18-61 through 18-100, inclusive, in Chapter 18, entitled "Environment", as follows:

Chapter 18 -- ENVIRONMENT

....

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.

- (1) 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 of Marco Island.
- (2) These guidelines and practices are established to help communities, developers, builders, contractors, businesses and homeowners be partners in improving and protecting Florida's environment.
- (3) This Article III "Fertilizer Regulations" is based on the *Model Ordinance for Florida-Friendly Fertilizer Use* or equivalent as encouraged by Section 403.9337, Florida Statutes.

¹ Proposed additions to existing City Code text are shown by underlining; proposed deletions from existing City Code text are shown by ~~strikethrough~~.

- (4) 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 of Marco Island and their associated watersheds.
- (5) 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:
- (a). The effects of pesticides, fertilizers and overwatering on the environment;
 - (b). Ways to reduce the amount of fertilizers and pesticides utilized; and
 - (c). 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.

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

Applicator means any person who applies, in any manner, fertilizer to turf or landscape plants within the city as defined in this ordinance.

Approved Best Management Practices Training Program means a training program approved per Section 403.9338, Florida Statutes, 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 or Inspector means any designated employee or agent of the City of Marco Island whose duty it is to enforce codes and ordinances enacted by the City.

Commercial Fertilizer Applicator, except as provided in Section 482.1562(9), Florida Statutes, 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 means any person, other than a private, non-commercial 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 (10) 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.

Non-Commercial Applicator means 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 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

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Service, or if heavy rain (World Meteorological Organization definition of heavy rain is rainfall greater than or equal to 50 mm (2 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 ordinance, 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 62-340 F.A.C.].

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.

(1) 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 of Marco Island 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.

(2) Exemptions. This Section shall not apply to:

(a) Bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14, Florida Statutes.

(b) Other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock.

(c) 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.

(d) Athletic Fields that are maintained by a public entity and used by the public are exempt from fertilizer application regulations under Section 18-64 (6)a of this Article.

(e) Newly planted turf and/or landscape plants may be fertilized only for a sixty (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.

(3) 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.

(4) Fertilizer Free Zones.

(a) Fertilizer shall not be applied within ten (10) 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.

(b) Spreader deflector shields are required when fertilizing adjacent to Fertilizer Free Zones or impervious surfaces.

(5) Timing of Fertilizer Application.

(a) 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.

(6) Fertilizer Content and Application Rate.

(a) 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.

(b) Fertilizer applied to turf or landscape plants within the city must contain no less than 50% slow release nitrogen per guaranteed analysis label as guaranteed analysis and label are defined in chapter 576, Florida Statutes.

(c) Total Yearly Applications. Fertilizers shall not be applied more than four (4) times during any one calendar year to a single area. No more than four (4) pounds of nitrogen per 1000 square feet shall be applied to any turf or landscape area in any calendar year.

(d) Where fertilizer application is not described in this article, fertilizer shall be applied in accordance with requirements and directions provided by Rule 5E-1.003, Florida Administrative Code for turf and as found in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs.

7) Education and Outreach.

(a) The City of Marco Island 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.

i) 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.

(b) Retail businesses within the City selling fertilizer are requested to post a notice in a conspicuous location near the fertilizer notifying customers of this ordinance.

Sec. 18-65 - Permitting, Penalties and Enforcement.

1) Permitting. All persons intending to apply fertilizer are required to obtain appropriate permits from the City.

(a) 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.

(b) 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.

- 2) Upon the request of Code Enforcement, applicators shall be required to provide the label for fertilizer being applied to verify compliance with this ordinance.
- 3) Any person who violates any provision of this ordinance shall be guilty of a noncriminal infraction. Violators will be subject to the issuance of a citation imposing the following penalties: (i) First Violation -- a fine up to \$150; and (ii) Each Subsequent Violation -- a fine not to exceed \$300.
- 4) Any person or persons, firm or corporation, or any agent thereof, who violates any of the provisions of any Section of this Article shall be 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 City Code of Ordinances, and Florida law.

Secs. 18-66 --- 18-100. - Reserved

SECTION 3. Amendments to Marco Island Lawn and Landscaping Maintenance Certification Regulations.

The Code of Ordinances, Marco Island, Florida, is hereby revised by amending Article IV, entitled "Marco Island Lawn and Landscaping Maintenance Certification Regulations", Sections 8-71 through 8-81, inclusive, in Chapter 8, entitled "Businesses", as follows:

Chapter 8. - BUSINESSES

....

**ARTICLE IV. -- MARCO ISLAND LAWN AND LANDSCAPE MAINTENANCE
CERTIFICATION REGISTRATION REGULATIONS**

Sec. 8-70. - Intent and purpose.

The intent and purpose of this article is to require any person or business entity performing lawn or landscaping maintenance work in the City of Marco Island to possess minimum

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qualifications and competency that will assist in strengthening and promoting public awareness of the need to engage in certain lawn and landscape maintenance activities and therefore mitigate long-term and immediate adverse impacts from stormwater run-off into natural water bodies located in and adjacent to the City of Marco Island.

Sec. 8-71. - 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:

Applicator means any person who applies, in any manner, fertilizer to turf or landscape plants within the City as defined in this ordinance.

Certification means the process of completing the State approved course and test as required in Florida Statute 482.1562

Commercial Fertilizer Applicator, except as provided in Section 482.1562(9), Florida Statutes, 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.

Landscape architect means an individual licensed by the State of Florida responsible for the preparation of landscaping plans and design.

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

Non-Commercial Applicator means 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.

Registration is the process of applying to the City for recognition of appropriate certification to apply fertilizer within the City and receipt of a decal identifying the vehicles of the approved applicators.

Sec. 8-72. - ~~Exemptions~~ Exception.

The ~~certification~~ registration requirement of this article shall not apply to the following:

- (1) Any individual non-commercial property owner engaging in lawn, landscaping or lawn or landscaping maintenance on one's own property;
- (2) Any landscape architects licensed by the State of Florida engaging in lawn or landscaping maintenance services;

- (3) Any individual or business entity, which possesses a license from the State of Florida to apply herbicides, pesticides, chemicals; or
- (4) Any individual or business entity possessing a valid specialty contractor's license from Collier County, Florida for the delivery of services such as landscaping, tree removal and trimming, and irrigation.

Sec. 8-73. - Regulated activities.

- (a) It shall be a violation of this Code to provide any lawn and landscaping, ~~or lawn or landscaping~~ maintenance and services in the city without first being certified and registered with the city as a lawn and landscape professional as provided herein.
- (b) Any lawn and landscaping ~~or lawn or landscape~~ maintenance and services, including fertilizer application, provided to the city by a lawn and landscape professional shall have at least one supervisor at each work site registered with ~~certified by~~ the city as a lawn and landscape professional. In addition, all business entities under contract with the city shall have ten percent of their staff certified and registered with ~~by~~ the city as a lawn and landscape professional within six months of entering into a contract with the city; and 50 percent of their staff certified by the city as a lawn and landscape professional within one year of entering into a contract with the city.
- (d) (c) Any lawn and landscaping ~~and landscape~~ maintenance or services, including fertilizer application, provided by lawn and landscape professionals within the city shall have at least one supervisor certified by and registered with the city as a lawn and landscape professional. These businesses shall provide at least one supervisor and/or crew leader per vehicle ~~certified registered~~ by the city as a lawn and landscape professional within one year of adoption. Any landscaping professional applying fertilizer is required to be state certified and city registered.

Sec. 8-74. - Certification application; contents.

1) Training and Licensing.

- a) Section 482.1562, Florida Statutes, contains language regarding the limited certification of urban landscape commercial fertilizer application. Fertilizer applicators, as certified under that section of state statute, shall have and carry in their possession at all times when applying fertilizer, evidence of that certification.
- b) The City also hereby requires lawn and landscape professionals, except as exempted above, to abide by and successfully complete the six-hour training program in the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries offered by the Florida Department of Environmental Protection through

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the University of Florida Extension program (or approved equivalent), as well as local ordinance requirements, as amended.

- 2) Lawn and Landscape Professional Registration. It shall be a violation of this Article for lawn and landscape professionals, except as exempted above, to fertilize lawns or landscape plants without first being certified with the state of Florida and business registered with the City as provided herein.
- a) Any lawn, landscaping and landscape maintenance business that applies fertilizer shall register supervisors/crew leaders with the City.
 - b) Lawn and Landscape Professionals registering with the City as such shall:
 - i) Attend and successfully complete the six-hour training program as described above.
 - ii) Attend and successfully complete the three-hour annual refresher course (or approved equivalent) for renewal of registration.
- ~~(1) Except as otherwise provided in section 8-72, all persons before entering into or upon property within the city to perform lawn, landscaping or lawn or landscaping maintenance shall demonstrate knowledge of the relationship between their profession and the environment through both experience and education.~~
- iii) Certification and registration shall be based on demonstrated ability, experience, and education in the following areas of competency:
 - (a) Effects of the environment from sediment, nutrients, and pesticides moving off-site through surface or ground water.
 - (b) Site design and plant selection to enhance the natural environment.
 - (c) Rates and methods of applying fertilizer and irrigation that minimize negative environmental consequences.
 - (d) Utilization of integrated pest management to both minimize pests and decrease chemical applications.
 - iv) Illustrate an ability to apply his or her knowledge of the concepts identified herein by providing a written, detailed management plan that outlines maintenance activities to be carried out for specific locations.
 - v) Provide an initial application fee of \$50.00, which shall be used to defray the costs of the program. A fee of \$15.00 shall be charged to renew certification. The application fee may be amended by resolution of the City Council as may be necessary.
- ~~(1) A person applying for certification by the city as a lawn and landscape maintenance professional shall provide evidence of completing a course of study from the Rookery~~

~~Bay National Estuarine Research Reserve, Naples, Florida, or other approved provider, with at least six hours of instruction in the areas identified under section 2. Confirmation of attendance in a three-hour annual refresher course from Rookery Bay National Estuarine Research Reserve, or other approved provider must be provided to the city prior to issuance of a renewal certification.~~

- ~~(2) A person applying for certification by the city as a lawn and landscape maintenance professional shall illustrate an ability to apply his or her knowledge of the concepts identified herein by providing a written, detailed management plan that outlines maintenance activities to be carried out for a specific location.~~
- c) ~~(4)~~ The city shall provide any person who has satisfied the requirement set forth herein and paid the application fee, a certificate registration and a decal indicating the city considers that person to be a certified lawn and landscape maintenance professional.
- d) ~~(5)~~ The certification registration program shall be managed and administered by the growth management department. However, the ~~city council~~ City Manager or designee shall retain the authority to approve certification registration of any applicant for lawn and landscape registration maintenance certification.
- e) It shall be the responsibility of the landscape professional to complete required training and to register with the City.

Sec. 8-75. - Duration, renewal.

A certification registration issued under this article shall be valid for one year. Renewals for an additional one-year period may be granted, unless previously issued registrations certificates are revoked as provided in this article. A maximum of two one-year renewals will be granted without submission of a new registration certification application and without payment of the applicable registration certification fee. However, prior to receiving a renewed registration certification, the applicant must update and make any necessary changes needed to the previously submitted certification application. Certification with the state must occur in compliance with state regulations.

Sec. 8-76. - Duty to carry, exhibit certification and receive appropriate permit.

- (1) Identification. Every certified registered lawn and landscaping professional shall carry his or her registration certification and photo identification at all times while engaged in lawn or landscaping maintenance work in the city.

- a) The City-issued Lawn and Landscape Professionals decal shall be displayed on every state-licensed motor vehicle used by a commercial fertilizer applicator or institutional applicator, and by lawn and landscape maintenance professionals when performing services within the City limits. One decal will be issued with each registration; each additional decal will cost \$5. The decal shall be displayed prominently and in such a manner as not to be obstructed.
- (2) Permitting. All registered landscape professionals are required to obtain appropriate permits from the City.
- a) A minimum of one business day prior to fertilizer application within the City, the registered professional 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.
 - b) 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.

Sec. 8-77. – Reserved. Fees.

~~An initial application fee shall be \$25.00, which shall be used to defray the costs of certificates and other expenses of the program. A fee of \$25.00 shall be charged to renew certification. The application fee may be amended by resolution of the city council as may be necessary.~~

Sec. 8-78. - Revocation authorized; grounds.

~~Certifications~~ Registration issued under this article may be revoked by the city manager or ~~the city manager's~~ designee after notice and hearing for any of the following offenses:

- (1) Fraud, misrepresentation or a false statement in the application.
- (2) Fraud, misrepresentation or a false statement in the performance of lawn or landscaping maintenance services.
- (3) Violation of any condition, provision or qualification provided in the application.
- (4) Conviction, nolo contendere plea or forfeiture resulting from violation of any city, state or federal law involving theft, fraud, violence or moral turpitude.
- (5) Conducting business in an unlawful manner or in such manner as to threaten breach of the peace or menace to public health, safety or welfare.
- (6) Failure to comply with any provision of this article and applicable sections of Chapter 18-Environment, of the Marco Island Code of Ordinances.

Sec. 8-79. - Notice of revocation.

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- (1) Written notice of revocation of a ~~certification~~ registration issued under this article and the grounds therefor shall be mailed or delivered to a certified lawn and landscaping professional at the address specified in its application.
- (2) The public will be notified of revocation of any landscaping professional's registration through the monthly report to City Council, on the City's website and a notification will be posted at City Hall.

Sec. 8-80. - Appeal.

Any person aggrieved by the denial of a ~~certification~~ registration or revocation of a ~~certification~~ registration shall have the right of appeal to the city council. Such appeal shall be taken by filing with the city manager or designee, within 14 days after notice of the action complained of has been mailed or delivered to such person's last known address, a written statement setting forth fully the grounds for the appeal. The city manager or designee shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant at least five days before the date of said hearing. The decision and order of the city council on such appeal shall be final.

Sec. 8-81. - Penalties.

Any person or persons, firm or corporation, or any agent thereof, who violates any of the provisions of any section of this article shall be punished by revocation of any ~~certification~~ registration issued under this article, and other penalties as may be imposed by the Code Enforcement ~~Magistrate board~~ pursuant to Florida Law or this Code.

SECTION 4. Codification.

It is the intention of the City Council, and it is hereby ordained that the amendments to the City of Marco Island Code of Ordinances made by this Ordinance shall constitute a new Article V to Chapter 8 of the City of Marco Island Code of Ordinances, and that the sections of this Ordinance may be renumbered and re-lettered as necessary, and that the word "Ordinance" may be changed to "Section, "Article" or other appropriate word.

SECTION 5. Conflicts.

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

SECTION 6. Severability.

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

SECTION 7. Effective Date.

This Ordinance shall become effective immediately following its adoption by the City Council.


ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 7th day of March 2016.

ATTEST:

CITY OF MARCO ISLAND, FLORIDA




Laura M. Litzan, City Clerk

By: 

Robert C. Brown, Chairman

Approved as to form and legal sufficiency:



Alan L. Gabriel, City Attorney

BRIEFING MEMORANDUM

Code Enforcement Authority on Private Property

Fertilizer Ordinance and Stormwater Ordinance Enforcement

Prepared by: Rick Woodworth, with assistance from AI

Prepared for: Meeting with Police Chief, Code Enforcement, Growth Management, and Public Works

Date: April 30, 2026

Purpose of This Memorandum

To address the recurring claim by City staff that Code Enforcement officers cannot enter private property to enforce the Fertilizer Ordinance or the Stormwater Ordinance. This memorandum sets out what the law actually requires, what the law actually permits, and the practical enforcement pathways available to the City that are not currently being used.

Executive Summary

The City's blanket statement that Code Enforcement cannot walk on private property is partially true but significantly overstated. It is being used as a categorical excuse to avoid enforcement work that is plainly within the City's legal authority.

Two critical points:

1. **Fourth Amendment limits exist**, but they apply only to areas where the property owner has a reasonable expectation of privacy. Most ordinance violations of concern occur in areas visible from the public right-of-way, the canal, or other lawful vantage points where no warrant or consent is required.
2. **Florida law provides clear enforcement pathways** when consent is refused, including administrative inspection warrants under Florida Statutes Sections 933.20 through 933.30. The City rarely, if ever, uses these tools.

What the Law Actually Says

The General Rule

The Florida Attorney General has issued multiple opinions confirming that a local government code inspector is not authorized to enter onto any private, commercial, or residential property to assure compliance with technical codes, or to conduct administrative inspections or searches, without (a) the consent of the owner, operator, or occupant, or (b) a duly issued search or administrative inspection warrant. The Fourth Amendment of the United States Constitution and

Article I, Section 12 of the Florida Constitution protect against warrantless searches by code officers, just as they do for police.

So far, so good for the City's position. But this is where the City's argument stops, and where the actual law continues.

Exception 1: Open View From Public Property

This is the most important exception, and the one the City consistently ignores. A code enforcement officer does not need permission or an administrative search warrant to inspect property for code compliance for any area that can be seen from public property, such as a street, sidewalk, swale, or navigable waterway. The public sidewalk is not curtilage. The Fourth Amendment does not apply when the officer is standing in a place where the officer has a lawful right to be.

In plain English: if a Code officer can see the violation from the street, the swale, the canal, or a neighboring property where they have consent to stand, they can document it, photograph it, and cite it. No warrant. No consent from the property owner. No problem.

Exception 2: Administrative Inspection Warrants

When consent is refused and the violation is not visible from a public vantage point, Florida Statutes Sections 933.20 through 933.30 authorize the City to obtain an administrative inspection warrant from a judge. These warrants permit inspection of any building, place, or structure for compliance with applicable health, safety, zoning, and similar standards. (Owner-occupied family residences are exempt from this specific warrant procedure, but not from the open-view doctrine.)

The City almost never uses this tool. That is a policy choice, not a legal limitation. Ask Code Enforcement how many administrative inspection warrants they have sought in the last five years. The answer will likely be zero.

Exception 3: Curtilage Is Narrower Than the City Claims

Curtilage is the area immediately surrounding the home that receives heightened Fourth Amendment protection, defined by four factors: proximity to the home, whether the area is enclosed, the nature of its use, and the steps the resident has taken to shield it from public view. A driveway open to the street, a swale, a front yard visible from the road, and a seawall edge visible from the canal are typically not curtilage in any meaningful sense. Even within curtilage, anything observable from a lawful vantage point remains fair game.

Exception 4: Aerial and Photographic Observation

Courts have repeatedly held there is no reasonable expectation of privacy from naked-eye observation by aircraft or helicopter operating in navigable airspace. Aerial photography of yards visible from above is permissible. A properly designed drone or aerial program is legally available to the City for fertilizer, stormwater, and landscape violations that are visible from above.

Exception 5: Consent Is Routinely Granted

Most homeowners say yes when asked. The City's enforcement posture treats every parcel as a fortress that cannot be entered. In practice, a Code officer who knocks on the door and politely

asks to walk the side yard or the back yard to confirm a complaint will, in the great majority of cases, be granted access. The blanket private-property excuse skips this step entirely.

Application to Specific Ordinances

1. Fertilizer Ordinance Enforcement

Almost every fertilizer violation that matters on Marco Island is visible from a public vantage point. None of the following situations require entering private property:

- Fertilizer being applied or stockpiled in a driveway, front yard, or area visible from the street.
- Granular fertilizer visible in the gutter, swale, or storm drain.
- Spreaders being operated within the ten-foot setback from a seawall, observable from the canal or from a neighboring dock with consent.
- Application during the prohibited summer wet-season blackout period (visible from the street).
- Commercial applicator trucks parked on driveways with bags and equipment in plain view.
- Absence of required best-management-practices certification for commercial applicators operating in the public right-of-way.

The right question for the meeting: How many fertilizer-related citations has the City issued in the last three years? If the answer is near zero despite ongoing visible violations, the private-property excuse is not the cause. The cause is the absence of a proactive enforcement program.

2. Stormwater Ordinance Enforcement: Landscapers Discharging Debris Into Canals

This is one of the most flagrant and routinely observable violations on Marco Island. Landscapers blowing or dumping grass clippings, leaves, palm fronds, and other yard waste into the canals is a direct violation of the City's Stormwater Ordinance and contributes measurable nutrient loading to canal waters that are already nitrogen and phosphorus impaired.

Every element of this violation is observable from a lawful vantage point:

- The landscaper's truck and crew are parked in the public right-of-way (the street or driveway apron).
- The blower's discharge plume is visible across the property and over the seawall.
- Debris floating in the canal is observable from any neighboring dock, from the canal itself by boat, from public road crossings, and from aerial photography.
- The landscape company's name, logo, and license plate are typically displayed on the truck in plain view.
- Time-stamped photographs and short video clips from a neighboring property (with consent), from a boat in the canal, or from a public bridge are admissible evidence and require no warrant.

There is no legitimate Fourth Amendment defense to this enforcement. The conduct is committed in plain view by a commercial entity (which has reduced privacy expectations under both Florida and federal law), in a location visible from public property, against a clearly published ordinance, and against a clearly identifiable defendant. The only thing missing is the City's willingness to cite.

Recommended enforcement protocol for this category:

1. Establish a dedicated stormwater complaint intake channel with photo upload, accepting citizen-generated evidence (the City already accepts citizen complaints under Chapter 162; nothing in Florida law prohibits citizen-generated photographic evidence as the basis for a Code investigation).
2. Direct Code Enforcement and Public Works Stormwater staff to conduct periodic ride-alongs through canal-front neighborhoods on weekday mornings, when commercial landscape crews are most active.
3. Issue first-offense Notices of Violation directly to the commercial landscape company, not to the property owner. The company is the actor; the property owner did not blow the debris into the canal.
4. Establish escalating civil penalties for repeat offenders, with a published list of cited companies posted on the City website. Reputational consequence drives compliance faster than fines.
5. Coordinate with Marine Patrol and the Police Marine Unit to document violations from the water, a vantage point with no Fourth Amendment exposure whatsoever.

3. Inspection and Sampling of Commercial Fertilizer Applicator Vehicles

A frequently raised question is whether the City can stop a commercial fertilizer truck and inspect or sample its contents. The answer requires distinguishing five separate questions, each with a different legal answer.

a. Can the City stop a moving fertilizer truck?

Generally, no. A traffic stop of a moving vehicle requires reasonable suspicion of a traffic violation or a crime, and only sworn law enforcement officers (the Marco Island Police Department) have that authority. Code Enforcement officers are explicitly not law enforcement officers under Florida Statute Section 162.21(2), which states that designation as a code enforcement officer does not provide the power of arrest. The Police Department can stop the truck for legitimate traffic infractions (improper commercial markings, unsecured load under F.S. Section 316.520, expired tag, observed traffic violation), but a regulatory inspection alone is not a basis for a traffic stop.

b. Can the City approach a lawfully parked truck?

Yes, without restriction. When the truck is parked on a public street, in a customer's driveway, or in any location visible from the public right-of-way, a Code officer can walk up to it, identify the company, photograph the equipment, and ask the operator questions. Anything in plain view is fair game without a warrant or consent.

What is typically in plain view at a parked landscape truck:

- The applicator's name and FDACS Limited Urban Commercial Fertilizer Applicator (LF) license number, which Florida law requires to be displayed on commercial vehicles.

- Bags of fertilizer with product labels showing brand, formulation (the N-P-K analysis), and lot numbers.
- Spreaders, blowers, and other equipment in the open bed of the truck.
- Open or torn bags with product visible.

This is sufficient to verify whether the company is properly licensed under F.S. Section 482.1562, whether the product complies with the City's fertilizer ordinance (low-phosphorus, slow-release nitrogen requirements), and whether the application is occurring during the prohibited summer blackout period.

c. Can the City seize a sample of fertilizer for laboratory testing?

Not unilaterally. Taking the company's product for testing is a seizure under the Fourth Amendment. Two narrow legal pathways exist:

- **Consent.** If the operator agrees, the officer can take a sample. Many operators will consent if the request is framed as a routine compliance check. The consent should be documented in writing.
- **Administrative inspection warrant under F.S. Sections 933.20 through 933.30.** These warrants explicitly cover environmental and land-use compliance inspections. A properly drafted affidavit citing reasonable suspicion of a fertilizer ordinance violation could support a warrant authorizing sample collection. The City does not currently use this tool.

d. The most powerful tool is FDACS, not the City.

The Florida Department of Agriculture and Consumer Services (FDACS), through its Bureau of Inspection and Incident Response, has full statutory authority under Chapters 388, 482, and 487 of the Florida Statutes to inspect commercial fertilizer applicators, including their trucks, equipment, and product, and to take samples for analysis. FDACS routinely conducts these inspections at random, on a routine enforcement basis, or in response to a specific complaint.

Loss of an FDACS Limited Fertilizer (LF) Certificate ends a company's ability to operate as a commercial fertilizer applicator anywhere in Florida. An FDACS referral is therefore a far more powerful enforcement tool than a municipal citation.

Recommended protocol:

1. Code Enforcement or a citizen documents a suspected violation (improper formulation, blackout-period application, unlicensed applicator, no displayed BMP certification, application within the seawall setback).
2. The City refers the complaint to FDACS Bureau of Inspection and Incident Response with photographs, GPS coordinates, time stamps, and the company name.
3. FDACS, with full statutory authority, conducts the inspection, takes samples if warranted, and issues citations or license sanctions as appropriate.
4. The City maintains a log of referrals and outcomes, available for public inspection, to demonstrate that the enforcement system is functioning.

e. Most violations do not require a sample at all.

It bears emphasis that the great majority of fertilizer ordinance violations on Marco Island can be proven without ever taking a sample.

- A blackout-period violation requires a date and a photograph.

- A seawall-setback violation requires a tape measure and a photograph.
- An unlicensed-applicator violation requires a company name and a check against the publicly searchable FDACS license database.
- A missing-BMP-certification violation requires a photograph of the truck.

If staff respond that they cannot test the fertilizer, the correct answer is: the City does not need to. FDACS can. The question is whether the City has a formal referral protocol with FDACS, and at present the answer appears to be no.

Questions for the Meeting

The following questions are designed to convert vague excuses into specific, on-the-record commitments.

1. How many fertilizer-related Notices of Violation and citations have been issued in the last three years? Please provide the data, broken down by year and by category (residential, commercial applicator, blackout-period, setback, etc.).
2. How many stormwater-related Notices of Violation and citations have been issued in the last three years for landscape debris discharged into canals or storm drains? Same breakdown.
3. What is the City's written policy for handling violations observable from the public right-of-way? If there is no written policy, when will one be drafted?
4. When was the last time the City sought an administrative inspection warrant under F.S. Sections 933.20 through 933.30 for any code matter? What internal procedure exists for requesting one?
5. Are Code Enforcement officers trained on the open-view doctrine, or only on the consent rule? Can the training materials be produced?
6. What proactive enforcement program exists for commercial landscape applicators and lawn services? Are they required to display BMP certification visibly, and is Code verifying it during ordinary patrols?
7. What is the protocol when a resident reports a stormwater violation in progress? Who responds, on what timeline, and what evidence-gathering steps are taken before the responder leaves the scene?
8. Will the City accept time-stamped photographic and video evidence submitted by residents as the basis for opening a Code investigation against a commercial applicator or landscape company?
9. Will the City coordinate with Marine Patrol to document landscape-debris discharge from the canal-side, where Fourth Amendment concerns do not apply?
10. Does the City have a written protocol for referring suspected commercial fertilizer applicator violations to the FDACS Bureau of Inspection and Incident Response? If so, please produce it. If not, when will one be drafted?
11. How many FDACS referrals has the City made in the last three years for suspected fertilizer applicator violations? What was the outcome of each?

12. When Code Enforcement encounters a lawfully parked commercial fertilizer truck, what is the standard documentation procedure (FDACS license number, displayed BMP certification, product labels, photographic record)? Is this procedure in writing?

Conclusion

The Fourth Amendment is not a wall around private property. It is a rule about reasonable expectations of privacy. The City's repeated invocation of "we cannot enter private property" is a half-truth deployed as a full excuse, and it is producing measurable harm to Marco Island's canals, its quality of life, and its taxpayers' confidence in municipal government.

Fertilizer in the swale is visible from the street. Grass clippings in the canal are visible from the canal. A commercial blower discharging debris over a seawall is visible from three different lawful vantage points at once. None of these violations require a warrant, and most do not even require consent. They require only the willingness to enforce.

The right question is not whether Code can enforce these ordinances. The law is clear that Code can. The right question is why the City chooses not to.

Note: This memorandum summarizes publicly available legal authority including Florida Statutes Chapter 162, Florida Statutes Sections 933.20 through 933.30, Florida Attorney General opinions on code enforcement and private property, and Fourth Amendment caselaw. It is intended to support meeting preparation and is not legal advice.

Attachment A: Constitutional and Statutory Text

The text below is reproduced from the United States Constitution, the Florida Constitution, and the Florida Statutes for ready reference during the meeting.

Fourth Amendment to the United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Florida Constitution, Article I, Section 12 (Searches and Seizures)

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

Florida Statutes, Chapter 933, Sections 933.20 through 933.30 (Inspection Warrants)

These provisions establish the administrative inspection warrant procedure that the City may use when consent to inspect is refused.

Section 933.20, "Inspection warrant"; definition.

As used in ss. 933.20-933.30, "inspection warrant" means an order in writing, in the name of the people, signed by a person competent to issue search warrants pursuant to s. 933.01, and directed to a state or local official, commanding him or her to conduct an inspection required or authorized by state or local law or rule relating to municipal or county building, fire, safety, environmental, animal control, land use, plumbing, electrical, health, minimum housing, or zoning standards.

Section 933.21, Requirements for issuance of inspection warrant.

An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the place, dwelling, structure, or premises to be inspected and the purpose for which the inspection is to be made. In addition, the affidavit shall contain a statement that consent to inspect has been sought and refused or a statement setting forth facts or circumstances reasonably justifying the failure

to seek such consent. Owner-occupied family residences are exempt from the provisions of this act.

Section 933.22, When cause deemed to exist.

Cause shall be deemed to exist if reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, or premises or if there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, or premises which condition is in violation of a state or local law or rule relating to municipal or county building, fire, safety, environmental, animal control, land use, plumbing, electrical, health, minimum housing, or zoning standards.

Section 933.23, Examination of applicant for inspection warrant.

Before issuing an inspection warrant, the judge shall examine on oath the applicant and any other witness and shall satisfy himself or herself of the existence of grounds for granting such application.

Section 933.24, Issuance of inspection warrant; contents.

If the judge is satisfied that cause for the inspection exists, he or she may issue the warrant particularly describing the place, dwelling, structure, or premises to be inspected and designating on the warrant the purpose and limitations of the inspection, including the limitations required by this act.

Section 933.25, Duration of inspection warrant.

An inspection warrant shall be effective for the time specified therein, but not for a period of more than 14 days unless it is extended or renewed by the judge who signed and issued the original warrant upon satisfying himself or herself that such extension or renewal is in the public interest. Such inspection warrant must be executed and returned to the judge by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed, is void.

Section 933.26, Conduct of inspection; notice.

An inspection pursuant to a warrant shall not be made between 6 p.m. of any day and 8 a.m. of the succeeding day; on Saturday, Sunday, or any legal holiday; or in the absence of an owner or occupant over the age of 18 years of the particular place, dwelling, structure, or premises unless specifically authorized by the judge upon a showing that such authority is reasonably necessary to effectuate the purpose of the rule being enforced. An inspection pursuant to a warrant shall not be made by means of forcible entry, except that the judge may expressly authorize a forcible entry when facts are shown which are sufficient to create a reasonable suspicion of a violation of a state or local law or rule relating to municipal or county building, fire, safety, environmental, animal control, land use, plumbing, electrical, health, minimum housing, or zoning standards which, if such violation existed, would be an immediate threat to health or safety or when facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. When prior consent has been sought and refused, notice that a warrant has been issued shall be given at least 24 hours before the warrant is executed. Immediate execution of a warrant shall be prohibited except when necessary to prevent loss of life or property.

Section 933.27, Refusal to permit authorized inspection; penalty.

Any person who willfully refuses to permit inspection lawfully authorized by warrant issued pursuant to this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Inspection shall not be made by force in the absence of express authorization by the judge issuing the warrant.

Florida Statutes, Section 162.06(2) (Code Inspector Authority)

This provision establishes the investigative and notice-of-violation authority of code inspectors and is the operative statutory basis for routine code enforcement activity.

It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes; however, no member of the enforcement board or special magistrate shall have the power to initiate such enforcement proceedings. Except as provided in subsections (3) and (4), if a violation of the codes is found, the code inspector shall notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall notify an enforcement board and request a hearing.

Florida Statutes, Section 162.21 (Citation Authority)

This is the alternative citation procedure that allows code officers to issue civil infraction citations directly. It is the operative authority for issuing fertilizer-ordinance and stormwater-ordinance citations to commercial actors observed violating the code.

(2)(a) A county or a municipality may designate certain of its employees or agents as code enforcement officers. The training and qualifications of the employees or agents for such designation shall be determined by the county or the municipality. Employees or agents who may be designated as code enforcement officers may include, but are not limited to, code inspectors, law enforcement officers, animal control officers, or firesafety inspectors.

(5)(c) Prior to issuing a citation, a code enforcement officer shall provide notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the time period, a code enforcement officer may issue a citation to the person who has committed the violation. A code enforcement officer does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if a repeat violation is found or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

Source materials: U.S. Constitution, Amendment IV; Florida Constitution, Article I, Section 12; Florida Statutes Chapter 162 (Local Government Code Enforcement) and Chapter 933 (Search

and Inspection Warrants), as published by the Florida Senate (flsenate.gov) and the Florida Legislature (leg.state.fl.us).

Attachment B: Selected Authorities Supporting Code and Police Enforcement Activity Visible From Public or Lawful Vantage Points

The following cases and Attorney General opinions establish that observation of code violations from public rights-of-way, public waters, neighboring properties, and navigable airspace does not require a warrant or the property owner's consent. They are listed in order of relevance to the residential and canal-front enforcement context on Marco Island. Commercial-premises authorities, while supportive, are listed last because they apply mostly to FDACS inspections of commercial fertilizer applicators rather than to municipal Code Enforcement of residential properties.

Most Directly On Point: Florida Authority

1. *Sarantopoulos v. State*, 629 So. 2d 121 (Fla. 1993).

This is the most important Florida case for Marco Island enforcement purposes. Acting on an anonymous tip, police officers walked onto a neighboring property without permission and stood on tiptoes to look over the defendant's six-foot wooden fence into his fenced backyard, where they observed marijuana plants. The Florida Supreme Court held the observation was constitutional. The Court reasoned that although the defendant manifested a subjective expectation of privacy in his fenced backyard, society is not prepared to recognize that expectation as reasonable when the backyard is observable from any vantage point higher than ground level. The Court also rejected the argument that the officers' civil trespass on the neighbor's property invalidated the observation.

Application to Marco Island: If a police officer can trespass on a neighbor's property and look over a six-foot fence into a defendant's protected curtilage, a Code Enforcement officer standing lawfully in the public right-of-way, in the swale, on a public sidewalk, or in a boat in the canal, observing a fertilizer or stormwater violation, is operating well within constitutional limits. This case directly answers the City's blanket private-property objection.

2. *Florida v. Riley*, 488 U.S. 445 (1989).

A Florida case (originating from Pasco County) in which the U.S. Supreme Court held that a sheriff's deputy's observation of marijuana plants through the partially open roof of a greenhouse, made from a helicopter hovering at 400 feet, did not constitute a Fourth Amendment search and required no warrant. The Court reasoned that members of the public could lawfully fly over the property at that altitude, so the homeowner had no reasonable expectation of privacy from aerial observation.

Application: Aerial and drone observation of fertilizer application, landscape-debris discharge into canals, and other ordinance violations is constitutionally available to the City. If the City wishes to develop a periodic aerial enforcement program, no Fourth Amendment barrier exists.

3. *Florida Attorney General Opinion 83-86 (Jim Smith)*.

Issued by the same Attorney General who one year later wrote the restrictive AGO 84-32 typically cited by the City. AGO 83-86 concluded that a municipality was authorized to enact an ordinance regulating pest control vehicles exceeding 10,000 pounds, including allowing them to make temporary stops on city streets for performing pest control services on adjacent residential

properties from such vehicles. This opinion implicitly confirms that municipalities have authority to regulate commercial pesticide and fertilizer operations occurring on or from the public street, and that activities visible from the public street are within the City's regulatory reach.

4. Florida Attorney General Opinion 2009-37 (Bill McCollum).

While addressing a different question (whether an Unsafe Structures Board order substitutes for a judicial warrant for arrest), this opinion contains an important affirmative authorization. The AG concluded that an order of a city's Unsafe Structures Board allows the city to enter premises to make reasonable repairs to abate or correct a code violation presenting a serious threat to the public health, safety, and welfare without the owner's consent. This opinion is useful evidence that even within the restrictive line of AG opinions, exceptions exist for serious public-health threats. Nutrient-driven canal water quality degradation is a serious public-health concern.

Most Directly On Point: U.S. Supreme Court Authority

5. *Oliver v. United States*, 466 U.S. 170 (1984).

The U.S. Supreme Court's foundational open-fields case. Federal officers, acting on a tip, ignored a locked gate and several "No Trespassing" signs and walked onto private rural property to find a marijuana field. The Supreme Court held the search was constitutional because open fields, areas outside the curtilage of the home, are not protected by the Fourth Amendment regardless of fences or signs. The Court reasoned that society has no interest in protecting the privacy of activities carried out in open fields, that open fields are more accessible to the public and police than are offices or residences, and that the open-fields doctrine is a bright-line rule that does not depend on the particular efforts of the landowner to maintain privacy.

Application: Most of a typical Marco Island canal-front lot, including driveways open to the street, front yards, swales, lawn areas visible from the road, and seawall edges visible from the canal, falls outside the curtilage of the home and is therefore unprotected open field for Fourth Amendment purposes. The City has substantial latitude to observe and enforce ordinances in these areas.

6. *United States v. Dunn*, 480 U.S. 294 (1987).

The U.S. Supreme Court established the four-factor test for determining whether a particular area is curtilage (and therefore protected) or open field (and therefore not). The four factors are: (1) the proximity of the area to the home; (2) whether the area is included within an enclosure surrounding the home; (3) the nature of the uses to which the area is put; and (4) the steps taken by the resident to shield the area from observation by passers-by.

Application: Most fertilizer and stormwater violations on Marco Island occur in areas that fail multiple Dunn factors and therefore are not protected curtilage. A driveway open to the street fails factor 2 (no enclosure) and factor 4 (no steps to shield from view). A swale fails factors 1, 2, and 4. A seawall edge visible from the canal fails factor 4. The Dunn test, properly applied, narrows the protected curtilage on a typical Marco Island lot considerably.

7. *California v. Ciraolo*, 476 U.S. 207 (1986).

Police, acting on a tip, flew a private airplane at 1,000 feet over the defendant's fenced backyard and observed marijuana growing in the curtilage. The U.S. Supreme Court held that this observation was not a Fourth Amendment search because the airspace was navigable and the public could lawfully view the curtilage from that altitude. Together with *Riley*, *Ciraolo* establishes that aerial observation of even fully fenced curtilage is constitutionally permissible.

8. California v. Greenwood, 486 U.S. 35 (1988).

The U.S. Supreme Court held that the Fourth Amendment does not protect garbage left for collection outside the curtilage of a home. The Court reasoned that the homeowner had no reasonable expectation of privacy in items placed where animals, scavengers, snoopers, or members of the public could readily inspect them.

Application: Yard debris pushed into a swale, into a public street, or into a canal is functionally analogous to garbage placed at the curb. Once the material crosses the curtilage line, it is not constitutionally protected, and the City has no Fourth Amendment barrier to documenting, sampling, or analyzing it as evidence of a stormwater violation.

Strongly Supportive: Curtilage Boundary Cases

9. Collins v. Virginia, 138 S. Ct. 1663 (2018).

This case is included for completeness because it cuts against unrestricted entry. The U.S. Supreme Court held that an officer's entry onto the residential driveway, behind the home and partially enclosed, to lift a tarp and inspect a motorcycle was a Fourth Amendment search of curtilage. Collins is a useful caution: not every driveway is open field. A driveway that is enclosed, behind the home, and used for activities intimately associated with the home may be protected curtilage.

Practical effect: Driveways open to the street, in front of the home, and used for ordinary parking and access are typically not protected curtilage. Driveways that are enclosed, behind the home, gated, or otherwise shielded from public view may be. The Code officer's safest practice is to remain in the public right-of-way or in plainly accessible front-of-home driveway areas, where Collins does not apply.

10. Florida v. Jardines, 569 U.S. 1 (2013).

Another Florida-origin case included for completeness. The U.S. Supreme Court held that bringing a drug-detection dog onto a homeowner's front porch to sniff for narcotics was a Fourth Amendment search of curtilage. The case stands for the proposition that the implied license to approach a front door (the "knock and talk" license) does not extend to bringing instruments of search onto the porch.

Practical effect: A Code officer who knocks on the front door to seek consent is acting within the implied license. A Code officer who walks around the side of the home or onto the back patio without consent is exceeding it. The line is whether the officer is doing what any private visitor would do.

Supportive: Commercial-Premises and Closely-Regulated-Industry Cases

These cases apply primarily to FDACS inspections of commercial fertilizer applicators and other regulated businesses, rather than to municipal Code Enforcement of residential properties. They are listed last because the residential application context dominates Marco Island enforcement, but they are useful authority for the FDACS referral pathway discussed in the main memorandum.

11. Dow Chemical Co. v. United States, 476 U.S. 227 (1986).

The U.S. Supreme Court held that the Environmental Protection Agency's aerial photography of a 2,000-acre Dow chemical plant, taken from navigable airspace using a precision aerial mapping camera, was not a Fourth Amendment search. The Court reasoned that the open areas of an industrial plant complex are more analogous to open fields than to the curtilage of a

dwelling, and commercial property is therefore subject to less Fourth Amendment protection than a private home.

Application: Commercial landscape operations and commercial fertilizer storage and loading sites, when observable from public spaces or navigable airspace, enjoy reduced Fourth Amendment protection. This is one of the constitutional foundations for FDACS's authority to inspect commercial fertilizer applicators.

12. **United States v. Biswell, 406 U.S. 311 (1972).**

The U.S. Supreme Court upheld a warrantless administrative inspection of a federally licensed firearms dealer's premises. The Court established the "closely regulated industry" exception to the warrant requirement: where a business is one in which there is a substantial federal interest in close regulation and the inspection is conducted under the authority of a statute meeting certain specificity requirements, no warrant is required.

13. **Donovan v. Dewey, 452 U.S. 594 (1981).**

The U.S. Supreme Court extended the Biswell closely-regulated-industry exception to inspections of stone quarries under the Federal Mine Safety and Health Act. The Court held that the warrantless inspection regime was constitutional because the statute provided a constitutionally adequate substitute for a warrant by limiting the discretion of inspecting officers and providing notice to operators of the regulatory scheme.

Application of Biswell and Donovan: Commercial fertilizer applicators are licensed under Florida Statutes Chapter 482, must hold an FDACS Limited Urban Commercial Fertilizer Applicator (LF) certification, and operate under a comprehensive regulatory framework. They are a closely regulated industry within the meaning of these cases. FDACS's authority to inspect their premises, vehicles, and product is constitutionally well-founded under this line of authority.

Summary of How These Authorities Apply

Read together, these authorities establish a clear framework that supports active Code Enforcement on Marco Island:

- **Observation from a lawful vantage point requires no warrant.** Sarantopoulos and the open-view line of cases authorize observation from public rights-of-way, neighboring properties (with or without consent of the neighbor), and navigable airspace.
- **Most areas of a typical Marco Island lot are not protected curtilage.** Oliver and Dunn establish that driveways open to the street, swales, front yards, and seawall edges are typically open field for Fourth Amendment purposes.
- **Aerial observation, including drone observation, is constitutionally available.** Riley, Ciraolo, and Dow Chemical authorize aerial observation of even fully fenced curtilage.
- **Material that has crossed the curtilage line into the swale, street, or canal is unprotected.** Greenwood treats abandoned material as outside the Fourth Amendment.
- **Commercial fertilizer applicators are subject to robust administrative inspection.** Biswell and Donovan support FDACS's full statutory authority to inspect, sample, and discipline commercial applicators under the closely-regulated-industry doctrine.

The City's blanket private-property objection cannot survive engagement with this body of authority. The Fourth Amendment is a defined and limited rule, not a wall around every parcel.

Citation note: All cases cited above are publicly available through the Florida Supreme Court, the U.S. Supreme Court, official reporters, and free legal research services such as Justia, FindLaw, and the Cornell Legal Information Institute. All Florida Attorney General opinions are publicly available at myfloridalegal.com. This attachment is intended to support meeting preparation and is not legal advice.