

EXHIBIT A

Chapter 1 GENERAL PROVISIONS

Sec. 1-1. Designation and citation of ~~Code~~code.

The ordinances embraced in the following chapters and sections, ~~along with applicable sections of the Collier County Code pursuant to the Charter,~~ shall constitute and be designated the "Code of Ordinances, City of Marco Island, Florida," or "Code of Ordinances", and may be so cited.

Sec. 1-2. Definitions and rules of construction.

In the construction of this ~~c~~Code, and of all ordinances, the following definitions and rules shall be observed, unless the context clearly indicates otherwise:

Beach. The term, "beach" means the sand portion of land lying seaward of a seawall or line of permanent vegetation and landward of the mean high water line.

Charter. The term "~~c~~Charter" means the Charter of the City of Marco Island, printed as part I of this volume.

City. The term "city" shall be construed as if the words "of Marco Island" followed the word "city," and shall extend to and include its officers, boards, committees and employees.

Code. The term "~~c~~Code" means the Code of Ordinances, City of Marco Island, Florida.

Code enforcement official. The term "code enforcement official" means the chief supervisor of the city's code enforcement unit and his or her designees.

Computation of time. In computing any period of time prescribed or allowed by ordinance, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

Council. The term "council" or "city council" means the City Council of the City of Marco Island.

County. The term "county" means the County of Collier in the State of Florida.

Fiscal year means the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be prescribed by law as the fiscal year for the city.

F.S. The abbreviation "F.S." refers to the official Florida Statutes and all amendments and supplements adopted by the state legislature. The symbol "\$" is an abbreviation for the "section." All references to a numbered provision within F.S. shall also include amendments to such provision, as may occur from time to time.

Gender. A word importing ~~the a particular masculine~~ gender ~~only may shall~~ extend and be applied to ~~females~~ all persons and to firms, partnerships and corporations ~~as well as to males~~.

Legal holiday. The term, "legal holiday" means all holidays declared by the state pursuant to F.S. § 110.17 and ~~all holidays for which city hall is closed to the public.~~

Month. The term "~~c~~month" means a calendar month.

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language; however, technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Number. A word importing the singular number only may extend and be applied to several persons and things, as well as to one person and thing.

40 *Oath.* The term “oath” shall ~~be construed to~~ include an affirmation ~~when in all cases in which~~, by law, an
41 affirmation may be substituted for an oath, and in such cases the words “swear” and “sworn” shall be equivalent to
42 the words “affirm” and “affirmed.”

43 *Officers, boards, committees, etc.* The title of any office, officer, employee, board, committee or commission
44 shall be construed as though the words “of Marco Island, Florida” were added. Whenever a provision appears
45 authorizing or requiring a particular officer or employee of the city to do some act, it shall be construed to authorize
46 the officer or employee to delegate, designate and authorize subordinates to do the act unless the terms of the
47 provisions or section specify otherwise.

48 *Or, and.* The word “or” may be read “and,” and “and” may be read “or,” if the sense requires it.

49 *Owner.* The term “owner,” applied to a building or land, includes any part owner, joint owner, tenant in
50 common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of such building or
51 land.

52 *Person.* The term “person” shall extend and be applied to associations, clubs, societies, firms, partnerships,
53 copartnerships, and bodies politic and corporate, as well as to individuals.

54 *Personal property.* The term “personal property” includes every species-type of property except real property.

55 *Preceding, following.* The terms “preceding” and “following” mean next before and next after, respectively.

56 *Property.* The term “property” includes real and personal property.

57 *Public nuisance.* The term, “public nuisance” means the commission or omission of any act, by any person, or
58 the keeping, maintaining, propagation, existence or permitting of anything, by any person that may threaten or
59 impair the life, health, safety, or welfare of any person, or that may diminish the customary use and enjoyment of
60 property.

61 *Public place.* The term “public place” means any park, cemetery or open space adjacent thereto, ~~and all~~
62 beaches, canals or other waterways, and any property owned by the city, state or federal government that is
63 normally accessible to the public.

64 *Real property.* The term “real property” includes lands, tenements and hereditaments.

65 *Render; rendition.* The term, “render” or “rendition” means the issuance of a written order, including approval,
66 approval with conditions, or denial of a determination by the city council, planning board other board with
67 jurisdiction, or administrative official, effective upon the date of signing by the authorized city official of such order
68 or final letter of determination and its filing in the records of the city council, board, or administrative official.

69 *Right-of-way.* The term, “right-of-way” means a strip of land occupied or intended to be occupied by a road,
70 sidewalk, pedestrian or bicycle path, utility, or stormwater conveyance. The term shall mean a public right-of-way
71 that is granted, dedicated or deeded to the public, unless the context clearly indicates otherwise.

72 *Shall, may.* The word “shall” is mandatory; the word “may” is permissive.

73 *Sidewalk.* The term “sidewalk” means any portion of a street between the edge of pavement of a roadway, or
74 curbline, and the adjacent property line, intended for the use of pedestrians, excluding ~~parkways~~ swales.

75 *Signature, subscription.* The term “signature” or “subscription” includes a mark when the person cannot write.

76 *State.* The term “state” means the State of Florida.

77 *Street.* The term “street” means right-of-way and improvements therein for a public thoroughfare that affords
78 access to abutting property. The term includes ~~streets~~, avenues, boulevards, roads, ways, alleys, lanes, viaducts and
79 all other public highways in the city regardless of the descriptive term used.

80 *Swale, roadway .* The term “swale” or “roadway swale” means a pervious, depressed strip of land used to
81 retain and/or convey surface water runoff, generally located between the edge of the pavement of a roadway, and
82 the inside edge of sidewalk or right-of-way boundary if no sidewalk is present.

Tenant, occupant. The terms "tenant" and "occupant," applied to a building or land, include any person holding a written or oral lease of, or who occupies the whole or a part of such buildings or land, either alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and present.

Week. The term "week" means any seven-days period.

Written, in writing. The term "written" or "in writing" includes any representation of words, letters or figures, whether by printing or otherwise.

Year. Unless otherwise designated, the term "year" means a calendar year, unless a fiscal year is indicated.

Sec. 1-3. Catchlines of sections.

The catchlines of the several sections of this cCode printed in boldface type are intended as mere catchwords to indicate the contents of the section and are not shall not be deemed or taken to be the titles of such sections, or any part of the section, nor, unless expressly ~~so~~ provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

Sec. 1-4. References to chapters or sections.

(a) Whenever ~~in one~~ section of this cCode references ~~is made to~~ another section of this cCode, the reference shall extend and apply to the referenced section ~~referred to~~ as may be subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

(b) All references to chapters or sections are to the chapters and sections of this cCode, unless otherwise specified.

Sec. 1-5. History notes.

The history notes appearing in parentheses after sections of this cCode are not intended to have any legal effect, but are merely intended to indicate the source of matter contained in the section.

Sec. 1-6. Charter references, cross references, state law references and editor's notes.

References and editor's notes following certain sections are inserted as an aid and guide to the reader and are not controlling or meant to have any legal effect.

Sec. 1-7. Provisions considered as continuation of existing ordinances.

The provisions of this cCode appearing in this and the following chapters and sections, so far as they are the same as ordinances existing at the time of the adoption of this Code, shall be considered as a continuation ~~thereof~~ of the ordinances that created them, and not as new enactments.

Sec. 1-8. Ordinances not affected by Codecode.

Nothing in this cCode or the ordinance adopting this Codecode shall affect any ordinance:

- (1) Promising or guaranteeing the payment of money by or to the city, or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness, or any contract or obligation assumed by the city.
- (2) Appropriating funds or establishing or relating to the annual budget.
- (3) Imposing taxes which are not inconsistent with this Codecode.
- (4) Granting any right or franchise.

- (5) Dedicating, naming, establishing, locating, relocating, opening, paving, widening or vacating any street or public way.
- (6) Establishing or prescribing street grades.
- (7) Providing for local improvements and assessing taxes therefor, or establishing special districts.
- (8) Prescribing through streets, parking prohibitions, parking limitations, one-way streets, speed limits, load limits or loading zones not inconsistent with this [Codecode](#).
- (9) Zoning or rezoning specific property.
- (10) Dedicating, accepting or rejecting any plat or subdivision.
- (11) Annexing or deannexing property.
- (12) Which continues in effect pursuant to Charter section 10.06.
- (13) Which is special, although permanent.
- (14) Which is temporary, although general.
- (15) Whose purposes have not been consummated.

All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this [Codecode](#).

Sec. 1-9. Effect of repeal of ordinances.

- (a) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.
- (b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, or any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

Sec. 1-10. Code does not affect prior offenses or rights.

- (a) Nothing in this [Codecode](#) or the ordinance adopting this [Codecode](#) shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing, before the effective date of this [Codecode](#).
- (b) The adoption of this [Codecode](#) shall not be interpreted as authorizing or permitting any use or the continuance of any use of a structure or premises in violation of any ordinance of the city in effect on the date of adoption of this [Codecode](#).

Sec. 1-11. Amendments to [Codecode](#); effect of new ordinances; amendatory language.

- (a) All ordinances passed subsequent to this [Codecode](#) which amend, repeal or in any way affect this [Codecode](#) may be numbered in accordance with the numbering system of this [Codecode](#) and printed for inclusion in the [Codecode](#). In the case of repealed chapters, sections and subsections, or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the [Codecode](#) by omission from reprinted pages affected thereby. The subsequent ordinances, as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this [Codecode](#) and subsequent ordinances numbered or omitted are readopted as a new code of ordinances by the city council.
- (b) Amendments to any of the provisions of this [Codecode](#) may be made by amending such provisions by specific reference to the section number of this [Codecode](#) in substantially the following language: "NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA: That section _____ of the

Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:" The new provisions shall then be set out in full as desired.

- (c) If a new section not heretofore existing in the [Codecode](#) is to be added, the following language may be used: "NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA: That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a section, to be numbered _____, which section reads as follows" The new section shall then be set out in full as desired.
- (d) All sections, articles, chapters or provisions desired to be repealed must be specifically repealed by section, article or chapter number, as the case may be.

Sec. 1-12. Supplementation of Code.

- (a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the city. A supplement to the [Codecode](#) shall include all substantive permanent and general parts of ordinances passed by the city council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the [Codecode](#), and shall also include all amendments to the Charter during the period. [If necessary, t](#)he pages of a supplement shall be so numbered that they will fit properly into the [Codecode](#) and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the [Codecode](#) will be current through the date of the adoption of the latest ordinance included in the supplement.
- (b) In preparing a supplement to this [Codecode](#), all portions of the [Codecode](#) which have been repealed shall be excluded from the [Codecode](#) by the omission thereof from reprinted pages.
- (c) When preparing a supplement to this [Codecode](#), the codifier, meaning the person, agency or organization authorized to prepare the supplement, may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:
- (1) Organize the ordinance material into appropriate subdivisions;
 - (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the [Codecode](#) printed in the supplement and make changes in catchlines, headings and titles;
 - (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the [Codecode](#) and, where necessary to accommodate new material, change existing section or other subdivision numbers;
 - (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ through _____." The inserted section numbers will indicate the sections of the [Codecode](#) which embody the substantive sections of the ordinance incorporated into the [Codecode](#); and
 - (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the [Ccode](#), but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the [Codecode](#).

Sec. 1-13. Severability of parts of [Codecode](#).

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this [Codecode](#) are severable, and if any phrase, clause, sentence, paragraph or section of this [Codecode](#) shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this [Codecode](#).

1 **Sec. 1-14. General penalty; continuing violations; violations deemed public nuisance.**

- 2 (a) Whenever in this ~~Code~~code any act is prohibited or is made or declared to be unlawful or an offense, or
3 whenever in this ~~c~~code the doing of any act is required or the failure to do any act is declared to be unlawful
4 or an offense, where no specific penalty is provided therefor, the violation of any such provision of this ~~c~~code
5 shall be punished by a fine not exceeding \$500.00 or imprisonment for a term not exceeding 60 days, or by
6 both such fine and imprisonment in the discretion of the court. Each day any violation of any provision of this
7 ~~Code~~code shall continue shall constitute a separate offense.
- 8 (b) In addition to the penalties provided in subsection (a) of this section, any condition caused or permitted to
9 exist in violation of any of the provisions of this ~~c~~code shall be deemed a public nuisance and may be abated
10 by the city as provided by law, and each day that such condition continues shall be regarded as a new and
11 separate offense.
- 12 (c) The penalties in this section are in addition to any other remedy provided by law, which may include without
13 limitation, an equitable action for injunctive relief or an action at law for damages.
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16 **Sec. 1-15. Appeals.**

- 17 (a) Any person affected by a decision or determination of a city administrative official or of a city board or
18 committee established pursuant to Sec. 2-201, relating to a provision of this code of ordinances not
19 excluded in subsection (b), may appeal the decision according to the procedure established within this
20 section, if the affected person believes the decision was rendered in error.
- 21 (b) This section does not authorize an appeal from any provision in chapter 30, land development code, or
22 any other article or chapter that provides for a separate appeal procedure.
- 23 (1) Filing. The party filing the appeal (appellant) shall submit written notification of the appeal to the city
24 clerk. The appeal must be received within thirty (30) days after the decision was rendered, and shall
25 include at least the following information: name, address, phone number and email address of the
26 appellant, the decision being appealed and how the appellant is affected by the decision, the name of
27 the administrative official or board that rendered the decision, the date the decision was rendered, a
28 copy of the decision, and the reason the appellant believes the decision was issued in error together
29 with any pertinent information, exhibits and other backup information in support of the appeal. The
30 appellant shall pay a fee for the processing of the appeal as may be established by the city council
31 from time to time.
- 32 (2) Processing. Upon receipt of a timely notice of appeal, the appeal shall be assigned to the city council
33 serving in an appellate capacity at one of the next two regularly scheduled meetings unless an
34 extension of time is requested or agreed to by the appellant.
- 35 (3) Hearing. The city council shall conduct a de novo review of the appeal at a quasi-judicial public hearing
36 noticed in a newspaper of general circulation at least seven days prior to the hearing. The city council
37 shall make a final determination based on the following criteria:
- 38 a. There exists an error or ambiguity that must be corrected;
- 39 b. Whether competent substantial evidence exists to support the decision being appealed;
- 40 c. The general intent of the section of this code of ordinances that is the subject of the appeal;
- 41 d. The impact of any finding on the surrounding community;
- 42 e. The testimony and submittals of any appellants, their counsel, agents, representatives, or
43 witnesses;

- 1 f. The testimony and submittals of city administrative officials, their counsel, representatives, or
2 witnesses;
3 g. Applicable statutes; and,
4 h. Established case law.
5 (4) Administrative resolution of appeal. In the event that the department or division that issued the
6 decision determines it erred after the appeal has been filed, nothing in this section precludes the
7 department or division from correcting the error and reversing or modifying its decision.
8 (5) Council authority. The city council shall have the authority to reverse or affirm, wholly or in part, or
9 modify any administrative or board order, requirement, decision, or determination made in the
10 administration, interpretation or enforcement of any provision of this code of ordinances. The council
11 shall have all the powers of the official or board from whose decision the appeal is taken, and its
12 decision shall become effective immediately. The city council's decision shall be reflected in a written
13 order prepared by the city attorney and filed with the city clerk.
14 (6) Appeal of council decision. Appeal of the council's decision shall by petition for writ of certiorari to the
15 appropriate state court located in Collier County within thirty (30) days from the date of the rendering
16 of the decision.
17 (7) A violation of any order entered with respect to an appeal processed pursuant to this section shall be
18 considered a violation of the code section that was the subject of the appeal and shall be subject to
19 enforcement procedures of this code of ordinances.
20

21 Chapter 2 ADMINISTRATION

22 ARTICLE I. IN GENERAL

23 Sec. 2-1. City seal.

- 24 (a) There is hereby designated an official seal of the city.
25 (b) The ~~city manager/~~city clerk shall be the custodian of the city seal.
26 (c) The manufacture, use, display, or employment of any facsimile or reproduction of the city seal, except by
27 municipal officials or employees in the performance of their duties, without express approval of the city council
28 is prohibited.
29 (d) ~~Nothing in this section shall be construed to prohibit the~~The city manager/city clerk ~~is authorized from to using~~
30 ~~use~~ a corporate seal, which reflects the name of the city and the state of incorporation, for certification of
31 official documents.

32 Sec. 2-2. Court cost for criminal justice education.

33 In addition to costs provided for in F.S. § 938.01, the city hereby assesses an additional ~~\$2.00~~amount
34 established by resolution of the city council for expenditures for criminal justice education degree programs and
35 training courses.

36 Secs. 2-3—2-30. Reserved.

ARTICLE II. CITY COUNCIL

Sec. 2-31. Induction of members into office: oath.

Except as provided by section 2-31.1, the newly elected councilmembers shall take office at noon on the Monday following their election, and shall be inducted into office at a special meeting called for that purpose. At that time, the city attorney or any judicial officer shall administer an oath of office to the newly elected councilmembers. The oath of office shall be as follows:

"I solemnly swear (or affirm) that I will support the Constitution and will obey the Laws of the United States and of the State of Florida; that I will, in all respects, observe the provisions of the Charter and the Ordinances of the City of Marco Island, and will faithfully discharge the duties of the office of City Council."

Sec. 2-31.1. City council election dates; commencement of term; qualifying; vacancy in candidacy; extension of term.

(a) *Priority of provisions.* The provisions of this section 2-31.1 shall control over any conflicting provision of the city code or charter ~~to the fullest extent authorized by F.S. § 100.3605 (2).~~

(b) *Election dates.* ~~The regular municipal election shall be held on the last Tuesday in January for the 2008 and 2010 elections, and, beginning with the 2012 election and every election thereafter, the regular~~Regular municipal elections shall be held on the first Tuesday, following the first Monday, in November of even-numbered years.

(c) *Commencement of terms.* ~~Those persons certified as duly elected in the 2008 and 2010 elections shall take office at the second city council meeting held in March.~~ Those persons certified as duly elected in the 2012 election, and any election thereafter, shall take office at the next city council meeting held following the certification of the election results. Terms of office shall remain staggered such that elections to fill four seats shall be conducted during presidential election years and three seats during non-presidential election years.

(d) *Qualifying; vacancy in candidacy.*

(1) The qualifying period for candidates shall begin at 8:00 a.m. on the sixteenth Tuesday prior to the election and end at 5:00 p.m. on the fourteenth Tuesday preceding the election.

(2) If the death, withdrawal or removal of a qualified candidate or candidates following the end of the qualifying period results in the number of candidates remaining on the ballot equal to or less than the vacancies on city council, one supplemental qualifying period shall be established for a period of five days beginning on the first day following the vacancy in candidacy. No further supplemental qualifying period shall thereafter be established and no supplemental qualifying period shall be established at all if a vacancy in candidacy occurs within 30 days prior to the date of the general municipal election. If within 30 days prior to the date of the general municipal election for city council there remains a number of candidates on the ballot equal in number to the vacancies on city council, said candidates shall be declared elected and no election for city council shall be required. In the event that there are less candidates than vacancies following the qualifying period or supplemental qualifying period, said remaining qualified candidates shall be declared elected and city council shall, within 60 days, by majority vote of the councilmembers seated, appoint a person to fill the vacancy or vacancies until the next regularly scheduled city election at which the seat shall be filled in accordance with Article V of the city charter.

~~(e) Extension of term. The term of office for those certified as duly elected in the 2008 election shall be extended to the date of the 2012 election. The term of office for those certified as duly elected in the 2010 election shall be extended to the date of the 2014 election.~~

1 **Sec. 2-32. Time and place of regular meetings.**

2 The city council shall hold regular meetings at least once in every month at such times and places as prescribed
3 by the city council's rules of procedure. The city council shall cause to be published annually a schedule of regular
4 city council meetings.

5 **Sec. 2-33. Special meetings.**

6 The city council may hold special meetings at any time pursuant to due notice, and whenever practicable, upon
7 no less than 24 hours' notice to each member and the public. Special meetings may be held on the call of the
8 chair~~man~~[person](#), or by the city manager, when a majority of councilmembers express a desire to call a special
9 meeting.

10 **Sec. 2-34. Agenda and notice of meetings.**

11 The procedure for the preparation of the agenda for regular meetings and the notice of meetings of the city
12 council shall be established by resolution and incorporated with the city council rules of procedure.

13 **Sec. 2-35. Recessed meetings.**

14 The city council may recess at any regular or special meeting, provided such recessed meetings shall be to a
15 future day and hour to be specifically provided for in the motion for such recess. A recessed meeting shall not be
16 later than the next regular meeting, and any such recessed meeting shall not be held at any hour or time other than
17 as specified in such motion.

18 **Sec. 2-36. Parliamentary rules; conduct of meetings.**

19 Parliamentary rules and conduct of meetings shall be established by resolution and incorporated in the city
20 council rules of procedure.

21 **Secs. 2-37—2-60. Reserved.**

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25 **ARTICLE III. OFFICERS AND EMPLOYEES**

26 ***DIVISION 1. GENERALLY***

27 **Secs. 2-61—2-80. Reserved.**

28
29 ***DIVISION 2. CITY MANAGER***

30 **Sec. 2-81. Office established; qualifications.**

31 (a) There shall be a city manager, who shall be the chief administrative officer of the city. The city manager shall
32 be responsible to the council for the administration of all city affairs placed in the manager's charge by or
33 under the Charter.

34 (b) The selection of a city manager shall be based on education, experience, and administrative background.

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2 **Sec. 2-82. Appointment; removal; residency; compensation.**

- 3 (a) The council shall appoint a city manager by a vote of five of the seven councilmembers. The city manager shall
4 serve at the will of the council and shall not be given a fixed term by resolution, ordinance, contract, or
5 otherwise.
- 6 (b) The city manager shall serve at the will of the city council. The council may remove the city manager by the
7 affirmative vote of at least four members of the council.
- 8 (1) Upon request by the city manager, to be made within five days after receipt of written notification of
9 such vote, a public hearing shall be held within ten days after receipt of such request.
- 10 (2) After such hearing, the council by affirmative vote of at least four councilmembers shall decide whether
11 to reconsider its previous action.
- 12 (c) The manager need not be a resident of the city or state at the time of the manager's appointment, but may
13 reside outside the city while in office only with the approval of the council.
- 14 (d) The compensation of the city manager shall be fixed by the council.

15 **Sec. 2-83. Powers and duties.**

16 The city manager shall:

- 17 (1) Appoint and, when deemed necessary for the good of the city, suspend or remove any city employees
18 and appointive administrative officers provided for by or under the Charter, except as otherwise
19 provided by law or personnel rules adopted by council resolution. The city manager may authorize any
20 administrative officer who is subject to the direction and supervision of the city manager to exercise
21 these powers with respect to subordinates in that officer's department.
- 22 (2) Direct and supervise the administration of all departments, officers, and agencies of the city, except as
23 otherwise provided by the Charter or by law.
- 24 (a) Appoint an officer to administer each such department, office, and agency. Such officers shall be
25 under the direction and supervision of the city manager, provided that, with the consent of the
26 council, the city manager may serve as the head of one or more such departments, offices, or
27 agencies or may appoint one person as the head of two or more of them.
- 28 (3) Attend all council meetings and shall have the right to take part in discussion, but may not vote.
- 29 (4) See that all laws, provisions of the Charter, and acts of the council subject to enforcement by the city
30 manager or by officers subject to the city manager's direction and supervision are faithfully executed.
- 31 (5) Prepare and submit the annual budget, budget message, and capital program to the council in a form
32 provided by ordinance.
- 33 (6) Submit to the council, and make available to the public, a complete report on the finances and
34 administrative activities of the city as of the end of each fiscal year.
- 35 (7) Prepare and enforce personnel policies, wage and compensation plans, and collective bargaining
36 contracts, and shall keep such policies current and in conformity with applicable federal and state laws.
- 37 (8) Make such other reports as the council may require concerning the operations of city departments,
38 offices, and agencies subject to the manager's direction and supervision.
- 39 (9) Keep the council fully advised as to the financial condition and future needs of the city and make such
40 recommendations to the council concerning the affairs of the city as manager deems desirable.
- 41 (10) Perform such other duties as are specified in the Charter or as may be required by the council.

(11140) Execute all formal contracts on behalf of the city. Such contracts shall be attested by the deputy city clerk.

Sec. 2-84. Acting city manager.

- (a) By letter filed with the council, the city manager may designate a qualified city administrative officer to exercise the powers and perform the duties of manager during the city manager's temporary absence or disability, not to exceed a period of 30 days.
- (b) During such absence or disability, the council may revoke such designation at any time and appoint another officer of the city to serve until the city manager ~~shall return~~ or the city manager's disability ~~shall cease~~.

Sec. 2-85. ~~Supervision of departments.~~ Reserved.

- ~~(a) Except as otherwise provided in the Charter or by general law, the city manager shall be responsible for the supervision and direction of all departments, agencies, or offices of the city.~~
- ~~(b) All departments, offices, and agencies under the direction and supervision of the manager shall be administered by an officer appointed by and subject to the direction and supervision of the manager.~~
- ~~(c) With the consent of council, the manager may serve as the head of one or more such departments, offices, or agencies or may appoint one person as the head of two or more of them.~~
- ~~(d) The city manager shall prepare and enforce personnel policies, wage and compensation plans, and collective bargaining contracts, and shall keep such policies current and in conformity with applicable federal and state laws.~~

~~Sec. 2-86. Preparation of administrative code.~~

~~The manager shall develop and keep current an administrative code for the purpose of implementing ordinances passed by the council.~~

Secs. 2-86~~7~~—2-100. Reserved.

DIVISION 3. CITY ATTORNEY

Sec. 2-101. Office established; appointment and removal; term; compensation.

- (a) ~~There~~ council shall ~~be appoint~~ a city attorney, ~~appointed by the council, who shall to~~ serve as chief legal advisor to the council and city administrators and ~~shall to~~ represent the city in all legal proceedings and perform such other related duties as the council may deem necessary.
- (b) The city attorney may be full-time or part-time or on retainer as the council may deem necessary. If the position of city attorney is full-time:
 - (1) The council shall appoint a city attorney by a vote of five of the seven councilmembers. The city attorney shall serve at the will of the council and shall not be given a fixed term by resolution, ordinance, contract, or otherwise.
 - (2) The council may remove the city attorney by the affirmative vote of at least four members of the council.

- a. Upon request by the city attorney, to be made within five days after receipt of written notification of such vote, a public hearing shall be held within ten days after receipt of such request.
- b. After such hearing, the council by affirmative vote of at least four councilmembers shall decide whether to reconsider its previous action.
- (c) The attorney need not be a resident of the city or state at the time of the attorney's appointment, but may reside outside the city while in office only with the approval of the council.
- (d) The compensation of the city attorney shall be fixed by the council.

Sec. 2-102. Duties.

In addition to any other duties assigned to the city attorney by the city council, the city attorney shall:

- (1) Upon request, give all necessary advice to the city council and all officers and agents of the city.
- (2) Institute and defend such proceedings and render such other legal services on behalf of the city as may be requested by the proper officers or agents of the city.
- (3) Be responsible for drafting or reviewing all ordinances, resolutions, and other instruments of writing relating to the business of the city.
- (4) Approve official documents of the city, as to form.
- (5) Attend regular and special meetings of the city council, render legal advice upon request, and review the legal propriety of documents under consideration by council or administrative officials.

Secs. 2-103—2-120. Reserved.

DIVISION 4. CITY CLERK

Sec. 2-121. Office established; duties.

The city manager shall appoint a city clerk ~~who to shall~~ be responsible for the following:

- (1) Provide public notice of all public meetings to city council and the public.
- (2) Keep a journal of all city council proceedings, which shall be a public record.
- (3) Be custodian of all official records and the official city seal.
- (4) Supervise city elections, initiatives, and referendums.
- (5) Provide access to public records as required by article 1, section 24, of the state constitution and F.S. ch. 119, as amended.
- (6) Serve as a member of the board of trustees of the City of Marco Island Firefighters' Pension Plan and the board of trustees of the City of Marco Island Police Officers' Pension Plan, if eligible.
- (7) Serve as the secretary for the board of directors of the Marco Island Community Parks Foundation, LLC.

1 **Secs. 2-122—2-140. Reserved.**

2 *DIVISION 5. DEPARTMENT OF FINANCE*

3 **Sec. 2-141. Established; director.**

4 There shall be a department of finance under the direction of the finance director. The finance director shall
5 be under the direction of the city manager.

6 **Sec. 2-142. Duties.**

7 The finance director shall be responsible for the proper administration of the financial affairs of the city, ~~subject~~
8 ~~to the supervision of the city manager.~~ The department of finance shall be required to:

- 9 (1) Maintain a general accounting system for the city government and each of its departments, offices, and
10 agencies.
- 11 (2) Keep the books for, and exercise financial budgetary control over, each office, department, and agency.
- 12 (3) Direct the data processing function for the city government.
- 13 (4) Collect revenues due the city, including ~~occupational business taxes~~ license fees.
- 14 (5) Upon the approval of the city manager, open and maintain checking and savings accounts in the name
15 of the city; designate persons to sign checks, drafts, notes, bills of exchange, acceptance or other orders
16 for the payment or withdrawal of money from such accounts; endorse checks, notes, bills, certificates of
17 deposit or other instruments owned or held by the city for deposit in such accounts or for collection or
18 discount by depository banks; accept drafts, acceptances and other instruments payable at city
19 depositories; and waive presentment, demand, protests, and notices of protest, or dishonor of any
20 check, note, bill, draft, or other instrument made, drawn, or endorsed by the city.
- 21 (6) Establish a "returned check" service charge to be assessed against any person who presents issues or
22 ~~delivers to this city any a~~ check, draft, or other written order on any bank or depository for ~~the payment~~
23 ~~of money to the city, when, upon presentation of such check, the payment is that is~~ not paid for any
24 reason.
- 25 (7) Invest funds of the city as provided by state statutes.
- 26 (8) Perform other duties and functions as may be prescribed by the city manager.
- 27 (9) Be responsible for establishing and maintaining accounting procedures and a system of internal controls.
- 28 (10) Produce monthly and yearly financial reports and the annual financial statements.
- 29 (11) Coordinate and establish the budget approval process and TRIM regulations.

30
31 **Secs. 2-143—2-160. Reserved.**

32 *DIVISION 6. TRAVEL POLICIES AND PROCEDURES*

33 **Sec. 2-161. Purpose of division.**

34 The purpose of ~~the~~ this division is to effectively allocate limited funds available for business-related expenses,
35 including training and professional development of elected and appointed officials and employees. This division is

1 established to pay for and reimburse all allowable expenditures, while reducing required paperwork to a minimum.
2 Business and travel expenditures, as with other purchases, represent an expenditure of city funds. Each employee
3 is responsible for ensuring that expenditures are prudent and necessary.
4

5 **Sec. 2-162. Definitions.**

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

9 *Authorized individual* means a public officer or employee, whether elected or not, who is authorized by the
10 city manager to incur travel expenses in the performance of his or her duties, including, but not limited to, board
11 and committee members performing services on behalf of the city and persons who are candidates for executive
12 or professional positions.

13 *Common carrier* means a train, bus, commercial airline operating scheduled flights, taxi, ferry, airport
14 limousine, rental cars of an established rental car firm, or ride sharing company.

15 *Public employee* means an individual, either elected or appointed, who in the performance of his or her
16 official duties is vested by law with powers of government.

17 * * *

18 **Sec. 2-167. Amount of meal and accommodations allowances.**

19 (a) When the period of travel conforms to the schedule of allowances in section 2-166, all authorized travelers
20 may be allowed subsistence when traveling to a convention, conference, seminar or activity or on city-related
21 business which serves a direct public purpose.

22 (b) Subsistence will consist of the basic travel allowance for meals as follows and actual hotel or accommodation
23 charges when the period of travel extends overnight. Meal allowances shall be in accordance with the amounts
24 authorized in F.S. § 112.061, as may be amended.

25 Hotel or accommodation charges must be single-occupancy rate and substantiated by receipt. The basic travel
26 allowance for meals shall exclude meals which have been prepaid as a part of registration fees.

27 (c) Tips and gratuities are included in the basic travel allowance for meals.

28 * * *

29 **ARTICLE IV. BOARDS AND COMMISSIONS**

30 **Sec. 2-201. Procedure for establishment.**

31 Boards, committees, or commissions ("boards") may be established by ordinance or, resolution, ~~or motion~~ at
32 the discretion of city council. Such ordinance or resolution ~~and~~ shall also describe the duties and the qualifications
33 of its members.

34 **Sec. 2-202. Qualifications of members.**

35 In addition to qualifications that may be specified for membership by state statutes, the cCharter, ordinance,
36 or resolution, ~~or motion~~, a person appointed to a board, ~~committee, or commission~~ shall be a resident of the city,
37 shall be a registered elector, and shall serve without compensation.

1 **Sec. 2-203. Appointment of members; vacancies.**

2 Except as otherwise provided by state statutes, ordinance, or resolution, ~~or motion ("otherwise provided")~~,
3 appointments to a board, ~~committee, or commission~~ shall be filled by the city council in accordance with the
4 following procedure:

- 5 (1) The city council may direct the city manager to advertise a vacancy and seek resumes from interested
6 members of the public willing to accept appointment.
- 7 (2) The composition of each board, ~~committee, or commission~~ shall consist of seven members. Each council
8 member shall reserve the right to ~~recommend the appointment~~ appoint of one member. The city council
9 may accept or reject ~~the an - recommendation appointment~~ offered by the council member.
- 10 (3) If a vacancy occurs on the board, ~~committee, or commission~~ during the term of the appointing council
11 member, such council member shall have the right to may recommend appoint a replacement to fill the
12 vacancy to complete the unexpired term. The city council may accept or reject the
13 recommendation appointment.
- 14 (4) The city council may delegate the appointment of advisory board members committees to the city
15 manager.

16 **Sec. 2-204. Terms of members.**

17 Unless otherwise ~~regulated provided, by state statutes, ordinance, resolution, or motion~~, the following shall
18 apply with respect to the terms of board members:

- 19 (1) The members appointed to all boards, ~~committees, or commissions~~ shall serve staggered terms that run
20 concurrently with the terms of office of the appointing city council member.
 - 21 a. ~~Such staggered~~ terms shall commence for appointed members as follows:
 - 22 1. June 1 following the election of the appointing city council member for the audit advisory
23 committee ~~and the code compliance board~~.
 - 24 2. February 1 following the election of the appointing city council member for all other boards,
25 ~~committees, or commissions~~.
 - 26 b. ~~Such staggered~~ terms shall end for appointed members at the earliest of any of the following:
 - 27 1. May 31 following the election for which the appointing city council member did qualify, or
28 would have been qualified, to seek re-election, or was term-limited, in the case of
29 appointments to the audit advisory committee ~~and the code compliance board~~; or
 - 30 2. January 31 following the election for which the appointing city council member did qualify,
31 or would have been qualified, to seek re-election, or was term-limited, in the case of
32 appointments to all other boards, ~~committees, or commissions~~; or
 - 33 3. Upon replacement by a person appointed by the procedure described in section 2-203 of
34 this article; or
 - 35 4. Upon removal by majority vote of city council.
 - 36 c. No ~~members appointed to any boards, committees or commissions~~ person may serve more than
37 a total of eight continuous years on any single board, ~~committee or commission~~.
38 Members A person who have has served eight years on one board, ~~committee, or commission~~ are
39 is eligible immediately for appointment to a different board, ~~committee or commission~~.
 - 40 d. If reappointment or replacement is not made prior to or at the expiration of a term of office, ~~the a~~
41 board member shall continue to serve until a re-appointment or replacement is made.

1 **Sec. 2-205. Removal of members.**

2 Unless otherwise ~~provided~~~~precluded by state statutes, ordinance, resolution, or motion~~, any member of a
3 board, ~~committee, or commission~~ shall serve at the pleasure of the city council and may be removed by the city
4 council with or without cause.

6 **Sec. 2-206. Meetings; attendance requirements.**

- 7 (a) *Regular meetings.* Meetings shall be scheduled in accordance with the ordinance or resolution authorizing the
8 establishment of the board, ~~committee, or commission~~. Public notice of the meeting shall be provided in
9 accordance with procedures adopted for city council meetings. Meetings may be called by the ~~committee~~
10 ~~board chairman~~ chairperson or by the city manager ~~or his designee~~.
- 11 (b) *Quorum.* A majority of all members appointed to the board, ~~committee, or commission~~ shall constitute a
12 quorum for the transaction of business unless otherwise ~~provided~~~~required by the ordinance or resolution~~
13 ~~authorizing the establishment of a particular board, committee, or commission~~.
- 14 (c) *Minutes.* A written record of the proceedings of the board, ~~committee, or commission~~ shall be kept, showing
15 its action on each question considered. Such record shall be filed with the city clerk and shall be open to public
16 inspection.
- 17 (d) *Attendance.* Unless otherwise provided, ~~by state statute, ordinance, resolution, or motion~~, absence from 30
18 percent of the meetings held by a board, ~~committee, or commission~~ within any 12-month period, ~~which period~~
19 ~~shall be considered to be the 12-month period~~, immediately prior to and including the day of the last absence,
20 shall automatically operate to vacate the seat of a member.

22 **Sec. 2-207. Rules of procedure.**

23 Unless otherwise ~~regulated~~~~provided by state statutes, ordinance, resolution, or motion~~, the city manager shall
24 prepare standard rules of procedure for the conduct of meetings. Such rules of procedure shall be followed by each
25 appointed board, ~~committee, or commission~~.

26 **Sec. 2-208. Authority of council regarding establishment and dissolution.**

27 Unless otherwise regulated by state statutes, the city council may dissolve a city board, ~~committee, or~~
28 ~~commission~~.

30 **Secs. 2-209—2-230. Reserved.**

ARTICLE V. FINANCES

DIVISION 1. GENERALLY

Secs. 2-231—2-250. Reserved.

DIVISION 2. PURCHASING

Sec. 2-251. Purpose of division.

- (a) The ~~city~~City of Marco Island is required to purchase goods and services, which are necessary for the operation and maintenance of city government. This ~~article~~division establishes the procedures to maximize the use of financial and personnel resources with sound procurement practices in order to obtain the best value for each tax dollar expended; to ensure fair and equitable treatment of all persons who deal with the ~~city's~~city's purchasing system ~~of Marco Island~~; to develop procurement capability responsive to user department needs; to provide safeguards for the maintenance of a procurement system dedicated to quality and integrity; and to promote public confidence in the procedures followed in public procurement.
- (b) The purchase of goods and services shall follow sound financial management practices, utilizing techniques and processes that ensure that those goods and services are obtained at the best quality and lowest prices and which meet the requirements of the city.
- (c) The purchase of goods and services shall follow all applicable state statutes.
- (d) When competitive bidding is required, adequate fair and open competitive practices will be employed to ensure that all parties that are interested in earning city business will be given the opportunity to do so.

Sec. 2-252. Definitions.

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

Addendum means written or graphic instruments, issued prior to the opening of bids, which clarify, correct, or change the bidding ~~documents~~ or the contract documents.

Adequate competition means the solicitation of sources to ensure that the price paid is fair and reasonable.

Bid, proposal and quotation each means an offer given to the city in response to a solicitation.

Change order means revisions made to an executed contract, which does not alter the character of the work.

Contract means any agreement for the procurement of supplies, services, or construction. Typical contracts include, but are not limited to, contracts, purchase orders or agreements, including verbal or email authorizations.

Contracting officer representative (COR) means a person designated to direct one or more contractors in the delivery of products and services. The COR also reports on the progress of the contractor(s), approves invoices (or release of progress payments), and prepares all change orders including termination paperwork at the end of a contract.

Cooperative purchasing ("piggy-backing") or competitive pricing can usually be assured when using cooperative purchasing agreements, which were negotiated through the RFB/RFP process.

Design-build means a procurement method in which a single firm has been given responsibility for the design and construction of a public project. Selection of a firm requires a combination of qualification-based selection and negotiated pricing based on project requirements and specifications.

1 *Emergency procurement* means a purchase made in response to a need when the delay incidental to
2 compliance with all governing rules, regulations, and/or procedures would be detrimental to the life, health, welfare,
3 safety, or convenience of the city and/or its residents.

4 *Noncompetitive purchase* means any purchase of supplies, materials, equipment, or services from one source
5 without competition.

6 *Project manager* means the city's representative for procurement of supplies, services, and construction.

7 *Proprietary* means a technological design or architecture whose configuration is unavailable to the public and
8 may not be duplicated without permission from the designer or architect.

9 *Prototype* means an original, full-scale, and usually working model of a new product or new version of an
10 existing product.

11 *Purchasing* means the buying, renting, leasing, or otherwise acquiring of any supplies, materials, and
12 equipment, professional or contractual services, or construction services.

13 *Responsible bidder* means a person or firm who has submitted a bid and has the capability in all respects to
14 perform fully the contract requirements and the tenacity, perseverance, experience, integrity, reliability, capacity
15 facilities, equipment, and credit ~~which that~~ will ensure good-faith performance.

16 *Responsive bidder* means a person or firm who has submitted a bid ~~that, which~~ conforms in all material
17 respects to the invitation to bid or request for proposals.

18 *Simplified purchases* means the procurement of goods and services that are under \$3,000.00.

19 *Small purchases* means the procurement of goods and services that do not exceed \$25,000.00.

20 *Sole source* means the only known vendor or the only responsible vendor capable of providing commodities
21 or contractual services to the city.

22 *Surplus* means materials, supplies or equipment for which the city no longer has a use, or materials, supplies
23 and equipment ~~which that have~~ reached the end of ~~its~~their useful life, or items that are not functional and for
24 which the cost of repair is not a sound business decision.

25 *Warrant* means a written authorization of authority to a specific individual issued by the city manager, to be
26 reviewed no less than annually.

27 **Sec. 2-253. Purchasing authorityAuthority of the city manager.**

28 (a) The city manager ~~shall ensure the city's efficient and effective contracting, compliance with terms and~~
29 ~~conditions of contracts, and protection of city interests in all contractual relationships. In exercising the~~
30 ~~authority granted in this section, the city manager shall ensure that the city's best interests are served, shall~~
31 ~~exercise sound business judgement, and adhere to the requirements of this section and sound procurement~~
32 ~~principles. shall have purchasing authority, including authority to award and administer contracts necessary to~~
33 ~~procure goods and services for the city. The city manager may delegate procurement authority to a purchasing~~
34 ~~agent, contract officer, or employee(s).~~ The city manager may:

35 (1) Delegate procurement authority to the purchasing agent, contract manager or other employee.

36 (2) Establish procurement policies and procedures.

37 (3) Enter into, award, administer, modify, and terminate contracts, and approve, reject, or modify bids, for
38 purchase of goods and services as necessary, unless otherwise provided in this article.

39 (4) Require bid bonds, performance, and payment bonds before entering into a contract, in such form and
40 amount as found reasonably necessary to protect the best interest of the city, procure supplies, material,
41 equipment, contractual services, and construction services required by the city.

(53) Require chemical and physical tests of samples submitted with quotations, bids, or proposals to determine their quality and conformance with specifications.

(64) Declare city-owned items as surplus.

(a) Transfer surplus ~~stock items~~ to ~~other another city offices,~~ departments, ~~or agencies of the city government~~ when the estimated value is less than \$1,000.00.

~~(5)(b) Sales-Sell of personal and~~ surplus property, when the estimated value exceeds \$1,000.00, ~~shall via be sold by~~ written sales contract or at public auction to the highest responsible bidder, after due notice inviting proposals or bids. Alternatively, Surplus-surplus personal property may be sold to other governmental agencies in lieu of using sealed bid or public auction procedures.

~~(6) Sell all supplies, materials and equipment which have become surplus property or unsuitable for use.~~

(7) Trade in supplies, material and equipment when deemed in the best interest of the city.

(8) Enter into interlocal agreements for cooperative purchasing when the best interest of the city would be served.

Sec. 2-254. Authority and responsibilities of city managerReserved.

~~(a) Authority of the city manager.~~

~~(1) The city manager may establish procurement policies and procedures and execute agreements for the purchases of goods and services as necessary.~~

~~(2) The city manager shall have the authority to approve, reject, or modify bids or contracts and to administer the purchase of goods and services to ensure that the best interests of the city are served.~~

~~(3) The city manager may delegate procurement authority to the purchasing/contract manager or purchasing agent.~~

~~(4) The city manager shall have the authority to declare city-owned items as surplus and direct the department owning such surplus items to transfer the items to another city department or to dispose of such surplus equipment in an approved manner as specified in purchasing policies and procedures.~~

~~(b) Responsibilities of the city manager.~~

~~(1) The city manager or designee is responsible for ensuring efficient and effective contracting, compliance with the terms and conditions of contracts, and protecting the interest of the city in all contractual relationships. The city manager is provided the latitude to exercise sound business judgment while adhering to the requirements of this section and sound procurement principles.~~

~~(2) The city manager is ultimately responsible for ensuring that the best interest of the city is served.~~

Sec. 2-255. General practices.

(a) ~~{Method of procurement.}~~ The method of procurement is dependent upon the type of commodity or service and the value of that commodity or service. Where required by state statute, city ordinance or department procedures, the city shall competitively award contracts in accordance with those statutes, ordinances or policy and procedures.

(b) *Competition.* Purchases should be planned and made on the basis of adequate competition whenever feasible. Adequate competition means the solicitation of sources to ensure that the price paid is fair and reasonable. The requirement for adequate competition does not preclude noncompetitive procurement as enumerated in this section.

(1) Request for bids (RFB) shall be used for projects exceeding \$25,000.00 when the specifications for the product or services can be clearly defined and there is little or no leeway in the interpretation of the requirement. Care must be taken not to create a specification that only one vendor can meet.

- (2) Request for proposals (RFP) shall be used for those projects that cannot be precisely defined and specifications are such that more than one approach or product type could fulfill the requirement.
- (3) Request for qualifications (RFQ) shall be primarily used to obtain professional services. The intent is to choose the vendor based on qualifications rather than price alone.
- (c) *Noncompetitive purchases are permitted in the following circumstances provided:*
- (1) Acquisition of supplies or services does not exceed \$25,000.00 in value.
 - (2) In emergencies involving public health, public safety, or where necessary for repairs to city property in order to protect against further loss or damage to city property or to prevent or minimize serious disruption in city services.
 - (3) Where goods and services are available from federal, state or local government agencies, and contracts with firms that provide goods or services subject to uniform tariff, government regulation or area-wide rates (utilities).
 - (4) Repair, maintenance, remodeling, renovation, construction or demolition of a single project not involving an increase in the size and type of an existing facility.
 - (5) Maintenance and servicing of equipment by the manufacturer or authorized service agent of the equipment.
 - (6) Telecommunications systems and information technology, including data processing equipment, systems software, and reproduction equipment.
 - (7) Where complete systems or equipment, parts or replacements of specified makes and models are needed for interoperability, compatibility or standardization purposes.
 - (8) When competitive purchasing would not otherwise be in the best interest of the city.
 - (9) When purchasing land, buildings, structures, or assets of other government agencies or private utilities.
 - (10) When granting nonexclusive franchise agreements, or contracts to manage and operate municipal facilities and programs.
- (d) *Standards of conduct.* City employees are held to the highest standard of conduct in the performance of their duties and shall conduct themselves so as to avoid even the appearance of any impropriety in the planning and execution of purchase requirements. All employees shall adhere to the standards of ethical conduct as listed in the city's personnel manual and other applicable policies and laws.
- (e) *Gifts and rebates.* The city manager and every officer and employee of the city are expressly prohibited from accepting any valuable gift, whether in the form of service, loan, thing or promise that may tend to unduly and improperly influence them in the discharge of their duties.
- ~~(f) *Public notice.* Public notice should be provided for all purchases requirements valued at over \$25,000.00 unless otherwise provided in this article.~~
- ~~(fg)~~ *Purchasing methods.*
- ~~(1) Purchases not exceeding \$25,000.00. Small purchases are determined by the level of effort expected and the documentation of the effort used to ensure that the price received is fair and reasonable and is in direct proportion to the cost of the good or service. Purchases~~ *Purchasing requirements aggregating* may not be separated solely for the purpose of avoiding formal contract procedures. When smaller purchases are a part (segment) of a system, process, structure, facility and/or project, the total cost of the system, etc., will determine the controlling purchasing method and procedure.
 - (2) The basis for award would be the lowest bid price submitted by a responsive and responsible bidder.
 - (3) Factors other than price are considered and negotiations with the best proposer(s) are used to determine the ultimate awardee.

- (4) The method of the procurement of professional services is governed by F.S. § 287.055, the Consultants' Competitive Negotiation Act.
- (5) Contracts or purchasing agreements that were obtained through competitive purchasing methods by federal, state, county, or municipal purchasing organizations can be used by the city in place of issuing its own RFBs or RFPs.
- (6) Emergency procurement may justify noncompetitive purchasing. Documentation shall be prepared to enable the finance department to process the invoices and to provide management insight and ultimate approval.
- (7) Design-build. Some of the primary objectives of using this procurement method are; (a) fast tracking of project completion (b) quick re-pricing and the ability to obtain an immediate analysis of options during a critical time when changes in plans are being considered, (c) competitive bids are obtained from each subcontractor and (d) it ensures that a project is going to be within an established budget before any early and/or substantial expenditures are made. For design-build projects, the city shall follow the procedures set forth in F.S. § 287.055, ~~as may be amended from time to time.~~
- (8) Purchases shall be made following established procurement and contracting principles and requirements of this article and supplemental procurement policies established by the city manager. The purchasing method employed is based upon the purchase requisition dollar estimate ~~and the complexity of the purchase requirement.~~
- a. *Purchasing using petty cash.* Department heads are authorized to make purchases for supplies and material valued up to \$100.00 using departmental petty cash funds. The department head shall be responsible for the accounting and documentation of petty cash transactions. Use of petty cash for services is prohibited.
- b. *Purchasing using a credit card.* The city has obtained credit cards and assigned them to select employees. The purpose of the credit card is to obtain services and supplies via internet and telephonic sources. A secondary use of the credit card is to pay for travel related expenses. In all instances, purchase via credit card should be limited to the signature authority of the individual making the purchase (e.g. \$10.00, \$500.00, \$1,000.00).
- c. ~~[Employee purchase with subsequent reimbursement.]~~ Purchasing by an employee with subsequent reimbursement by city is discouraged and should be used only as a last resort.
- d. *Competition for simplified ~~or small~~ purchases.* Competition is not required for [simplified purchases](#) if the city manager ~~or designee~~ determines that the price received is fair and reasonable. Where practicable, noncompetitive purchases may be distributed equitably among qualified suppliers in order to develop and maintain a responsive industrial/supplier base for the city.
- e. *Basis for award.* ~~Simplified purchases~~ [Except as provided in \(d\) for simplified purchases, purchases](#) are awarded to the proposer who offers the best value to the city. Best value is obtained by basing the award on price or a combination of price with price-related factors, other evaluation factors, or both. Rationale for making other than low-price award will be documented in the appropriate files. In instances of equal prices and all other evaluation factors being equal, the award should be made to the local proposer.
- f. *Solicitations.* Solicitation of proposals or quotations for small purchases may be done in writing or orally, at the discretion of the city manager ~~or designee~~. Public notice of small purchases is not required, but may be initiated at the discretion of the city manager.
- g. *Negotiation.* The city manager ~~or designee~~ may negotiate with proposers to ensure prices are reasonable, and that the city's requirements are understood.
- h. *Suppliers or sources in default to city.* No purchases shall be made from vendors or contractors who are delinquent in the payment of taxes, licenses or other monies due the city.

- i. *Ordering methods.* Simplified or small purchases may be made using petty cash or by purchase methods, such as purchase orders, unpriced purchase orders, blanket purchase orders and delivery agreements.
- j. *Administration of small purchases.* Small purchases will be administered in accordance with the terms and conditions of the order or agreement. The city manager may amend, modify, cancel, or terminate purchase orders and agreements as deemed necessary by the particular circumstances or situation.
- (g9) *Formal contract procedures.*
- (1) All supplies, material, equipment and contractual services valued in excess of \$25,000.00, whether purchased competitively or noncompetitively through sealed bids or sealed proposals, shall be purchased by formal written contract or purchase order.
- (2) Sale of property between two governmental entities shall be pursuant to Florida Statutes. ~~The principles listed in the subparagraph below apply to formal contracts:~~
- (3)a. ~~Public notice requirements.~~ All purchases ~~requirements~~ over \$25,000.00, except those authorized to be purchased noncompetitively by this article, shall only be awarded after due public notice. The public notice required for purchases over \$25,000.00 shall include a general description of the articles or services, state where written solicitations may be obtained, and shall state the time and place for receipt of bids or proposals.
- (4)b. ~~Solicitations.~~ Except in cases of emergency, written solicitations will be issued when requesting sealed bids and sealed proposals.

Sec. 2-256. Use of sealed competitive bidding.

Sealed, competitive bidding is a method of contracting that employs competitive bids, public opening of bids, and award to the lowest responsive and responsible bidder. Invitations to bid (written solicitations) shall be used to request sealed bids and shall describe the purchase requirements. Sealed bid procedures are normally used for standard products or services where the specifications or statement of work are so definitive that prospective bidders may clearly understand the requirement and may take the necessary business risk to propose a firm-fixed price for the contract.

- (1) *Bid bonds for sealed bids.* When deemed necessary, bid bonds shall be prescribed in the public notices inviting sealed bids. Upon entering into a contract, bidders will be entitled to return of the bid bond. A successful bidder shall forfeit any bid deposit upon failure on his part to enter into a contract within the working days specified following the award of contract. The city, in its sole discretion, may waive this forfeiture.
- (2) *Sealed bids—Award to other than low bidder.* When contract award is not made to the lowest responsible bidder, a full and complete statement of the reasons should be prepared and filed with the purchase transaction.
- (3) ~~{Payment and performance bonding.} Bond of contractor, as defined in F.S. § 255.05, means (in part) any~~ Any person entering into a formal contract with the ~~state or any county, city, or political subdivision thereof, or other public authority or private entity,~~ for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, ~~to comply with the bonding requirement in F.S. § 255.05 before commencing the work or before recommencing the work after a default or abandonment, to execute, deliver to the public owner, and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. When such work is done for the state and the contract is for \$100,000.00 or less, no payment and performance bond shall be required. At the discretion of the official or board awarding such contract when such work is done for any county, city, political subdivision, or public authority, any person entering into such a~~

~~provided the city may exempt contracts which is for \$200,000.00 or and less, may be exempted from executing the payment and performance bond.~~

Sec. 2-257. Contract through negotiation.

(a) Negotiation is a process of contracting through the use of either competitive or other-than-competitive proposals and discussions. Negotiation is a procedure that may include the receipt of sealed proposals from offerors, permits bargaining, and may afford offerors an opportunity to revise their offers before award of a contract. Award may be made on a basis other than the lowest price. Negotiation is the preferred method of contracting when specifications or statements of work may not be definitive and may allow for variation in providing the products or services. Requests for proposals (written solicitation) should be used in negotiated acquisitions to communicate purchase requirements to prospective contractors and to solicit proposals or quotations from them.

(1) *Award without negotiation.* A contractor may be selected from the sealed proposals and award made without discussing proposals with the offerors. Whenever price or price-related factors are the most important or the only evaluation factors, award will normally be made without discussion, if adequate competition exists, to ensure that offerors submit their most favorable proposals at the outset. However, even when award will be based on price alone, discussions may be held as necessary to determine that the price is fair and reasonable. The decision to make an award without discussions shall be made by the city manager for amounts up to \$50,000.00.

(2) *Award with negotiation.* Whenever appropriate, written or oral discussions may be held with offerors to resolve uncertainties in their proposals, to give them an opportunity to correct deficiencies, and to provide the opportunity to revise proposals. Discussion may be held with one offeror or with all offerors in the competitive range. The competitive range will be determined following evaluation of proposals. The competitive range shall be determined on the basis of the evaluation factors stated in the solicitation and shall only include all proposals that have a reasonable chance of being selected for award.

(3) *Conduct of discussions.* When necessary, discussions shall be held with the assistance or participation of technical, accounting or legal personnel as appropriate. Discussions may be conducted so as to:

- a. Advise the offeror of deficiencies in its proposal in terms of user department requirements, but not deficiencies relative to other proposals.
- b. Attempt to resolve uncertainties concerning aspects of the proposal.
- c. Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process.
- d. Provide the offeror a reasonable opportunity to submit any price, technical or other revisions to its proposal that may result from the discussions.

(4) *Best and final offers.* Upon completion of discussions, a request for "best and final offer" will be issued to all offerors still in the competitive range.

(5) *Contractor selection.* Following receipt of the best and final offers, the contract may be awarded to the offeror (contractor) whose proposal offers the best value to the city.

Sec. 2-258. Award of contracts.

Authority to award contracts:

- (1) Contracts with a total value under \$50,000.00 may be awarded by the city manager.
- (2) Contracts with a total value over \$50,000.00 shall be awarded by the city council.
- (3) Exemptions:

1 • ~~Contracts for capital projects and equipment;~~

2 • ~~Utility department water and wastewater production chemicals.~~

3 a. The city manager shall have the authority to award all contracts for capital equipment and projects
4 specifically approved by the city council in the current year budget provided that:

5 1. All purchasing requirements are met and documented and available for public inspection;
6 and

7 2. The final cost per item does not exceed the ~~approved current year amount~~ budgeted cost
8 for the item by more than 25 percent ~~of the budgeted amount or more than a total dollar~~
9 value of and does not exceed \$50,000.00. ~~If the final cost of the item exceeds the approved~~
10 current year budget cost by more than \$50,000.00, the award shall be made by city council.

11 b. The city manager shall have the authority to award term contracts for utility department chemicals
12 that are used in the production of water or the treatment of wastewater, and previously funded in
13 the current year utility department operating budget and required in the day to day operation of
14 the utility department.

15 (4) Blanket/price agreement contracts shall be awarded by the purchasing/contracts manager provided that
16 all purchasing requirements are met, ~~and~~ documented and available for public inspection.

17 (5) Emergency procurements. If the city manager determines that an emergency exists and a delay would
18 be detrimental to the interests of the city, the city manager is authorized to direct the purchase of any
19 supplies or professional or contractual services needed to protect the health, safety, and welfare of the
20 city and its residents. The city manager shall inform the city council of the conditions and circumstances
21 requiring such action for purchases having a dollar value exceeding \$50,000.00.

22 (6) Basis of award. Contracts may be awarded to the lowest and most responsible bidder, as determined on
23 the basis of the entire bid and the investigations into the bidder by the city manager and
24 purchasing/contracts manager. When the contract is awarded by the city manager or
25 purchasing/contracts manager, such award shall be evidenced by either a notice of award or purchase
26 order, signed by the purchasing/contracts manager.

27 (7) Modification and withdrawal of bids. Bids submitted in response to RFBs or RFPs may be modified or
28 withdrawn ~~by the bidder or proposer~~ at any time prior to the applicable public opening date (for
29 advertised solicitations) or due date (for unadvertised purchases). The request for withdrawal or
30 modification should be made in writing and signed by an officer of the company. After the public opening
31 or due date, as applicable, obvious errors that are clearly evident on the face of the bid document may
32 be corrected by the purchasing/contracts manager and such required changes noted on the official bid
33 tab.

34 (8) The city reserves the right to:

35 a. Evaluate the current capacity of the low bidder to perform the size and scope of work specified in
36 the contract bidding documents;

37 b. Use previous performance on similar job(s) for the city as a factor in the selection of the bidder;

38 c. To negotiate with the apparent lowest and most responsible bidder to correct obvious defects in
39 the original bid;

40 d. To waive defects in the form of bid or to waive formalities and negotiate with the apparent lowest
41 and most responsible bidder to such extent as may be necessary to satisfy the intent and
42 requirements of the city's project.

43 (9) In the event of a tie, the project manager and the purchasing/contracts manager shall consider the
44 following factors including: delivery lead time, documented quality, warranty, availability of local service,
45 cost of repair parts, contractor reputation, ~~and~~ and all other relevant information to make the

recommendation of award. In instances of equal prices and all other evaluation factors being equal, the award should be made to the local proposer. All considerations used in the decision should be documented for reference. For purchases or construction agreements, the final decision on the resolution of the tie shall be made by the city manager. Protest of the recommended award shall follow the standard protest procedure.

- (10) Any prospective bidder who desires to protest any aspect(s) or provision(s) of the bid invitation shall file a protest with the city manager in writing prior to the time of the bid opening.

Sec. 2-259. Change orders and renewals.

- (a) ~~{Change orders.}~~ Change orders are often needed to (i) address unforeseen conditions, (ii) to add or decrease the scope of work due to changes in the city's requirements, and (iii) to execute price revisions to material supply contracts as are authorized by that contract.

The authority to award or approve change orders is subject to the following:

- (1) For contracts authorized by city council, the city manager may approve change orders or contract modifications provided that the cumulative cost of the contract and changes orders does not exceed 25 percent of the original contract amount and does not exceed the city manager's signature authorization level.
- (2) For contracts of less than \$50,000.00, the city manager may approve change orders or contract modifications provided that the cumulative cost of the contract and change orders does not exceed 25 percent of the original contract amount.
- (3) The city manager may approve change orders decreasing the cost of the contract to the city that do not materially alter the character of the work contemplated by the contract.
- (4) All change orders that the city manager is not authorized to approve must be formally approved by the city council before work may be authorized to begin.
- (5) In the event that a change order, which under the aforementioned criteria must be approved by city council, is of an emergency nature or if a delay in the approval by city council caused by the timing of a city council meeting will result in a work stoppage or cause increases in the cost of the project, the city manager is authorized to approve the change order and is then required to advise city council shortly thereafter of that change order and the circumstances which necessitated that decision.

- (b) *Contract renewals.*

- (1) If the city council previously awarded a contract that contained a renewal option, the city manager, ~~or his designee,~~ shall determine if such a renewal is in the best interest of the city and may exercise this option on behalf of the city in accordance with the terms and conditions of the contract, for a period not exceeding three years.
- (2) When a contract is entered into by the city, pursuant to city council approval, and provides for one or more automatic renewals unless one party notifies the other of its intent not to renew, only the city council is authorized to decide not to renew the contract.

- (c) *Extensions.* If provided for in a contract, the purchasing/contracts manager may authorize up to a 90-day extension of a contract in accordance with the terms and conditions of the contract. Otherwise, the city manager is authorized to extend, for operational purposes only for a maximum of 180 days, any contract entered into by the city pursuant to city council approval. Any further extensions of such contract require the approval of the city council.

- (d) *Price adjustment.* For any material supply contract that has a price adjustment clause that allows for increases after the initial set price term, the purchasing/contracts manager has the authority to authorize price changes that are supported by either the consumer price index (CPI) or by documented fuel surcharges. That authority

1 is limited to a maximum increase of 25 percent over the prior year price. Price changes exceeding that
2 maximum are to be submitted to the city manager for approval. The city manager may either approve the
3 change or may instruct the purchasing/contracts manager to advertise and award the contract.

4 5 **Sec. 2-260. Rejecting bids; negotiation.**

6 (a) Rejection of bids. The city reserves the right to reject any bids or portions of them as best serves the interest
7 of the city. By way of example and not limitation, bids may be rejected if:

- 8 (1) They are nonresponsive;
- 9 (2) They are materially higher than expected;
- 10 (3) Errors in specifications may have caused confusion;
- 11 (4) Sufficient funds are not available;
- 12 (5) The item or service is no longer needed;
- 13 (6) There is a lack of competition;
- 14 (7) The item or service can be provided in-house;
- 15 (8) The bidder does not qualify under state or federal law;
- 16 (9) The bidder is not in compliance with city ordinances. This requirement may be waived if the city finds
17 that the noncompliance is inadvertent, minor, and curable as a condition of the award;
- 18 (10) The bidder does not appear to have the expertise, financial capability or other ability to meet the
19 requirements of the contract to be awarded, or is otherwise shown not to be responsible.

20 (b) Negotiation. If no bid is received, the city council may authorize the purchasing/contracts manager to purchase
21 by negotiation.

22 23 **Sec. 2-261. Bidder suspension and debarment procedure.**

24 After reasonable notice to an actual or prospective contractual party, and after reasonable opportunity to such
25 party to be heard, the city manager shall have the authority to debar a person or entity for the causes listed below
26 from consideration for award of city contracts. The debarment shall be for a period of not fewer than three years.
27 The city manager shall also have the authority to suspend a contractor from consideration for award of city contracts,
28 if there is probable cause for debarment, pending the debarment determination. The authority to debar and suspend
29 contractors shall be exercised in accordance with the following regulations:

- 30 (1) Causes for debarment or suspension. Causes for debarment or suspension include the following: Bidders,
31 contractors, and other proposing parties may be debarred from doing business with the city for any of
32 the following reasons:
 - 33 a. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain
34 a public or private contract or subcontract, or in the performance of such contract or subcontract.
 - 35 b. Conviction under state or federal statutes of embezzlement, theft, receiving stolen property, or
36 any other offense indicating a lack of business integrity or business honesty.
 - 37 c. Conviction under state or federal anti-trust statutes arising out of the submission of bids or
38 proposals.
 - 39 d. Civil finding of guilt of activity described above.

e. Violation of contract provisions including the following:

1. Deliberate failure without good cause to perform in accordance with the specifications, or within the time limit provided in the contract.
2. Unauthorized withdrawal of a submitted bid or proposal after opening.
3. Failure to execute contract following notification of award.
4. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts or other contract violation. Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment or suspension.

(2) *Certification.* Prior to or contemporaneously with any submission of a bid or request for proposal, or if there is no such bid or proposal, prior to execution of a contract for commodities or services, such bidder or proposer shall execute an affidavit certifying that neither the contractual party nor any of its principal owners or personnel have been convicted of any violations, debarment, or suspensions as set forth above.

(3) *Debarment and suspension decisions.* Subject to the provisions of this section, the city manager shall render a written decision stating the reasons for the debarment or suspension. A copy of the decision shall be provided promptly to the suspended or debarred party, along with a notice of said party's right to seek judicial relief. ~~The city manager or designee is responsible for ensuring efficient and effective contracting, compliance with the terms and conditions of contracts, and protecting the interests of the city in all contractual relationships. The city manager is provided the latitude to exercise sound business judgment while adhering to the requirements of this section and sound procurement principles.~~

Sec. 2-262. Dispute resolution and protest procedure.

(a) Applicability. Any unresolved dispute pertaining to:

- (1) Unadvertised or noncompetitive purchases made under this section shall be submitted to the city manager for resolution and/or final determination.
- (2) Unresolved disputes pertaining to protests by bidders on advertised solicitations for purchases greater than \$25,000.00 shall follow the following bid/proposal protest procedure.

(b) *Bid/proposal protest procedure.* Any ~~firm-person~~ that has submitted a formal bid/proposal to the ~~city~~City of ~~Marco Island~~ and ~~who claims to be~~ adversely affected by an intended decision with respect to the award of the formal bid/proposal, shall file a written "notice of protest" with the purchasing/contracts manager ~~within three days of either the bidder's receipt of the notice of disqualification of its bid, or receipt of a notice of intent to recommend award from the purchasing/contracts manager.~~ Failure to submit the notice of protest as outlined in ~~the Code this section~~ shall constitute a waiver of proceedings.

(1) The "notice of protest" shall identify the solicitation and specify the basis for the protest. The "notice of protest" must be received by the city clerk and time stamped no later than 4:00 p.m. on the third working day following the posting date of the recommended award or bidder's receipt of a notice of disqualification of bid.

(2) The protesting party must then file a formal written protest within five calendar days after delivery of the notice of protest to the city clerk's receipt of the notice of protest. The protesting party shall post a bond (bond, cashier's check, or letter of credit) in an amount equal to five percent of the firm's total bid/proposal or \$10,000.00, whichever is less at the time of delivery of the notice of protest. Said bond shall be designated and held for the payment of any costs that may be levied against the protesting firm by the city council, if the protest is deemed by the council to be a frivolous protest.

- 1 (3) The formal written protest shall contain the following:
- 2 a. Bid/proposal (RFB, RFP, or RFQ) identification number and title.
- 3 b. Name and address of the affected party and the title or position of the person submitting the
- 4 protest.
- 5 c. A statement of all claimed disputed issues of material fact. If there are no disputed material facts,
- 6 the formal written protest must so indicate.
- 7 d. A concise statement of the facts alleged and the rules, regulations, statutes or constitutional
- 8 provisions which entitle the affected party to relief.
- 9 e. All information, documents, other materials, calculations and any statutory or case law authority
- 10 in support of the ground for the protest.
- 11 f. A statement indicating the relief sought by the affected (protesting) party.
- 12 g. Any other relevant information that the affected party deems to be material to the protest.
- 13 (4) Upon receipt of a timely filed notice of protest, the purchasing/contracts manager will abate the award
- 14 of the formal bid/proposal as appropriate until the protest is heard pursuant to the informal hearing
- 15 process as further outlined below, except and unless the city manager shall find and set forth makes a
- 16 written finding that in writing particular facts and circumstances ~~that~~ would require an immediate award
- 17 of the formal bid/proposal for the purpose of avoiding a danger to the public health, safety or welfare.
- 18 Upon such written finding by the city manager, the city manager may authorize an expedited protest
- 19 hearing and may void the requirement for a formal written protest and bond.
- 20 (5) A dispute committee, comprised of the city manager ~~or designee~~, finance director ~~or designee~~, public
- 21 works director ~~or designee~~ and, as deemed appropriate, the city attorney to provide legal counsel, but
- 22 not as a voting member, will convene a meeting within seven working days from receipt of the formal
- 23 written protest with the protesting firm to attempt to resolve the protest. The hearing is to (1) review
- 24 the basis of the protest; (2) to evaluate the facts and merits of the protest; and (3) to make a
- 25 determination whether to accept or reject the protest. If at all possible, the parties will resolve the
- 26 protest at this first meeting.
- 27 (6) If a resolution to the satisfaction of the dispute committee and the protesting firm cannot be
- 28 accomplished during the meeting (s), the dispute committee, with respect to the merits of the protest,
- 29 shall place the protest on the city council agenda with the staff recommendation and relevant
- 30 background information.
- 31 (7) City council shall conduct a hearing on the matter at the regularly scheduled city council meeting.
- 32 Following presentations by the affected parties, the council shall render its decision on the merits of the
- 33 protest.
- 34 (8) If the council's decision upholds the recommendation by of the dispute committee in denial of the
- 35 protest regarding the award and further finds that the protest was either frivolous and/or lacked merit,
- 36 the council, at its discretion, may assess costs, charges or damages associated with any delay of the
- 37 award and any costs incurred with regard to the protest. The bond posted by the party filing the protest
- 38 may be applied by city council at its discretion to pay in whole or in part said costs, charges, or damages.
- 39 (9) If the council's decision upholds the position of the party filing the protest, the purchasing/contracts
- 40 manager will cancel any prior award and award the contract to the party filing the protest in the amount
- 41 of that party's original bid/proposal.
- 42

1 **Sec. 2-263. Professional services.**

2 The selection of professional engineering and architectural services shall follow the procedure established by
3 F.S. § 287.055, ~~as revised.~~

4 The city manager shall appoint a committee of no ~~less~~fewer than three individuals to evaluate statements of
5 qualification and proposals for professional services. Such individuals may be employees, citizens, or elected officials.

7 **Sec. 2-264. ~~Administration of contracts~~Purchase orders.**

8 ~~While administration of contracts (including purchase orders) requires the efforts and skills of many city~~
9 ~~employees, the city manager shall provide guidance regarding contract administration functions. Once a Upon~~
10 ~~contract has been awarded,~~ pursuant to ~~approval of contract~~the requirements in this chapter, the city manager is
11 authorized to issue purchase orders for the direct purchase of materials as part of a contract award. Competitive
12 proposals shall not be required when a purchase is made for materials, equipment, prefabricated elements and
13 components, appliances, fixtures and supplies bought under a sales tax savings procedure constituting part of a
14 construction project, which construction contract has been awarded in compliance with this chapter. Concurrent
15 with the issuance of a direct materials purchase order, a deduct purchase order amendment shall be issued to the
16 contract holder.

17 **Sec. 2-265. Contracting officer's representative (COR).**

18 A person may be designated as contracting officer's representative (COR). In a complex procurement (~~i.e.~~ex.
19 the septic tank replacement program) or a major redevelopment project (~~i.e.~~ex. Collier Boulevard reconstruction)
20 the COR directs one or more contractors in the delivery of products and services. The COR also reports on the
21 progress of the contractor(s), the COR approves invoices (or release of progress payments), and COR prepares all
22 change orders including termination paperwork at the end of a contract. The COR may not change the scope of work.

23 **Sec. 2-266. Purchasing agent.**

- 24 (a) One or more purchasing agents may be staffed by the city. An appropriate use of a purchasing agent is to
25 conduct buying activity on behalf of a utility wherein there exists a steady and repetitive need to purchase
26 materials, chemicals, and supplies; and to regularly rebid utility supplies in order to obtain the best terms and
27 prices.
- 28 (b) The purchasing agent's authority is exhibited in the form of a warrant which specifies the purchasing agent's
29 scope of authority and the time frame of the warrant. All warrants will be issued by the city manager and
30 reviewed no less than annually.
- 31 (c) The purchasing agent is responsible to adhere to all purchasing rules and regulations, and to maintain records
32 of all buying transactions.
- 33 (d) The purchasing agent has no authority to approve invoices or authorize the payment of monies to
34 contractors/suppliers. Invoice approval must come from operations or administration personnel responsible
35 for receiving supplies and services.

36 **Secs. 2-267—2-280. Reserved.**

37 *DIVISION 3. CAPITAL IMPROVEMENTS*

38 **Subdivision I. In General**

1 **Sec. 2-281. Definitions.**

2 (a) ~~As used in this division, unless the context indicates otherwise, the terms "hereof," "hereby," "herein,"~~
3 ~~"hereto," "hereunder" and similar terms refer to this division. The term "hereafter" means after, and the term~~
4 ~~"heretofore" means before, the effective date of the ordinance from which this division is derived.~~

5 (b) The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them
6 in this section, except where the context clearly indicates a different meaning. These definitions are
7 supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case
8 of conflict.

9 ~~Annual assessment resolution means the resolution described in section 2-327, approving an assessment roll~~
10 ~~for a specific fiscal year.~~

11 ~~Assessment means a special assessment imposed by the city pursuant to this division to fund the capital cost~~
12 ~~of local improvements.~~

13 ~~Assessment area means any of the municipal special benefit areas created by resolution of the city council,~~
14 ~~pursuant to section 2-301, that specially benefit from a local improvement.~~

15 ~~Assessment coordinator means the chief administrative officer of the city and such person's designee.~~

16 ~~Assessment roll means the special assessment roll relating to local improvements, approved by a final~~
17 ~~assessment resolution or an annual assessment resolution pursuant to section 2-326 or section 2-327.~~

18 *Assessment unit* means the apportionment unit utilized to determine the assessment for each parcel of
19 property, as set forth in the initial assessment resolution. Assessment units may include, by way of example and not
20 limitation, one or a combination of the following: front footage, land area, improvement area, equivalent residential
21 connections, permitted land use, trip generation rates, rights to future trip generation capacity under applicable
22 concurrency management regulations, property value, or any other physical characteristic or reasonably expected
23 use of the property that is related to the local improvement to be funded from proceeds of the assessment.

24 *Capital cost* means all or any portion of the expenses that are properly attributable to the acquisition, design,
25 construction, installation, reconstruction, renewal or replacement (including demolition, environmental mitigation
26 and relocation) of local improvements under generally accepted accounting principles, including reimbursement to
27 the city for any funds advanced for capital cost and interest on any interfund or intrafund loan for such purposes.

28 ~~Clerk means the city clerk or deputy city clerk.~~

29 ~~Final assessment resolution means the resolution described in section 2-326, which shall confirm, modify or~~
30 ~~repeal the initial assessment resolution and which shall be the final proceeding for the imposition of an assessment.~~

31 ~~Fiscal year means the period commencing on October 1 of each year and continuing through the next~~
32 ~~succeeding September 30, or such other period as may be prescribed by law as the fiscal year for the city.~~

33 *Government property* means property owned by the United States of America, the state, a county, a special
34 district, a municipal corporation, or any of their respective agencies or political subdivisions.

35 ~~Initial assessment resolution means the resolution described in section 2-322, which shall be the initial~~
36 ~~proceeding for the imposition of an assessment.~~

37 *Local improvement* means a capital improvement constructed or installed by the city for the special benefit of
38 a neighborhood or other local area within the city.

39 *Obligations* means bonds or other evidence of indebtedness, including but not limited to, notes, commercial
40 paper, capital leases or any other obligation issued or incurred to finance any portion of the capital cost of local
41 improvements and secured, in whole or in part, by proceeds of the assessments.

42 *Pledged revenue* means, as to any series of obligations:

- (1) The proceeds of such obligations, including investment earnings;
- (2) Proceeds of the assessments pledged to secure the payment of such obligations; and
- (3) Any other legally available non-ad-valorem revenue pledged, at the council's sole option, to secure the payment of such obligations, as specified by the ordinance and resolution authorizing such obligations.

Property appraiser means the county property appraiser.

~~*Resolution of intent* means the resolution expressing the council's intent to collect assessments on the ad valorem tax bill required by the Uniform Assessment Collection Act.~~

Tax collector means the county tax collector.

Tax roll means the real property ad valorem tax assessment roll maintained by the property appraiser for the purpose of the levy and collection of ad valorem taxes.

Uniform Assessment Collection Act means F.S. §§ 197.3632 and 197.3635, or any successor statutes authorizing the collection of non-ad-valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

~~Sec. 2-282. Findings.~~

~~It is hereby ascertained, determined and declared that:~~

- ~~(1) Pursuant to article VIII, section 2 of the state constitution, F.S. § 166.021, and other applicable provisions of law, the city has all powers of local self-government to render municipal services and may exercise any power for municipal purposes, except when expressly prohibited by law.~~
- ~~(2) State law authorizes a municipality to impose a special assessment under its home rule.~~
- ~~(3) The use of special assessments is a fair and equitable alternative revenue source whereby benefited properties pay for capital improvements on a basis commensurate with the benefit provided to such property without burdening the general taxpayer.~~
- ~~(4) The city council finds it to be in the best interests of the citizens of the city to enact this division in order to establish a process and procedures by which assessment areas may be created within the city and by which the cost of capital improvements may be assessed against the specially benefited properties within such areas.~~

Sec. 2-28~~2~~³. Interpretation of division; provisions supplemental.

This division shall be deemed to provide an additional and alternative method for funding local capital improvements ~~the doing of the things authorized by this division~~ and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may ~~hereafter~~ come into existence. This division, being necessary for the health, safety and welfare of the inhabitants of the city, shall be liberally construed to effect the purposes of this division.

Secs. 2-284—2-300. Reserved.

Subdivision II. Assessment Areas

1 **Sec. 2-301. Creation.**

2 The council is hereby authorized to create assessment areas by resolution. Each assessment area shall
3 encompass only that property specially benefited by the local improvements proposed for funding from the
4 proceeds of assessments to be imposed therein. The resolution creating each assessment area shall include brief
5 descriptions of the proposed local improvements, a description of the property to be included within the assessment
6 area, and specific legislative findings that recognize the special benefit to be provided by each proposed local
7 improvement to property within the assessment area.

8 **Sec. 2-302. Landowner petitions.**

9 The council shall establish a process ~~pursuant to which for the~~ owners of property located within the city
10 ~~may to~~ petition for creation of an assessment area to fund local improvements. ~~Notwithstanding the petition~~
11 ~~process established pursuant to this section, the~~ The council shall retain the authority to create assessment areas
12 without a landowner petition.

13 **Secs. 2-303—2-320. Reserved.**

14 **Subdivision III. Imposition and Payment of Assessments**

15 **Sec. 2-321. Authority to impose assessments.**

16 The council is hereby authorized to impose assessments against property located within an assessment area
17 to fund the capital cost of local improvements. The assessment shall be computed in a manner that fairly and
18 reasonably apportions the capital cost among the parcels of property within the assessment area, based upon
19 objectively determinable assessment units related to the value, use or physical characteristics of the property.

20 **Sec. 2-322. ~~Initial assessment resolution~~Procedure for establishing assessments.**

21 (a) The initial proceeding for imposition of an assessment shall be the council's adoption of an initial
22 assessment resolution pursuant to F.S. 170.03, which shall include specific legislative findings that
23 recognize the equity provided by the apportionment methodology. ~~The initial assessment resolution~~
24 ~~shall:~~
25 (1) ~~Describe the local improvement proposed for funding from proceeds of the assessments;~~
26 (2) ~~Estimate the capital cost;~~
27 (3) ~~Describe~~ Specify with particularity the proposed method of apportioning the capital cost among the
28 parcels of property located within the assessment area, such that the owner of any parcel of property can
29 objectively determine the amount of the assessment, based upon its value, use or physical characteristics; and
30 (4) ~~Include specific legislative findings that recognize the equity provided by the apportionment~~
31 ~~methodology.~~

32 **Sec. 2-323. Preliminary assessment roll.**

33 (ba) The ~~assessment coordinator~~ city manager shall prepare a preliminary assessment roll pursuant to F.S.
34 170.06 that includes the number of assessment units attributable to each parcel and the estimated
35 maximum annual assessment to become due in any fiscal year for each assessment unit and
36 parcel contains the following information:
37 (1) ~~A summary description of each parcel of property (conforming to the description contained in the tax~~
38 ~~roll) subject to the assessment;~~
39 (2) ~~The name of the owner of record of each parcel, as shown on the tax roll;~~

- 1 ~~(3) The number of assessment units attributable to each parcel;~~
2 ~~(4) The estimated maximum annual assessment to become due in any fiscal year for each assessment unit;~~
3 ~~and~~
4 ~~(5) The estimated maximum annual assessment to become due in any fiscal year for each parcel.~~
5 ~~(c) Copies~~ The of the initial assessment resolution and the preliminary assessment roll shall be ~~on file in the~~
6 ~~office of the assessment coordinator and open to available on digital media for public inspection in city~~
7 ~~hall and on the city's website at least 20 days prior to the public hearing for establishing the special~~
8 ~~assessment. This subsection shall not be construed to require that the assessment roll be in printed form~~
9 ~~if the amount of the assessment for each parcel of property can be determined by use of a computer~~
10 ~~terminal.~~

11 **Sec. 2-324. Publication of notice and hearing.**

- 12 ~~(d) The city~~ After filing the assessment roll in the office of the assessment coordinator, as required by
13 ~~section 2-323(b), the assessment coordinator shall publish once in a newspaper of general circulation~~
14 ~~within the city a notice stating that at a meeting of the council on a certain day and hour, not earlier~~
15 ~~than 20 calendar days from such publication, which meeting shall be a regular, adjourned or special~~
16 ~~meeting, the council will hear objections of all interested persons to the final assessment resolution~~
17 ~~and approve the preliminary assessment roll. The published~~ shall hold a duly noticed public hearing to
18 ~~consider the proposed assessment notice in shall conformance with to the publication and mailed~~
19 ~~notice requirements set forth in the Uniform Assessment Collection Act. After the hearing, the council~~
20 ~~may adopt the final assessment resolution, which shall:~~
21 ~~(1) Confirm, modify or repeal the initial assessment resolution with such amendments, if any, as may~~
22 ~~be deemed appropriate by the council;~~
23 ~~(2) Establish the maximum amount of the assessment for each assessment unit;~~
24 ~~(3) Approve the assessment roll, with such amendments as it deems just and right; and~~
25 ~~(4) Determine the method of collection.~~

26 **Sec. 2-325. Mailing of notice.**

27 In addition to the published notice required by section 2-324, the assessment coordinator shall provide
28 notice of the proposed assessment by first class mail to the owner of each parcel of property subject to the
29 assessment. The mailed notice shall conform to the requirements set forth in the Uniform Assessment Collection
30 Act. Notice shall be mailed at least 20 calendar days prior to the hearing to each property owner at such address as
31 is shown on the tax roll on the 20th calendar day prior to the date of mailing. Notice shall be deemed mailed upon
32 delivery thereof to the possession of the U.S. Postal Service. The assessment coordinator may provide proof of
33 such notice by affidavit.

34 **Sec. 2-326. Final assessment resolution.**

35 At the time named in the notice required by this subdivision or to which an adjournment or continuance may be
36 taken, the council shall receive written objections and hear testimony of interested persons and may then, or at
37 any subsequent meeting of the council, adopt the final assessment resolution, which shall:

- 38 ~~(1) Confirm, modify or repeal the initial assessment resolution with such amendments, if any, as may be~~
39 ~~deemed appropriate by the council;~~
40 ~~(2) Establish the maximum amount of the assessment for each assessment unit;~~
41 ~~(3) Approve the assessment roll, with such amendments as it deems just and right; and~~
42 ~~(4) Determine the method of collection.~~

1 **Sec. 2-32~~37~~³⁷. Annual assessment resolution.**

2 The council shall adopt an annual assessment resolution during its budget adoption process for each fiscal
3 year in which assessments will be imposed to approve the assessment roll for such fiscal year. The final assessment
4 resolution shall constitute the annual assessment resolution for the initial fiscal year. The assessment roll shall be
5 prepared in accordance with the initial assessment resolution, as confirmed or amended by the final assessment
6 resolution. If the proposed assessment for any parcel of property exceeds the maximum amount established in the
7 notice provided pursuant to section 2-32~~2(d)5~~^{2(d)5} or if an assessment is imposed against property not previously subject
8 thereto, the council shall provide notice to the owner of such property in accordance with sections 2-32~~2(d)4 and 2-~~
9 ~~325~~^{2(d)4 and 2-325} and conduct a public hearing prior to adoption of the annual assessment resolution.

10 **Sec. 2-32~~48~~⁴⁸. Effect of assessment resolutions.**

11 The adoption of the final assessment resolution shall be the final adjudication of the issues presented
12 (including but not limited to the apportionment methodology, the rate of assessment, the adoption of the
13 assessment roll and the levy and lien of the assessments), unless proper steps are initiated in a court of competent
14 jurisdiction to secure relief within 20 days from the date of council adoption of the final assessment resolution. The
15 assessments for each fiscal year shall be established upon adoption of the annual assessment resolution. The
16 assessment roll, as approved by the annual assessment resolution, shall be delivered to the tax collector, or such
17 other official as the council, by resolution, deems appropriate.

18 **Sec. 2-32~~59~~⁵⁹. Prepayment of assessments.**

19 The assessment imposed against any parcel of property to fund the capital cost of a local improvement shall
20 be subject to prepayment at the option of the property owner, as follows:

- 21 (1) Prior to the issuance of obligations to finance the capital cost of such local improvement, the assessment
22 coordinator shall provide first class mailed notice to the owner of each parcel of property subject to the
23 assessment of the council's intent to issue such obligations. On or prior to the date specified in such
24 notice (which shall not be earlier than the 30th day following the date on which the notice is delivered
25 to the possession of the U.S. Postal Service), or such later date as the council may allow in its sole
26 discretion, the owner of each parcel of property subject to the assessment shall be entitled to prepay
27 the total assessment obligation upon payment of such parcel's share of the capital cost.
- 28 (2) Following the date specified in the notice provided pursuant to subsection (1) of this section, or such
29 later date as the council may allow in its sole discretion, the owner of each parcel of property subject to
30 the assessment shall be entitled to prepay the total remaining assessment obligation upon payment of
31 an amount equal to the sum of (i) such parcel's share of the principal amount of obligations then
32 outstanding, (ii) the premium associated with redemption of such parcel's share of the principal amount
33 of obligations then outstanding, and (iii) interest on such parcel's share of the principal amount of
34 obligations then outstanding, from the most recent date to which interest has been paid to the next date
35 following such prepayment on which the city can redeem obligations after providing all notices required
36 by the ordinance or resolution authorizing issuance of such obligations; provided, however, that during
37 any period commencing on the date the annual assessment roll is certified for collection pursuant to the
38 Uniform Assessment Collection Act and ending on the next date on which unpaid ad valorem taxes
39 become delinquent, the city may reduce the amount required to prepay the assessments imposed
40 against any parcel of property by the amount of the assessment certified for collection with respect to
41 such parcel.
- 42 (3) At the city's election, the assessment imposed against any parcel of property may be subject to
43 acceleration and mandatory prepayment if at any time a tax certificate has been issued and remains
44 outstanding in respect of such property. In such event, the amount required for mandatory prepayment

shall be the same as that required for an optional prepayment authorized by subsection (2) of this section.

(4) The amount of all prepayments computed in accordance with this section shall be final. The city shall not be required to refund any portion of a prepayment if:

- a. The capital cost of the local improvement is less than the amount upon which such prepayment was computed; or
- b. Annual assessments will not be imposed for the full number of years anticipated at the time of such prepayment.

Sec. 2-~~326~~~~330~~. Assessments to constitute lien.

- (a) ~~Upon adoption of the annual assessment resolution for each fiscal year, assessments~~ Assessments to be collected under the Uniform Assessment Collection Act shall constitute a lien against assessed property as provided in F.S. 170.09 ~~equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad-valorem assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other liens, titles and claims, until paid.~~ The lien shall be deemed perfected upon adoption by the council of the annual assessment resolution and shall attach to the property included on the assessment roll as of the prior January 1, the lien date for ad valorem taxes.
- (b) Upon adoption of the final assessment resolution, assessments to be collected under the alternative method of collection provided in section 2-352 shall constitute a lien against assessed property as provided in F.S. 170.09 ~~equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad-valorem assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other liens, titles and claims, until paid.~~ The lien shall be deemed perfected on the date notice thereof is recorded in the official records of the county.

Sec. 2-~~323~~~~341~~. Revisions to assessments; procedural irregularities.

- (a) Revisions to assessments shall be made in accordance with F.S. 170.14. ~~If any assessment made under the provisions of this division is either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the council is satisfied that any such assessment is so irregular or defective that the assessment cannot be enforced or collected, or if the council has omitted to include any property on the assessment roll which property should have been so included, the council may take all necessary steps to impose a new assessment against any property benefited by the local improvement, following, as nearly as may be practicable, the provisions of this division, and in case such second assessment is annulled, the council may obtain and impose other assessments until a valid assessment is imposed.~~
- (b) Any informality or irregularity in the proceedings under this subdivision are subject to F.S. 170.16 and shall not affect the validity of the assessment.

Sec. 2-332. Procedural irregularities.

~~Any informality or irregularity in the proceedings in connection with the levy of any assessment under the provisions of this division shall not affect the validity of the assessment after the approval thereof, and any assessment as finally approved shall be competent and sufficient evidence that such assessment was duly levied, that the assessment was duly made and adopted, and that all other proceedings adequate to such assessment were duly had, taken and performed as required by this division; and no variance from the directions under this division shall be held material unless it be clearly shown that the party objecting was materially injured thereby. Notwithstanding the provisions of this section, any party objecting to an assessment imposed pursuant to this division must file an objection with a court of competent jurisdiction within the time periods prescribed in this division.~~

Sec. 2-~~234~~⁴³³. Correction of errors and omissions.

- (a) No act of error or omission on the part of the council, assessment coordinator, property appraiser, tax collector, clerk, or their deputies or employees shall operate to release or discharge any obligation for payment of any assessment imposed by the council under the provisions of this division.
- (b) The city may correct the number of assessment units attributed to a parcel of property ~~may be corrected at any time by the assessment coordinator.~~ Any such correction which reduces an assessment shall be considered valid from the date on which the assessment was imposed and shall in no way affect the enforcement of the assessment imposed under the provisions of this division. Any such correction which increases an assessment or imposes an assessment on omitted property shall first require notice to the affected owner at the address shown on the tax roll notifying the owner of the date, time and place that the council will consider confirming the correction and offering the owner an opportunity to be heard.
- (c) After the assessment roll has been delivered to the tax collector in accordance with the Uniform Assessment Collection Act, any changes, modifications or corrections thereto shall be made in accordance with the procedures applicable to errors and insolvencies for ad valorem taxes.

Secs. 2-~~235~~³³⁴—2-350. Reserved.

Subdivision IV. Collection of Assessments

Sec. 2-351. Collection pursuant to Florida's Uniform Assessment Collection Act.

Unless directed otherwise by the council, assessments (other than assessments imposed against government property) shall be collected pursuant to ~~the~~Florida's Uniform Assessment Collection Act, and the city shall comply with all applicable provisions thereof, ~~including but not limited to (i) entering into a written agreement with the property appraiser and the tax collector for reimbursement of necessary expenses, and (ii) adopting a resolution of intent after publishing weekly notice of such intent for four consecutive weeks preceding the hearing. The resolution of intent may be adopted either prior to or following the initial assessment resolution; provided, however, that the resolution of intent must be adopted prior to January 1 (March 1 with consent of the property appraiser and tax collector) of the year in which the assessments are first collected on the ad valorem tax bill. Any hearing or notice required by this division may be combined with any other hearing or notice required by the Uniform Assessment Collection Act.~~

Sec. 2-352. Alternative method of collection.

In lieu of using ~~the~~Florida's Uniform Assessment Collection Act, the city may elect to collect the assessment by any other method which is authorized by law or provided by this section as follows:

- (1) The city shall provide assessment bills by first class mail to the owners of each affected parcel of property, other than government property. The bill or accompanying explanatory material shall include:
- A brief explanation of the assessment;
 - A description of the assessment units used to determine the amount of the assessment;
 - The number of assessment units attributable to the parcel;
 - The total amount of the parcel's assessment for the appropriate period;
 - The location at which payment will be accepted;
 - The date on which the assessment is due; and

- g. A statement that the assessment constitutes a lien against assessed property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad-valorem assessments.
- (2) A general notice of the lien resulting from imposition of the assessments shall be recorded in the official records of the county. Nothing in this section shall be construed to require that individual liens or releases be filed in the official records.
- (3) The city shall have the right to appoint or retain an agent to foreclose and collect all delinquent assessments in the manner provided by law. An assessment shall become delinquent if it is not paid within 30 days from the due date. The city or its agent shall notify any property owner who is delinquent in payment of an assessment within 60 days from the date such assessment was due. Such notice shall state in effect that the city or its agent will initiate a foreclosure action and cause the foreclosure of such property subject to a delinquent assessment in a method now or ~~later~~hereafter provided by law for foreclosure of mortgages on real estate, or otherwise as provided by law.
- (4) All costs, fees and expenses, including reasonable attorneys' fees and title search expenses, related to any foreclosure action as described in this section shall be included in any judgment or decree rendered therein. At the sale pursuant to decree in any such action, the city may be the purchaser to the same extent as an individual person or corporation. The city may join in one foreclosure action the collection of assessments against any or all property assessed in accordance with the provisions of this division. All delinquent property owners whose property is foreclosed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the city and its agents, including reasonable attorneys' fees, in collection of such delinquent assessments and any other costs incurred by the city as a result of such delinquent assessments, including but not limited to costs paid for draws on a credit facility, and such costs shall be collectible as a part of, or in addition to, the costs of the action.
- (5) In lieu of foreclosure, any delinquent assessment, and the costs, fees and expenses attributable thereto, may be collected pursuant to the Uniform Assessment Collection Act; provided, however, that:
- a. Notice is provided to the owner in the manner required by law and this division; and
- b. Any existing lien of record on the affected parcel for the delinquent assessment is supplanted by the lien resulting from certification of the assessment roll to the tax collector.

* * *

DIVISION 4. CAPITAL EXPENDITURES

Sec. 2-389. Definitions.

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

Capital ~~cost~~-expenditure means all or any portion of the expenses that are properly attributable to the acquisition, design, construction, installation, reconstruction, renewal or replacement (including demolition, environmental mitigation and relocation) of local improvements under generally accepted accounting principles, including reimbursement to the city for any funds advanced for capital cost and interest on any loan for such purposes.

Capital improvement means a non-recurring expenditure or any expenditure for physical improvements, including costs for: acquisition of existing buildings, land, or interests in land; construction of new buildings or other structures, including additions and major alterations; construction of streets and highways or utility lines; acquisition of fixed equipment; landscaping; and similar expenditures.

~~*City council* means the city council of the City of Marco Island, Florida.~~

1 *General fund revenue* means all general purpose tax revenue and other unrestricted general purpose revenue
2 of the city, including state and federal revenue sharing monies, credited to the city general fund and from which
3 appropriations may be made.

4 ~~*Government property* means property owned by the United States of America, the state of Florida, a county,~~
5 ~~a special district, a municipal corporation, or any of their respective agencies or political subdivisions.~~

6 ~~*Local improvement(s)* means a capital improvement constructed or installed by the city, for a municipal~~
7 ~~benefit.~~

8 *Obligations* means bonds or other evidence of indebtedness, including but not limited to, external or interfund
9 loans, notes, commercial paper, capital leases or any other obligations issued or incurred to finance any portion of
10 the capital cost of local improvements.

11 *Super majority vote*, unless otherwise required or prohibited by law, means at least five members of council
12 shall be required when seven council members are present; at least four members of council when six or fewer
13 council members are present.

15 **Sec. 2-390. Super majority vote required for capital improvement approval.**

16 (a) Approval by a super majority vote of city council shall be required for any capital expenditure that exceeds ten
17 percent of the average of the last four fiscal year's general fund revenue, except as provided in subsection (b).

18 (b) A super majority vote shall not apply to any capital improvement constructed or installed by the city, for a
19 municipal benefit local improvement(s), which that are is:

- 20 (1) Mandated by applicable regulation or existing bond covenants;
- 21 (2) Funded through enterprise funds, including without limitation, water/sewer utility improvement or
22 maintenance projects;
- 23 (3) Funded through grant funds;
- 24 (4) Funded through discretionary tax funds;
- 25 (5) Funded with proceeds of obligations which shall be secured by and/or payable from grant funds,
26 enterprise funds or discretionary tax funds; or
- 27 (6) Occasioned by an emergency and is accompanied by an official declaration of emergency issued by the
28 council chair and city manager, including without limitation a hurricane or other natural disaster.

29 **Sec. 2-391. Super majority vote required to amend or repeal this division.**

30 An affirmative vote by a super majority of city council shall be required to amend or repeal any section or
31 portion of this division 4.

32 **Sec. 2-392. Applicability.**

33 ~~Unless otherwise exempted as provided in section 2-390(b), this vote requirement shall apply to all capital~~
34 ~~improvement expenditures requiring initial approval subsequent to the date of adoption of the ordinance from~~
35 ~~which this division is derived.~~

36 **Secs. 2-39~~2~~³—2-400. Reserved.**

37 **ARTICLE VI. INVESTMENT POLICY**

1 **Sec. 2-401. Introduction.**

2 (a) *Goal.* The goal of the city investment policy shall be to ensure the safety of all funds entrusted to the city
3 (safety), the availability of those funds for the payment of all necessary obligations of the city (liquidity), and
4 to provide for the investment of all funds, not immediately required, in interest-bearing securities (return).
5 The highest investment priority will be safety of principal, followed by liquidity and return, in that order.

6 The city shall maintain a comprehensive cash management program in order to maximize total return as a
7 viable and material revenue source to all operating and capital funds. The cash management program will include
8 collection of accounts receivable on a timely basis, vendor payment in accordance with invoice terms and state law,
9 and prudent investment of its available cash.

10 (b) *Scope.* This investment policy of the city shall include those funds in excess of those required to meet short-
11 term expenses and any new funds created. This investment policy shall also include those funds which may be
12 created by bond ordinances to include, but not limited to, the revenue fund, the sinking fund, reserve accounts
13 and the bond amortization fund. These accounts will be called "bond trust accounts" for the remainder of this
14 document. It will not pertain to pension or trust funds where there are other existing policies or indentures in
15 effect.

16 ~~(c) *Amendments.* This policy may be amended from time to time as the city council may so desire, or as state law~~
17 ~~may require.~~

18 * * *

19
20 **Chapter 4 ALCOHOLIC BEVERAGES**

21 **ARTICLE I. IN GENERAL**

22 **Sec. 4-1. Purpose and intent.**

23 The purpose and intent of this chapter is to provide uniform operational regulations pursuant to the authority
24 reserved to the city by F.S. ch. 562, for all establishments in the city dealing directly or indirectly with the sale or
25 consumption of alcoholic beverages.

26 **Sec. 4-2. Definitions.**

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

31 *Alcoholic beverage* means any beverage containing ~~more than~~ one-half of one percent or more of alcohol by
32 weight.

33 *Bottle club* is any business premises in which ~~no intoxicating liquors are sold but where~~ patrons may bring
34 alcoholic beverages for their own use, and where food, soft drinks and mixes are often sold, and suitable places and
35 premises are provided for consumption of ~~such liquors alcoholic beverages as individual club members or their~~
36 guests bring upon premises for their own use. A bottle club may or may not sell alcoholic beverages on premises.
37 This chapter shall apply to bottle clubs and all of their duly authorized agents. The consumption of alcoholic
38 beverages in bottle clubs is not allowed during prohibited hours as set forth below.

Establishment dealing in alcoholic beverages means any business, club, or establishment licensed by the state for the sale of alcoholic beverages; any area or part of any building or structure in which alcoholic beverages are kept for sale, offered for sale, sold, served or dispensed under license by the state; any other building or structure or part thereof having an entrance, door or other passageway that could in any manner be used or utilized as a means of access, ingress or egress into the area in which alcoholic beverages are kept, offered for sale, sold or dispensed; or which is in any other manner capable of access, ingress or egress at any time to the area in which alcoholic beverages are kept, offered for sale, sold, served or dispensed. However, the term "establishment dealing in alcoholic beverages," when applied to a hotel or club means that area or part of such hotel or club in which alcoholic beverages are kept, sold, served or dispensed when such area is capable of being closed or in some other manner set apart and forbidden to access.

Intoxicated person means a person overcome by the consumption of alcoholic beverages to the point of losing control of one's faculties.

Premises includes the interior of an establishment, the exterior grounds and parking areas.

Sale or *sell* includes any transfer of ~~liquor, wine or beer or other~~an alcoholic beverages for a consideration, and any gift of ~~liquor, beer or wine~~an alcoholic beverage in connection with or as a part of a transfer of property other than ~~liquor, beer or wine or other~~an alcoholic beverages for a consideration.

Vendor means any person who keeps for sale, sells or dispenses any alcoholic beverages in any quantity in any place or business licensed by the state for the sale of alcoholic beverages, or any person who holds a license from the state for the sale of alcoholic beverages, including the owner, manufacturer, operator, proprietor or licensee, or the servant, agent or employee of any one of such. Vendor also means any duly authorized agent of a bottle club.

Sec. 4-3. Hours during which sales, consumption, and service are prohibited.

No establishment dealing in alcoholic beverages shall sell or offer for sale, or serve or offer to serve, any beers, wines or alcoholic beverages of any kind, regardless of alcoholic content, between 2:00 a.m. and 7:00 a.m.; provided, however, the hours of prohibition for January 1 of each year shall be 5:00 a.m. to 7:00 a.m.

Sec. 4-4. Consumption off premises.

No person shall consume any alcoholic beverage on or within any property which is licensed to sell alcoholic beverages in sealed containers only for off-premises consumption.

Sec. 4-5. Dispensing, selling or serving intoxicating beverages.

- (a) It shall be unlawful for any vendor to ~~suffer, permit or~~ allow any establishment dispensing, selling or serving intoxicating alcoholic beverages to be ~~and or remain~~ open for the transaction of business during prohibited hours.
- (b) It shall be unlawful for any vendor to ~~suffer, permit or~~ allow any person to ~~enter or to be~~ and remain in any establishment dispensing, selling or serving intoxicating alcoholic beverages at any time during prohibited hours.
- (c) It shall be unlawful for any person to ~~enter or to be~~ or remain in any establishment dispensing, selling, or serving intoxicating alcoholic beverages at any time during prohibited hours.
- (d) Nothing in this section shall ~~be construed to~~ prevent vendors that are permitted to engage in other permitted business activity, and are also licensed to sell intoxicating alcoholic beverages, from remaining open for the permitted business activity, so long as intoxicating alcoholic beverages are not sold or consumed during prohibited hours.
- (e) Nothing in this section shall ~~be construed to~~ prevent any person from ~~entering or remaining being~~ in any establishment that is engaged in other permitted business activity and is also licensed to sell intoxicating

1 alcoholic beverages, so long as intoxicating beverages are not being served or consumed on the premises
2 during prohibited hours.

- 3 (f) Nothing contained in this section shall ~~be construed to~~ prevent a vendor of any establishment dispensing,
4 selling or serving ~~intoxicating alcoholic~~ beverages from ~~entering, being or remaining~~ in the establishment
5 during prohibited hours when the vendor is actually engaged in duties other than the sale of or serving of
6 ~~intoxicating alcoholic~~ beverages in the establishment, nor shall this section ~~be construed to~~ prevent any
7 firefighter, ~~or~~ law enforcement officer or agent of the city from ~~entering, being or remaining~~ in the
8 establishment in the performance of ~~his~~ their official duties.

9 **Sec. 4-6. Sale to certain intoxicated persons prohibited.**

10 No ~~person who is a~~ vendor ~~of alcoholic beverages~~ shall sell, furnish or deliver ~~or permit any person in his~~
11 ~~employ to sell, furnish or deliver~~ any alcoholic beverages in any quantity to any intoxicated person ~~who is overcome~~
12 ~~by the consumption of alcoholic beverages to the point of losing control of one's faculties.~~

13 **Sec. 4-7. Permitting intoxicated person to loiter about premises.**

14 It shall be unlawful for any intoxicated person to loiter in and about the business premises used or occupied
15 by any person licensed under the state beverage law. ~~For the purposes of this section "intoxicated person" means a~~
16 ~~person overcome by the consumption of alcoholic beverages to the point of losing control of one's faculties.~~

17 **Sec. 4-8. Loitering during prohibited hours of operation.**

18 It shall be unlawful for any person to loiter in and about the business premises licensed under the state
19 beverage law during prohibited hours of operation. It shall be unlawful for ~~the a vendor operator~~ of such premises
20 to permit and knowingly allow any person to loiter thereon during prohibited hours of operation. ~~In and about the~~
21 ~~business premises includes, but is not limited to, the interior of the establishment, the exterior grounds and parking~~
22 ~~areas.~~ When applied to a vendor that is permitted to engage in other business activity, it is the intent of this section
23 to apply only to that area or part of such vendor's business in which alcoholic beverages are kept, sold, served or
24 dispensed when such area is capable of being closed or in some other manner set apart and forbidden to access.

25 **Sec. 4-9. Public consumption or possession.**

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

30 (1) "Container" means any cup, glass, can, bottle, carton or other vessel or receptacle of alcoholic beverage.

31 (2) "Open container" means any container which is open, which has been opened, which has its original seal
32 broken, punctured or altered so as to allow the consumption of its contents.

33 (3) "Parking lot" means any private or public area appurtenant to any nonresidential and commercial use or
34 establishments used by the public for parking and pedestrian access to such uses and establishments,
35 including, but not limited to, drives, parking areas, sidewalks and walkways appurtenant thereto, and
36 any area wherein motor vehicles are parked by the public in conjunction with any nonresidential ~~or~~
37 commercial business, enterprise or office building use.

- 38 (b) *Violation.* It shall be a violation for any person to sell or consume any alcoholic beverage, or to possess any
39 ~~opened or unsealed container containing an alcoholic beverage,~~ on or in any publicly owned building, any
40 parking lot or in a park.

- (c) *Exceptions.* This provision shall not be applicable to the sale or consumption of an alcoholic beverage, or possession of an alcoholic beverage in an open container, in the following locations:
- (1) As specifically authorized and approved by a special event permit issued by the city manager or designee;
 - (2) Locations specifically authorized by the vendor's state license;
 - (3) The public beach;
 - (4) On the waterways within the city limits;
 - (5) Passengers and their guests, on a bus, limousine, taxicab or other motor vehicle that is operated by duly-licensed drivers in the course of conducting an ongoing, duly licensed and authorized business or providing paid passenger transportation or service; provided that no open container containing any alcoholic beverage is in the possession of, or readily accessible to, the driver.

Sec. 4-10. Unlawful acts in establishments.

- (a) It shall be unlawful for any vendor of an person maintaining, owning or operating a commercial establishment offering for sale dealing in located in the city at which alcoholic beverages are offered for sale for consumption on the premises to suffer or permit the following on the premises:
- (1) Any female person, while on the premises of the commercial establishment, to expose to exposing to the public view that area of the human female breast at or below the areola thereof.
 - (2) Any female person, while on the premises of the commercial establishment, to employing any device or covering which is intended to give the appearance of, or simulate, such portions of the human female breast as described in subsection (a)(1) of this section.
 - (3) Any person, while on the premises of the commercial establishment, to expose exposing to public view his or her their genitals, pubic area, anus or anal cleft or anal cleavage.
 - (4) Any person, while on the premises of the commercial establishment, to employ employing any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, anus, anal cleft or anal cleavage.
- (b) It shall be unlawful for any female person, while on the premises of an commercial establishment dealing in alcoholic beverages located in the city at which alcoholic beverages are offered for sale for consumption on the premises, to expose to public view that area of the human female breast at or below the areola thereof or to employ any device or covering which is intended to give the appearance or simulate such areas of the female breast as described in this subsection.
- (c) It shall be unlawful for any person, while on the premises of an commercial establishment dealing in alcoholic beverages located in the city at which alcoholic beverages are offered for sale for consumption on the premises, to expose to public view their his or her genitals, pubic area, anus or anal cleft or anal cleavage or to employ any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, anus or anal cleft or anal cleavage.
- (d) For the purpose of enforcement, this section shall not apply to the breast or anal cleft and cleavage of a customer exhibited by a bathing suit or other wearing apparel provided the areola and lower portion of the female breast are not exposed.

Sec. 4-11. Penalties.

- (a) Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 14 of this code. Any person or persons, firm or corporation, or any agent thereof, who that violates any of the provisions of any section of this chapter shall be punished by a fine not exceeding \$500.00 or imprisonment not exceeding 60 days, or by both such fine and imprisonment.

~~(b) In addition to the penalties provided in subsection (a) of this section, any condition caused or permitted to exist in violation of any of the provisions of this Code chapter shall be deemed a public nuisance and may be abated by the city as provided by law, and each day that such condition continues shall be regarded as a new and separate offense.~~

Secs. 4-12—4-30. Reserved.

ARTICLE II. LOCATIONAL RESTRICTIONS FOR ESTABLISHMENTS INVOLVING ON- PREMISES S CONSUMPTION

Sec. 4-31. Purpose and intent.

It is the purpose of this article to establish reasonable standards to protect the community from potential adverse impacts related to establishments primarily engaged in the sale of alcoholic beverages for on-premise consumption. It is the intent of this article to provide reasonable separation and/or distance requirements between such establishments, and between such establishments and community facilities, to avoid potential conflicts or adverse impacts.

Sec. 4-32. Enumerated.

~~The community development director, or his designee, may authorize the sale~~ Sale of alcoholic beverages for consumption on-premises is subject to compliance with all zoning restrictions and the following locational criteria:

- (1) No such use shall be located within 500 feet of any established elementary, middle or high school, child-care center, public library, ~~churchplace of worship~~, public park, ~~or~~ public playground excluding beach access points, or existing establishment whose primary function is the sale of alcoholic beverages for consumption on-premises ("existing establishment") unless a ~~waiver-variance of said distance requirement~~ is granted pursuant to section ~~4-36 18-76~~ by the city council~~board of zoning appeals~~. ~~This does not include beach access points.~~
- (2) The distance of 500 feet shall be measured as the shortest distance between the lot on which the school, child care center, public library, ~~churchplace of worship~~, public park ~~or~~ public playground, or existing establishment is located, and the lot on which the alcoholic beverages are to be sold, except that establishments located in shopping centers shall be measured to the outer wall of the establishment.
- ~~(3) No such use shall be located within 500 feet of any existing establishment whose primary function is the sale of alcoholic beverages for consumption on-premises.~~
- ~~(4) The distance of 500 feet shall be measured as the shortest distance between the lot on which the existing establishment is located and the lot on which the alcoholic beverages are to be sold, except that establishments located in shopping centers shall be measured to the outer wall of the establishment.~~

The erection of any school, child care center, public library, ~~churchplace of worship~~, public park, or public playground within 500 feet of an establishment which offers the sale of alcoholic beverages for consumption on-premises shall not cause such establishment to become nonconforming.

Sec. 4-33. Exemptions.

The following uses shall be exempted from the distance limitations of section 4-32, but shall comply with all other requirements of this article:

- (1) Any restaurant with a state special food service alcoholic beverage retail license that requires deriving that at least 51 percent of its gross revenue be from the sale of food and nonalcoholic beverages.
- (2) Any motel and/or hotel with a special motel/hotel alcoholic beverage retail license, having 100 or more guestrooms.
- (3) Any private club, golf club, country club, civic or fraternal club may serve alcoholic beverages for consumption on-premises when such service is incidental to the main use, and for the exclusive use of the members, tenants and/or guests of the facility.

Sec. 4-34. Required information.

In addition to the application required by the department of business and professional regulation, division of alcoholic beverages and tobacco, the applicant shall submit a site plan to the city showing the following:

- (1) Dimensions of subject premises;
- (2) All vehicular points of ingress and egress;
- (3) Distance from any use identified in section 4-32 above; and
- (4) Compliance with all requirements of the land development code including landscaping, off-street parking, buffer areas, and location and size of all signs.

Sec. 4-35. Expiration of zoning approval.

The community development director's approval for the sale of alcoholic beverages for consumption on-premises, granted pursuant to this article, shall expire after the following periods of time and shall thereafter become null and void:

- (1) In the case of an existing structure, zoning approval shall expire six months from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. For purposes of this section, operation shall be defined as the sale of alcoholic beverages in the normal course of business.
- (2) In the case of a new structure, zoning approval shall expire one year from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. However, if substantial construction is completed, the development services director may grant an extension for up to six months.

Sec. 4-36. Waiver-Variance of district-distance requirements.

- (a) The After a public hearing and recommendation by the planning board, the board of zoning appeals may city council is authorized to, by resolution, grant waiver of part grant a variance from or all of the minimum distance requirement set forth in section 4-32, subsections (1) and (2), if it is demonstrated by the applicant and determined by the board of zoning appeals upon determining that the site proposed for the sale and consumption of alcoholic beverages is separated from an established school, child care center, public library, churchplace of worship, public park, or public playground, or existing establishment by natural or manmade boundaries, structures or other features or circumstances which offset or limit the necessity for such minimum distance requirement.
- (b) Variances under this section are subject to the procedures and requirements for variances set forth in section 30-65 of the land development code, provided that the standard for granting a variance in section 4-36(a) shall apply in lieu of those in section 30-65(g)(3). The board of zoning appeals decision to waive part or all of the distance requirement city council shall consider the following factors:

(1) The nature and type of natural or manmade boundary, structure or other feature lying between the proposed establishment and an existing school, child care center, public library, church, public park or public playground which is determined by the board of zoning appeals to lessen the need for the total 500-foot distance requirement. Such boundary, structure or other feature may include, but not be limited to, lakes, marshes, non developable wetlands, designated preserve areas, canals, and major rights-of-way.

(2) The paths of vehicular and pedestrian traffic, which could be taken between the establishment and the uses listed in this section~~school, child, care center, public library, church, public park or public playground.~~

(3) The hours of operation and the noise and light which could potentially be generated from the premises selling alcoholic beverages.

(4) Whether alcoholic beverages will be sold in conjunction with food or whether the establishment is primarily engaged in the sale of alcoholic beverages as a primary use.

~~(b) Further, after a public hearing and recommendation by the planning board, the board of zoning appeals may, by resolution, grant waiver of part or all of the minimum distance requirement set forth in section 4-32, subsections (3) and (4), if it is demonstrated by the applicant and determined by the board of zoning appeals that the site proposed for the sale and consumption of alcoholic beverages is separated from another such establishment by features or circumstances which offset or limit the necessity for such minimum distance requirement. The board of zoning appeals decision to waive part or all of the distance requirement shall consider the following factors:~~

~~(1) The establishment is located within a shopping center containing a gross leasable floor area of at least 25,000 square feet.~~

~~(2) The establishment fronts upon an arterial, collector or local collector street as shown on the "Existing 2000 Island Road Network", contained in the comprehensive plan.~~

~~(3) The establishment can accommodate all required parking on-site.~~

~~(4) The establishment is located in a commercial zoning district abutting the residential tourist (RT) zoning district, if applicable.~~

~~(c) Prior to consideration of such waiver by the planning board and the board of zoning appeals, the applicant shall provide to the community development director a written application for waiver of the distance limitation on an application form supplied by the community development director, including a legal description of all applicable structures with a survey or boundary sketch to scale, and such other information which the applicant can supply which would assist the planning board and the board of zoning appeals in their evaluation pursuant to the factors set forth above.~~

~~(d) Upon receipt of the application and the applicable fee, established by city council, public hearing dates shall be scheduled before the planning board and board of zoning appeals for a determination on the proposed waiver. The applicant shall notify, by certified mail, the owners, or representatives of the subject school, childcare center, public library, church, public park, public playground, or other establishment(s) of the application at least 15 days prior to the public hearings; and evidence of such notification shall be supplied to the community development director.~~

Sec. 4-37. Statement of gross receipts.

Any owner or operator of an establishment exempted under section 4-33(1) shall upon written ~~demand~~ request of the city manager~~community development director~~, produce an affidavit attesting to the~~make or cause to be made under oath a statement itemizing what~~ percentage of his the establishment's gross receipts ~~are~~ from the sale of alcoholic beverages.

Chapter 6 BUILDINGS AND BUILDING REGULATIONS

ARTICLE I. IN GENERAL

~~Sec. 6-1.~~ [Sec. 6-1 moved to new Article VII]

Secs. 6-~~12~~—6-30. Reserved.

ARTICLE II. CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS

Sec. 6-31. Title of article.

This article shall be known and may be cited as the "City of Marco Island Construction Board of Adjustment and Appeals Ordinance."

Sec. 6-32. Definitions.

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

Board means the construction board of adjustment and appeals.

Building official means the authorized agent or employee of the city whose duty it is to enforce and interpret the construction codes of the city.

City attorney means the legal counsel to the council.

~~Construction board means the city construction board of adjustment and appeals.~~

Person means an individual, association, firm, partnership, corporation, or other legal entity recognized under the laws of the state.

Secretary of the board means the building official, who shall make a detailed record of all of the construction board's proceedings, which shall set forth the reasons for the construction board's decision, the vote of each member, the absence of a member and any failure of a member to vote.

Technical codes means those construction-related codes adopted by the city through article III of this chapter, and chapter 26, article II (floodplain management).

Variance means the ability of the construction board to vary the application of any provision of the technical codes to any particular case, when, in the opinion of the construction board, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of the technical codes or public interest.

Sec. 6-33. Penalties.

Violations of this article are punishable according to the penalties and procedures set forth in chapter 14 of this code.

~~(a) Pursuant to F.S. § 162.22, a person found to be in violation of this article may be charged a fine, not to exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days.~~

~~(b) Violations of this article may also be prosecuted before the code enforcement board.~~

1 **Sec. 6-34. Findings; purpose of article.**

2 The city council ~~does~~ hereby makes the following findings:

- 3 (1) It is the intent and purpose of this article to promote, protect and improve the health, safety and welfare
4 of the citizens of the city, and to provide a forum for aggrieved parties, by authorizing the creation of a
5 construction board of adjustment and appeals ("construction board"), with authority to hear appeals of
6 decisions and interpretations of the building official and consider variances ~~offrom~~ the technical codes
7 ~~and chapter 26, article II (floodplain management)~~.
- 8 (2) The purpose and function of ~~such the construction board of adjustment and appeals~~ is to provide an
9 equitable, expeditious, effective and inexpensive method ~~for deciding such to appeals the decisions and~~
10 ~~interpretation of the building official and to consider variances of the technical codes and chapter 26,~~
11 ~~article II (floodplain management)~~.
- 12 (3) It is in the best interest of the citizens of the city to create ~~such at the construction board of adjustment~~
13 ~~and appeals~~.

14 **Sec. 6-35. ReservedApplicability of article.**

15 ~~This article shall apply within the territorial limits of the city.~~

16 **Sec. 6-36. Membership; compensation of members; appointment and term of members.**

- 17 ~~(a) The council shall appoint one seven member sit as the construction board. All members of the construction~~
18 ~~board shall be permanent residents and electors of the city and shall serve without compensation. Members~~
19 ~~may be reimbursed for such travel, mileage and per diem expenses as may be authorized, in advance, by~~
20 ~~council.~~
- 21 ~~(b) The procedures to solicit and appoint members to the construction board shall be consistent with procedures~~
22 ~~found in section 2-203.~~
- 23 ~~(c) The appointment of members to the construction board shall be made on the basis of knowledge and~~
24 ~~experience in the technical codes, and should include, whenever possible, an architect, an engineer, two~~
25 ~~general contractors, two subcontractors, and a businessperson.~~
- 26 ~~(d) The initial terms of appointment for members shall be as follows:~~
- 27 ~~(1) Two members appointed for a term of one year.~~
- 28 ~~(2) Two members appointed for a term of two years.~~
- 29 ~~(3) Two members appointed for a term of three years.~~
- 30 ~~(4) One member appointed for a term of four years.~~
- 31 ~~(e) If any member's term expires during the pendency of any appeal or variance petition which has not reached~~
32 ~~conclusion by a final vote, such member's expired term shall be extended for the limited time and limited~~
33 ~~purpose of presiding over such particular appeal or variance petition until conclusion and final vote.~~
- 34 ~~(f) After initial appointments, all appointments shall be made for a term of four years. Reappointment to the~~
35 ~~construction board, attendance requirements, and vacancies shall be addressed in a manner consistent with~~
36 ~~procedures established by chapter 2, article IV.~~
- 37 ~~(g) Notwithstanding the provisions outlined in subsections (a) (f) above, city council may, by resolution,~~
38 ~~designate itself as a body to serve as the city's construction board of adjustment and appeals, consistent with~~
39 ~~the powers and duties contained in this article.~~

1 **Sec. 6-37. Officers; voting; rules of procedure; staff support; reports.**

- 2 (a) ~~Officers.~~ At the first meeting of the construction board, the members shall elect a chairman and vice chairman,
3 who shall be voting members, from among the members of the construction board. The terms of the chairman
4 and vice chairman shall be one year.
- 5 (b) ~~Voting.~~ A simple majority of the construction board shall constitute a quorum. In varying any provision of those
6 construction-related codes adopted by the city through article III of this chapter (the technical codes) or
7 chapter 26, article II (floodplain management), the affirmative vote of the majority present, but not less than
8 three affirmative votes, shall be required. In modifying a decision of the building official, not less than four
9 affirmative votes of the construction board shall be required.
- 10 (c) ~~Rules of procedure.~~ The construction board shall establish rules and regulations for its own procedures, as it
11 deems necessary to carry out the its duties of the construction board in accordance with the provisions and
12 intent of this article. The construction board shall consult chapter 2, article IV for guidance in developing rules
13 of procedure.
- 14 (d) ~~Staff support.~~ The council shall provide such clerical and administrative personnel and legal services as may be
15 reasonably required for the proper performance of the duties of the board.
- 16 (e) ~~Reports.~~ The construction board secretary (building official) shall provide to the council written quarterly
17 reports of the activities of the construction board, which report shall delineate the name of the
18 appeal/interpretation heard for the quarter, the date of hearing, and the resolution of the
19 appeal/interpretation. This paragraph shall not apply if the council serves as the construction board.

20 **Sec. 6-38. Composition and pPowers.**

- 21 (a) ~~Generally.~~ The city council shall serve as the ~~construction board, of adjustment and appeals which~~ shall have
22 the power to hear appeals of decisions and interpretations of the building official and consider variances of
23 ~~construction-related from technical codes, as defined in section 6-32 adopted by the city through article III of~~
24 ~~this chapter (technical codes) and chapter 26, article II (floodplain management).~~
- 25 (b) ~~Appeal of decisions of the building official.~~ The owner of a building, structure or service system, ~~or his duly~~
26 ~~authorized agent,~~ may appeal a decision of the building official to the ~~construction~~ board whenever any one
27 of the following conditions is claimed to exist:
- 28 (1) The building official rejected or refused to approve the proposed mode or manner of construction
29 ~~proposed to be followed~~ or materials to be used in the installation or alteration of a building, structure
30 or service system.
- 31 (2) The provisions of the technical codes ~~or chapter 26, article II (floodplain management)~~ do not apply to a
32 specific case.
- 33 (3) An equally good or more desirable form of installation can be employed in ~~any~~ specific case.
- 34 (4) The true intent and meaning of the technical codes, ~~chapter 26, article II (floodplain management), or~~
35 ~~any of the regulations thereunder~~ have been misconstrued or incorrectly interpreted.
- 36 (c) ~~Variances.~~
- 37 (1) ~~Granting.~~ The ~~construction~~ board, ~~when so appealed to and after a hearing,~~ may approve a petition
38 requesting vary a variance from the application of any provision of those construction-related codes
39 ~~adopted by the city through in~~ article III of this chapter (technical codes) or chapter 26, article II
40 (floodplain management), to ~~any~~ particular case property, when, ~~in its opinion,~~ following the conclusion
41 of a quasi-judicial public hearing, noticed in accordance with section 1-15 of this code, the board finds
42 that the enforcement thereof would do manifest injustice and would be contrary to the spirit and
43 purpose of the provision from which the variance is sought ~~article III of this chapter or chapter 26, article~~
44 ~~II,~~ or the public interest, and also finds all of the following:

- a. Special conditions and circumstances exist which are peculiar to the building, structure or service system involved and which are not applicable to others.
 - b. The special conditions and circumstances do not result from the action or inaction of the applicant.
 - c. Granting the variance requested will not confer on the applicant any special privilege that is denied by the technical codes to other buildings, structures or service systems.
 - d. The variance granted is the minimum variance that will make possible the reasonable use of the building, structure or service system.
 - e. The grant of the variance will be in harmony with the general intent and purpose of ~~those construction-related the technical codes adopted by the city through article III of this chapter (technical codes) or chapter 26, article II (floodplain management)~~, and will not be detrimental to the public health, safety and general welfare.
- (2) *Conditions.* In granting the variance, the ~~construction~~ board may prescribe a reasonable time limit ~~within which the action for which the variance is required shall be for the proposed improvement to be commenced, or completed or both.~~ In addition, the ~~construction~~ board may prescribe appropriate conditions and safeguards in conformity with ~~the those construction-related technical codes adopted by the city through article III of this chapter (technical codes) or chapter 26, article II (floodplain management).~~ Violation of the conditions of a variance shall be deemed a violation of this ~~article~~chapter.

Sec. 6-39. Fees.

The city council shall establish, by resolution, a schedule of fees for the filing of appeals, ~~and variances under this article and interpretations before the construction board of adjustments and appeals.~~ The city council may ~~change, delete, or add to the listed fees by resolution.~~

Sec. 6-40. Notice of a Appeal procedure.

- (a) ~~Appeals shall follow the procedure in section 1-15 of this code. notice of appeal under this article shall be filed with the City Clerk on the applicable city application form with all requisite materials on the form in writing and filed within 30 calendar days after the decision is rendered by the building official. Appeals shall be in a form acceptable to the building official.~~
- ~~(b) The construction board shall meet as necessary at the call of the chairmanperson. The chairmanperson shall call for a meeting within 30 calendar days after a notice of appeal has been received and found to be in an acceptable form by the building official.~~
- ~~(c) The building official shall be responsible for promptly notifying the applicant, by certified mail, of the date, time and location of the meeting at which the appeal will be heard. The building official will prepare an agenda and a report summarizing the appeal and all pertinent support material. The agenda and staff report is to be made available to construction board members and the applicant no later than seven days prior to the meeting date. Applicants who elect to prepare and provide a written report should deliver such report at least ten days prior to the meeting date.~~
- ~~(d) The building official is responsible for ensuring that the meeting is sufficiently noticed in a newspaper of general circulation at least 14 days prior to the meeting date, and further that notice of the meeting is posted at the office of the building official and at city hall.~~
- (e) In the case of a building, structure or service system which, in the opinion of the building official, is unsafe, unsanitary or dangerous, the building official's ~~may, in his order,~~ may shall reduce the length of the appeal period to ten calendar days ~~limit the time for such appeals to a shorter period.~~

~~Sec. 6-41. Decisions.~~

~~(a) The construction board of adjustment and appeals shall, in every case, reach a decision without unreasonable or unnecessary delay. Each decision of the construction board shall also include the reasons for the decision. If a decision of the construction board reverses or modifies a refusal, order, or disallowance of the building official, or varies the application of any provision of the technical codes, the building official shall immediately take action in accordance with such decision. Every decision shall be promptly filed in writing in the office of the building official and shall be open to public inspection. A certified copy of the decision shall be sent by mail or otherwise to the applicant and a copy shall be kept publicly posted in the office of the building official for two weeks after filing. Every decision of the construction board shall be final.~~

~~(b) The building official shall act as secretary of the construction board and shall promptly make a detailed record of all of its proceedings, which shall set forth the reasons for its decision, the vote of each member, the absence of a member and any failure of a member to vote.~~

~~Sec. 6-42. Remedies for aggrieved parties.~~

~~Every decision of the construction board of adjustment and appeals shall be final, subject, however, to such remedy as any aggrieved party might have at law or in equity.~~

~~Secs. 6-423—6-70. Reserved.~~

ARTICLE III. BUILDING CONSTRUCTION CODE

DIVISION 1. RESERVED

Secs. 6-71—6-80. Reserved.

DIVISION 2. SEAWALLS AND REVETMENTS

Sec. 6-81. Applicability.

This division applies to all seawalls on salt water bodies. This division shall not apply to seawalls surrounding fresh water bodies.

Sec. 6-82. Definitions.

As used in this division, the following words shall have the following meanings. These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.:

Anchor. The buried portion of the tieback rod that is typically a reinforced concrete block, which engages the soil to resist the pull on the tieback rod, also known as a deadman.

Batter. The angle from plumb (vertical) deliberately constructed for a bearing pile.

Concrete cap. The structural element on top of the seawall panels.

City. ~~The City of Marco Island, Collier County, Florida.~~

Sec. 6-83. Failed seawall or revetment declared to be unlawful and a public nuisance.

It is hereby declared unlawful and a public nuisance for any ~~Marco Island~~ property owner to allow, or fail to repair or reconstruct, a failed seawall or revetment on the owner's property. Within 60 days of notification ~~from the city of a failed seawall or revetment by the City of Marco Island~~, the property owner ~~or his representative~~ shall submit a complete building permit application to the building services division, or otherwise provide proof of contract with a licensed Florida engineer, for repair or replacement of ~~the a~~ failed seawall or revetment. Property owners who disagree with the ~~city's~~ determination ~~of the City of Marco Island~~ that a seawall or revetment has failed, may provide, ~~within 60 days~~, an independent inspection report within 60 days of notification, which shall be prepared, completed and certified by a licensed Florida engineer, describing the condition of the seawall or revetment.

Sec. 6-84. ~~Other enforcement remedies and penalties~~ Reserved.

~~Violation of the provisions of this division, or failure to comply with any of the provisions of this division shall be subject to those penalties set forth in section 1-14 of this Code. The city may take any other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any failure or refusal to comply with any of the provisions of this division. Nothing in this section shall be construed to prohibit the city from prosecuting any violation of this division by means of a code enforcement board established pursuant to the authority under F.S. ch. 162, and chapter 14, article II of this Code. All remedies and penalties provided for in this division shall be cumulative and independently available to the city.~~

Sec. 6-85. Technical specification for seawalls and revetments.

The city shall adopt ~~by a~~ resolution establishing the technical specifications ~~that establishes and~~ minimum performance based standards for seawall and revetment construction and repair. Site-specific designs and specifications are required and shall be appropriate for conditions at each location and construction materials employed. All seawalls and revetments constructed, reconstructed, repaired, or altered in the city after the effective date of this division shall meet or exceed this technical specification as follows:

- (1) Minor repairs to the seawall or revetment that do not require physical alteration to the existing structural support system are exempt from the technical specification.
- (2) Major repairs to the seawall or revetment that requires replacement of any portion of the structural support system, shall comply with all applicable ~~provisions of the technical~~ specifications for that portion of the seawall or revetment. Repairs shall restore the original integrity of the seawall or revetment.
- (3) Reconstruction of any seawall or revetment requiring complete reinstallation of the sheet pile portion of the structural support system, or any new seawall or revetment section installed adjacent to or independent from any existing seawall or revetment shall comply with all applicable ~~provisions of the technical~~ specifications for that portion of the seawall or revetment.
- (4) Seawalls shall be placed so that the waterward face of the wall is coincidental with the platted property or bulkhead line, if one exists, or at the intersection of the mean high water line with the existing shoreline. Upon specific request to the city, an administrative variance to the above may be approved by the city for seawalls that were originally constructed with an intentional offset from the property line, provided the offset shall not be increased.
- (5) The placing of a new seawall waterward (in front of) of an existing seawall is permitted in an artificially created waterway such as a manmade canal/basin or in a natural or man-altered waterbody in accordance with Rule 62-330.051 and any other applicable state requirements 40E-4.051(4)(a), (b), and (c) of Florida Administrative Code (F.A.C.), pursuant to the following conditions:
 - a. A Florida registered professional engineer certifies the new seawall design.

- b. The new seawall does not extend more ~~then~~than 18 inches from the waterward face of the existing vertical seawall location.
- c. The new seawall is placed vertically plumb.
- d. Placing a seawall in front of an existing seawall shall only be permitted once.
- e. Existing seawall sections that interfere with new seawall location shall be removed.
- f. The new seawall shall include an adequate "closure" at each property line.
- (6) The placing of a new seawall waterward (in front of) of an existing seawall where the seawall is located on sovereign submerged land (Barfield Bay) may qualify for a consent by rule (18-21.005(l)(b), F.A.C.) or a letter of consent (18-21.005(l)(c), F.A.C.) if it meets the regulatory exemption criteria listed in these rules. All seawalls shall comply with state and federal permitting requirements.
- (7) The top of cap elevation for all replacement and new seawalls and top elevation for all other revetments shall be equal to or greater than 3.2 feet N.A.V.D. but not exceeding 4.2 feet N.A.V.D. If the top of a seawall cap is constructed at an elevation differing from the adjacent property's ~~owner~~ top of cap elevation by greater than one foot, then a return wall is required to sufficiently provide for the break in grade at the property line.
- (8) The city manager ~~or his designee~~ may approve after-the-fact height encroachments of up to three inches for seawall caps for which a certificate of completion or a final development order has not been granted. After-the-fact encroachments are subject to the following criteria:
- a. A survey must be prepared and certified by a Florida licensed registered engineer or surveyor identifying the exact location and size of the encroachment;
- b. A statement of how and when the encroachment was created;
- c. A statement of current ownership and ownership at the time the encroachment was created;
- d. A letter of no objection from each adjacent property owner;
- e. Any other factors which may show the encroachment was not intentionally created; and
- f. Payment of any applicable fees imposed by the city council.
- (9) A property owner desiring shoreline protection may request permission from the city to construct a seawall or revetment. In general, revetments would be constructed adjoining natural bodies of water (if allowed by the State of Florida), and seawalls adjoining manmade channels, or canals.
- (10) A building permit is required for all seawall and revetment work. The ~~building and planning divisions city~~ shall review the plans and specifications to determine compliance with the minimum requirements set forth herein.
- a. For minor repairs only, ~~with a value of less than \$2,500.00~~, the application for permit shall include a drawing prepared by a licensed contractor with the legal description of the property signed by the owner or contractor as owner's representative. The dollar threshold for minor repairs shall be a value of less than \$2500 or as established by resolution of the city council.
- b. For all other seawall and revetment repair, alteration, reconstruction, or replacement, the application for permit shall include two copies of scaled plans and specifications signed and sealed by a professional engineer registered in the State of Florida including the legal description of the property.
- c. Seawall construction shall be ~~subject to inspections inspected~~ by the city ~~manager or his designee or the city manager or may accept inspections~~ by a licensed Florida professional engineer in lieu of city staff, at the discretion of the building official, for the purpose of determining conformance of

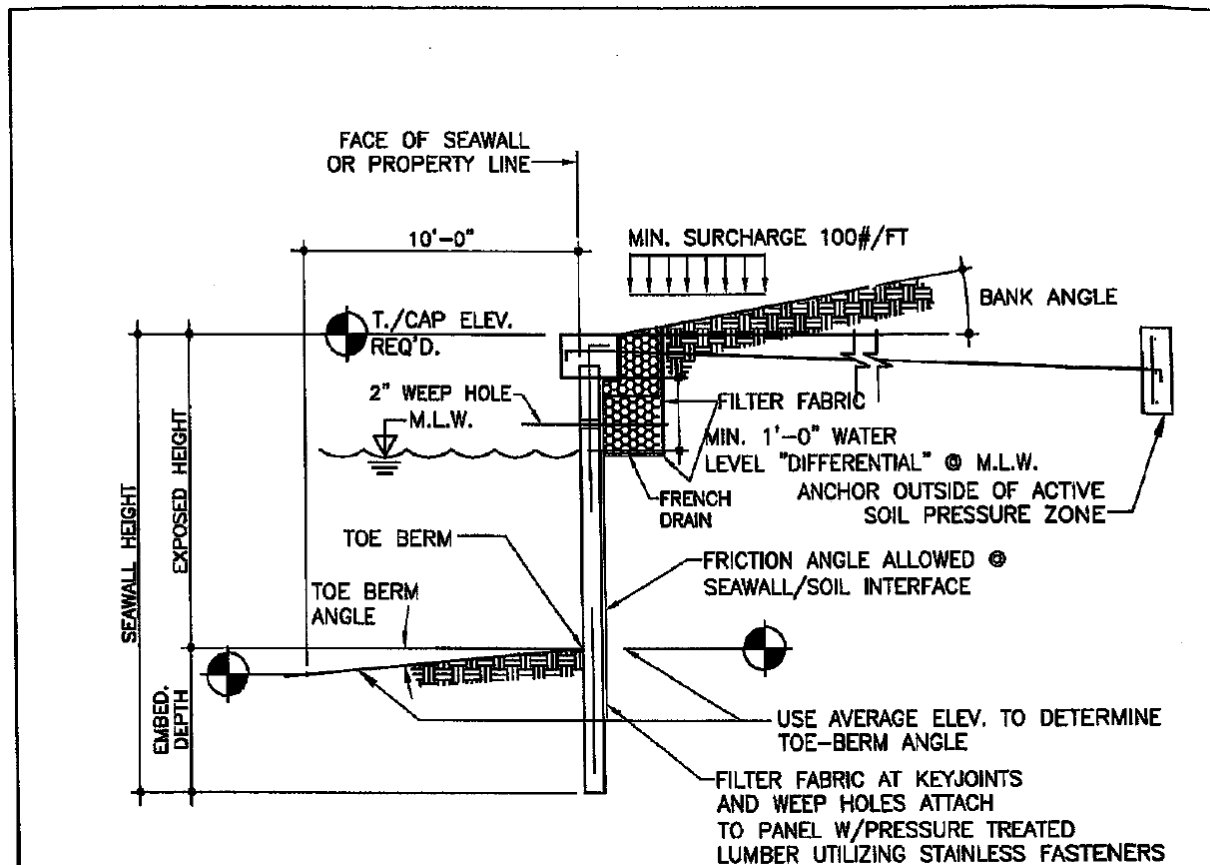
seawall construction with the permitted plans and this division. A schedule of quality control and inspections is given in the technical specification.

- d. ~~Note there are State of Florida environmental regulations (F.A.C. ch. 40E-4) governing seawall and revetment work including exemptions to the state permit process. It remains the responsibility of the~~ The property owner ~~where seawall and revetment work is to be performed is responsible for complying with to comply with~~ all state and federal regulations governing the work, ~~including . Additionally, the property owner shall comply with state and federal regulations concerning vegetation affected by the work, including the disturbance and~~ restoration of mangroves.
- (11) Existing seawall construction does not coordinate with location of perpendicular platted property lines throughout the city. Accordingly, a burden exists on the property owners to cooperate during seawall repair or replacement. If the permitted seawall or revetment repair or replacement would require entry onto neighboring properties to properly locate and construct the seawall expansion, joint tie-in or return wall, the owner seeking the repair or replacement should seek permission from the neighboring property owner. If said neighbor owner consents to entry, a temporary construction easement or license should be obtained of approximately six feet by 17 feet adjacent to the seawall and common boundary to accommodate the construction. The property owner undertaking the repairs shall be responsible for restoring the neighboring property to pre-work condition prior to receipt of a certificate of completion. These repairs shall be completed prior to final inspection. ~~Depending on job site conditions, or if the adjoining property owner does not consent to entry, the~~ The seawall to be replaced or repaired shall include a return wall ~~if the adjoining property owner does not consent to entry or if the building official determines that job site conditions warrant a return wall.~~
- (12) Seawalls shall include adequate provision for pipe penetrations through the seawall as required by the city. The seawall design details for such penetrations shall be provided as part of the engineered design seawall plans for building permit.

*****Editor's Note to MuniCode: replace poor quality seawall diagrams with the better quality versions, below *****

[\[Remainder of page is intentionally blank\]](#)

1 **FIGURE 1**



SHEET PILE WALL SECTION

SOIL PARAMETERS:

DRY DENSITY..... PCE.
 SATURATED DENSITY..... PCE.
 BUOYANT DENSITY..... PCE.
 ANGLE OF INTERNAL FRICTION = DEGREES (ANGLE OF REPOSE).
 SOIL SEAWALL FRICTION ANGLE = DEGREES.

SITE PARAMETERS:

EXPOSED HEIGHT..... FEET.
 ANCHOR LOCATION..... FEET.
 BANK ANGLE..... DEGREES.
 TOE-BERM ANGLE..... DEGREES.
 SURCHARGE..... PSF.
 LAG..... FT.



CERTIFICATE OF AUTHORIZATION NO. 27322
 12530 Professional Park Drive, Suite 7
 FORT Myers, FL 33913
 PHONE: (239) 939-1414
 FAX: (239) 278-4289

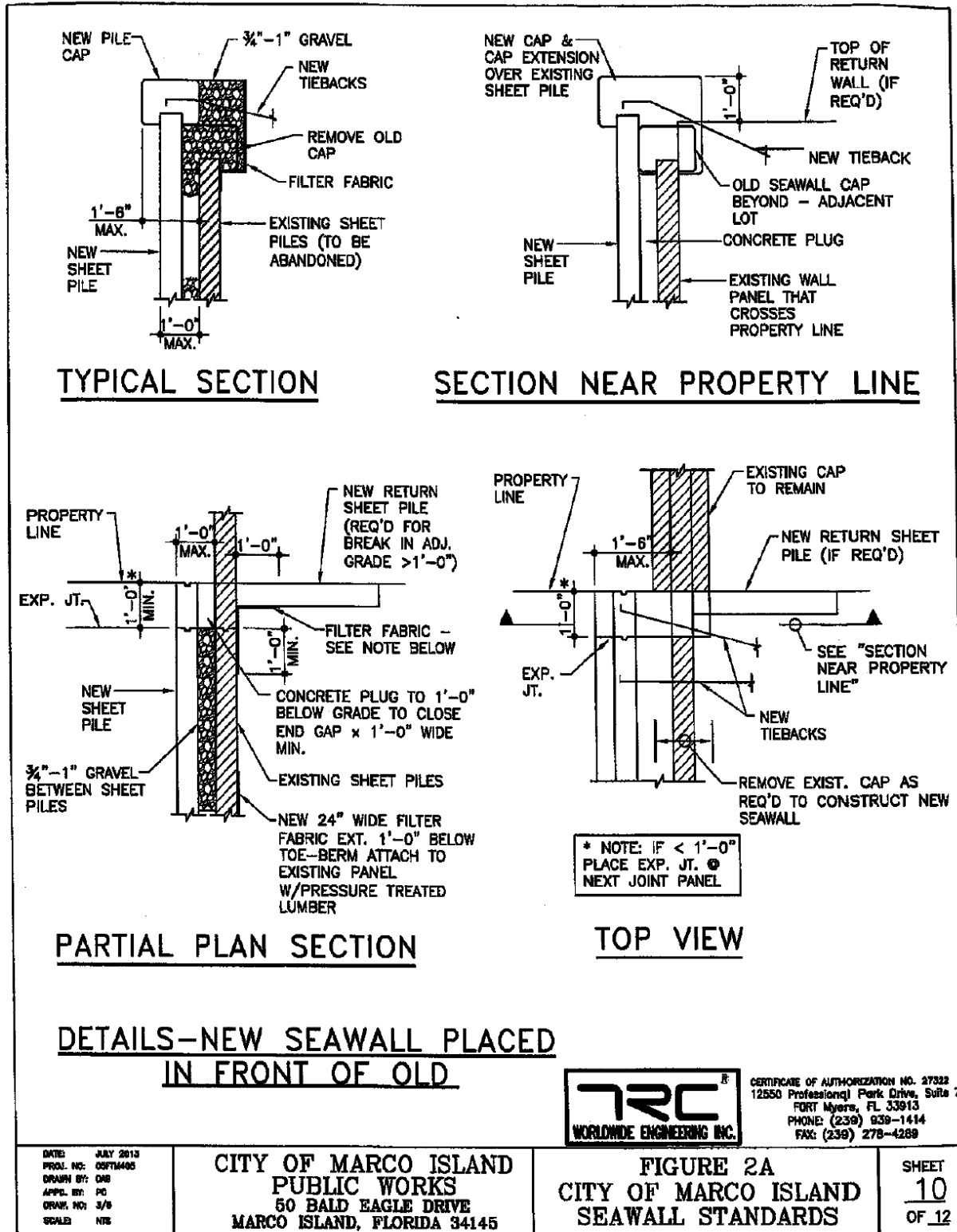
DATE: JULY 2013
 PROJ. NO: 05PTMA03
 DRAWN BY: DEF
 APPD. BY: PC
 DRAW. NO: 1/5
 SCALE: NTS

CITY OF MARCO ISLAND
PUBLIC WORKS
 50 BALD EAGLE DRIVE
 MARCO ISLAND, FLORIDA 34145

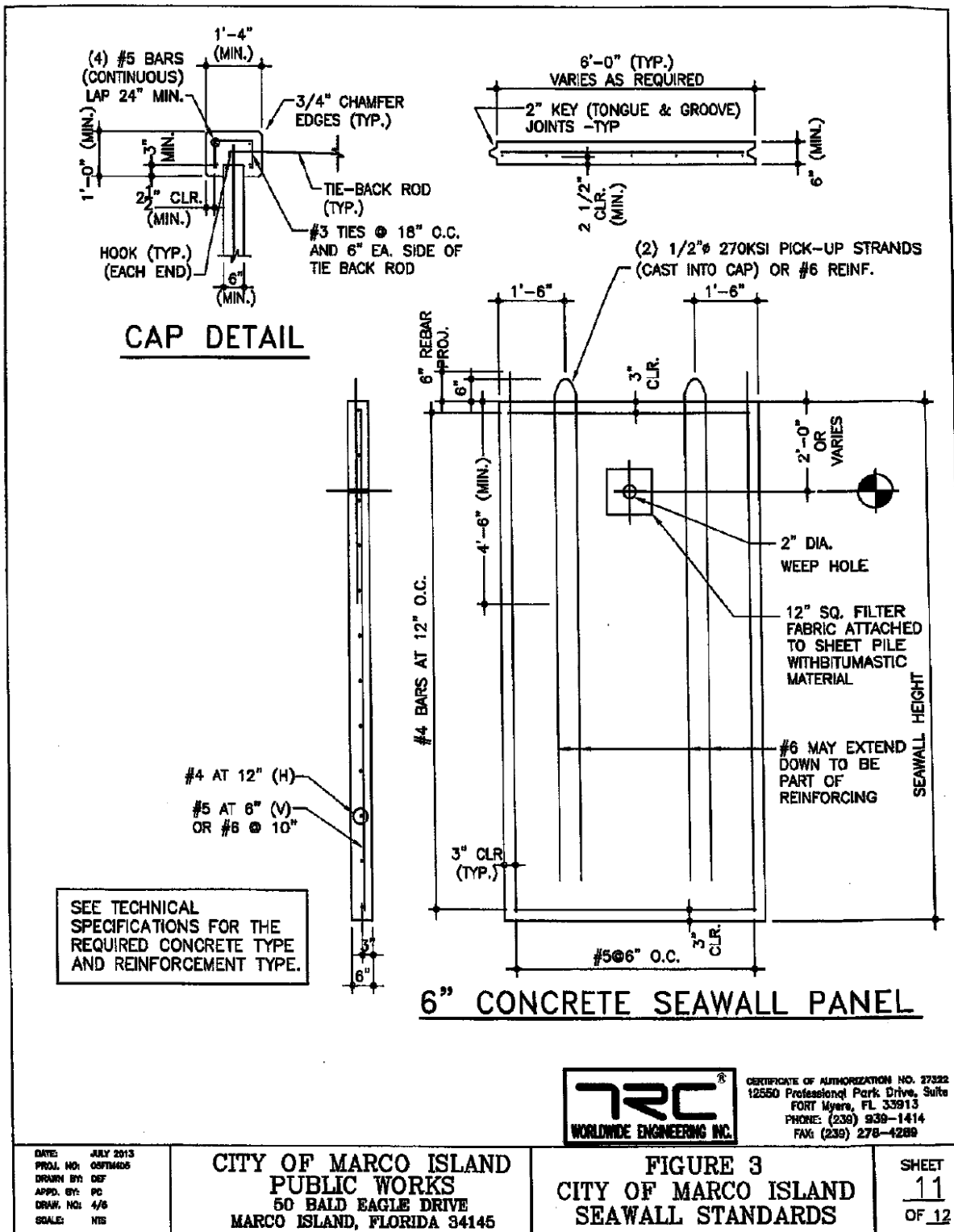
FIGURE 1
CITY OF MARCO ISLAND
SEAWALL DESIGN CRITERIA

SHEET
8
 OF 12

1 FIGURE 2A



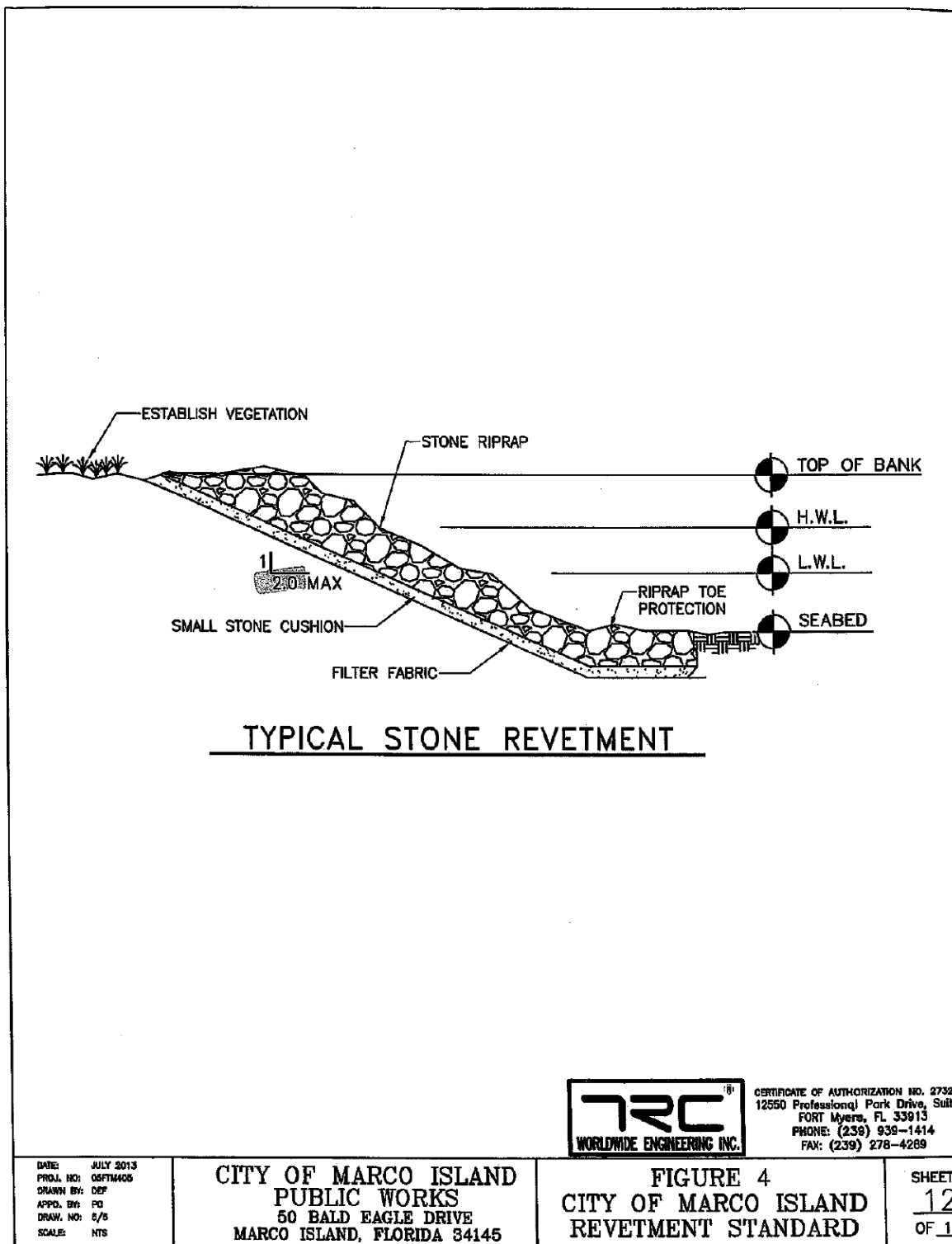
1 **FIGURE 3**



2

3

1 FIGURE 4



2

1 **Sec. 6-86. Other restrictions.**

2 It shall be unlawful to place an in-ground swimming pool or retaining wall waterward of seawall anchors or
3 within 15 feet of an existing seawall. Property owners are cautioned not to plant trees near the seawall because of
4 the possibility of damage to the wall by the root system.

5 **Sec. 6-87. Manufacture of precast seawall panels on vacant lots.**

6 Manufacture of seawalls and marine construction activities may be undertaken subject to all applicable rules
7 in this code~~the Code of Ordinances~~, and subject to the specific requirements of ~~Code~~ section 30-793 (construction
8 temporary use permit).

9 * * *

11 **ARTICLE IV. ADMINISTRATIVE CONSTRUCTION CODE**

12 * * *

13 **Sec. 6-112. Penalties.**

14 Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 14
15 of this code. If any person, firm, corporation, or other legal entity whether public or private, shall fail or refuse to
16 obey or comply with, or violates, any of the provisions of this division, such person, firm, corporation, or other legal
17 entity whether public or private, upon conviction of such offense, shall be punished by a fine not to exceed \$500.00
18 or by imprisonment not to exceed 60 days in the county jail, or both, in the discretion of the court. Each day of
19 continued violation or non~~compliance~~ shall be considered as a separate offense. In addition, any person, firm,
20 corporation, or other legal entity whether public or private, convicted under the provisions of this section shall pay
21 all costs and expenses involved in the case.

22 **Secs. 6-113—6-140. Reserved.**

23 **ARTICLE V. OUTDOOR LIGHTING**

24 **Sec. 6-141. Definitions.**

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

29 *Floodlight* means an artificial light source designed to give direct and/or reflective illumination over a large
30 area. Vehicular parking lighting sources, wall packs, and security/surveillance lights shall be considered as floodlights.
31 Also see *Uplighting*.

32 *Footcandle*. One footcandle is the amount of illumination provided by a light source of one international candle
33 at a distance of one foot from the light source.

34 *Glare* means a sensation of brightness within the visual field that causes annoyance, discomfort, or loss in
35 visual performance and visibility.

36 *Hood*. See *Shield*.

1 *International candle or candle power.* One international candle is the unit of luminous intensity as established
2 by standard light sources as maintained by the U.S. Bureau of Standards. This is called more commonly one candle
3 power.

4 *Luminaire* means a device or fixture containing a light source and means for directing and controlling the
5 distribution of light emitted therefrom.

6 *Shield* means an opaque device or fixture intended to direct and restrict the distribution of light emitted from
7 a light source.

8 *Snook light* is a regional term for a light source, usually attached to a dock facility or seawall, which is
9 illuminated for the purpose of attracting fish.

10 *Uplighting* means a lighting technique in which sources of illumination are strategically located to light up
11 features such as building facades, signs, and trees.

12 **Sec. 6-142. Penalties.**

13 (a) ~~Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 14~~
14 ~~of this code. Pursuant to F.S. § 162.22, a person found to be in violation of this division may be charged with a~~
15 ~~fine, not to exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days.~~
16 ~~Each violation or noncompliance shall be considered a separate and distinct offense. Further, each day of~~
17 ~~continued violation or noncompliance shall be considered as a separate offense.~~

18 ~~(b) Violation of this division may also be prosecuted before the code enforcement board.~~

19 **Sec. 6-143. Purpose and intent of article.**

20 It is the intent and purpose of this ~~division article~~ to protect and promote the health, safety and welfare of the
21 citizens of the city, and the public at large, by providing reasonable standards for the installation and maintenance
22 of outdoor lighting. All outdoor lighting shall be installed and maintained in such a manner and be so shielded that
23 the cone of light shall fall substantially within the perimeter of the property. Through the use of shielding and
24 limitations upon intensity, ambient light travelling outward and upward shall be reduced to the greatest extent
25 possible without unduly interfering with the intent and purpose of the outdoor lighting. It is further intended that
26 this ~~division article~~ shall be liberally construed to effect such intent and purpose.

27 **Sec. 6-144. Exemptions.**

28 (a) *Publicly owned facilities; street lighting.* Lighting at publicly owned facilities and street lighting shall be exempt
29 from the provisions of this ~~division article~~. Applicable state department of transportation design standards and
30 public facility design standards shall be utilized in the placement, maintenance, and regulation of lights at
31 public facilities and in public streets.

32 (b) *Existing tennis facilities.* Multiple-court tennis facilities existing at the date of adoption of the ordinance from
33 which this ~~division article~~ is derived are permitted up to 5.0 footcandles of illumination to fall on adjoining RSF
34 and RMF zoned properties until 10:00 p.m.

35 **Sec. 6-145. Maximum lighting levels.**

36 (a) Regulation of the intensity and glare of outdoor lighting shall be as follows:

37 (1) No lighting source shall cause more than 1.0 footcandle of illumination to fall on adjoining residential
38 single-family (RSF) zoned property.

39 (2) No lighting source shall cause more than 1.0 footcandle of illumination to fall on adjoining residential
40 multifamily (RMF) zoned property.

- (3) No lighting source shall cause more than 10.0 footcandles of illumination to fall on any adjoining commercially (C) zoned property.
- (4) No lighting source shall cause more than 1.0 footcandle of illumination to fall on any public right-of-way in residential areas.
- (5) No lighting source shall cause more than 10.0 footcandles of illumination to fall on any public right-of-way in commercial areas.
- (b) Outdoor lighting on property abutting lands subject to sea turtle nesting activities is further regulated pursuant to section 3.4.02(B) division 3.10 of the county land development code (Sea Turtle Protection); in the event of conflict, the stricter regulation shall prevail.

Sec. 6-146. Shielding.

- (a) All outdoor lighting (except public recreational lighting and sign lighting) shall be shielded and directed according to the following schedule:

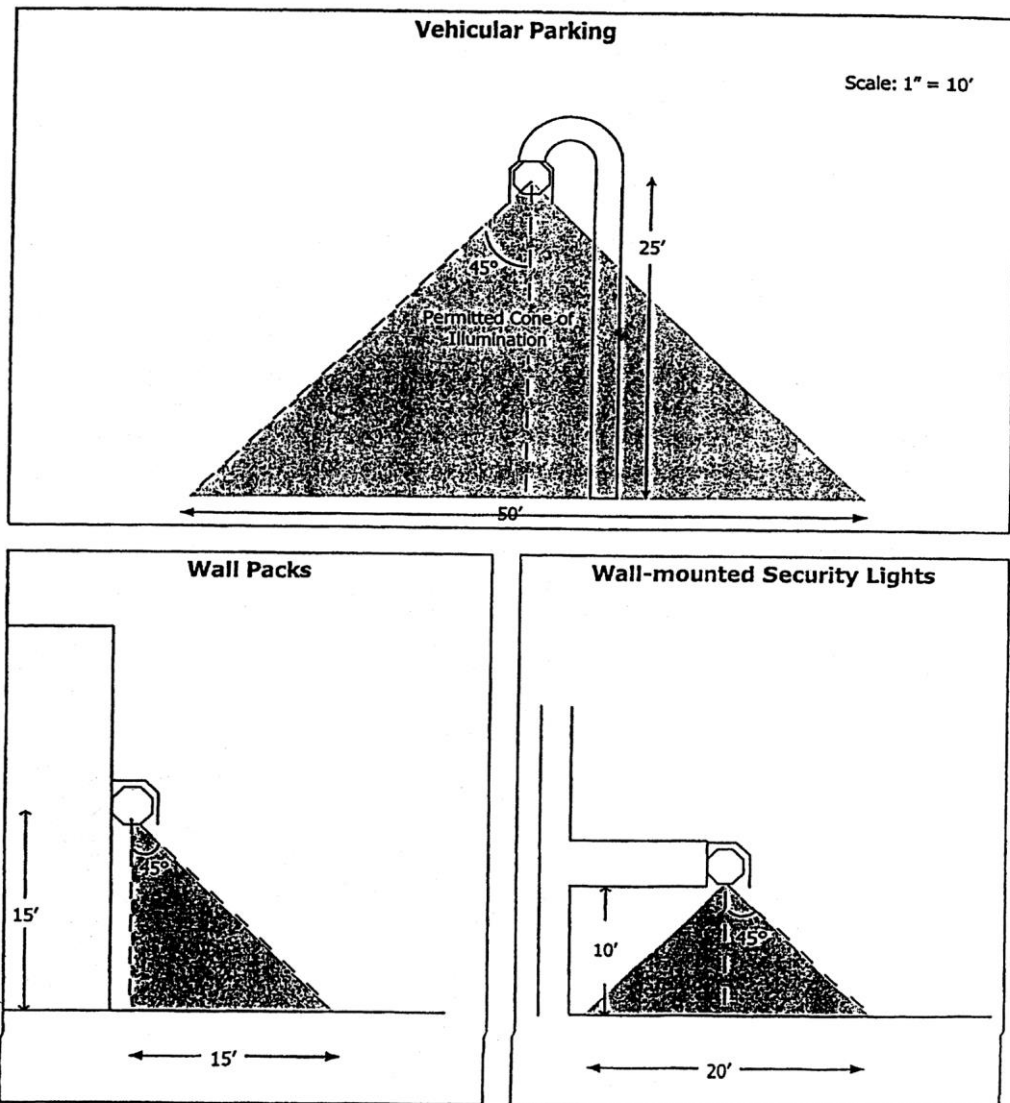
Wattage of Each Light Source	Shielding Required	Directed Downward
Up to 50 watts	No	No
50 to 100 watts	Yes	No
Over 100 watts	Yes	Yes
Floodlights	Yes	Yes
Snook lights	Yes	Yes
Uplighting	Yes	No

Uplighting shall be shielded in such a manner that no illuminated part of the light source shall be visible from any adjoining public right-of-way or property line.

- (b) ~~Except for uplighting, light sources which are required to be shielded shall be shielded~~ All light emitted from a shielded fixture shall in such a manner that no light emitted from the light source shall travel upward or horizontally. In addition, light sources required to be directed downward shall be so directed such that the cone of light ~~emitted from the source of illumination~~ shall not exceed ~~an included angle of 90 degrees (45~~ degrees as measured from the midpoint of the light source to the ground). Refer to the exhibits at the end of this ~~division article~~ for illustrations of shielding and angle measurements.
- (c) Illuminated signage shall be regulated pursuant to article VI of the division 2.5 of the county chapter 30, land development code (Signs).

Sec. 6-147. Measurement of intensity and glare; changes to standards.

- (a) Light intensity and glare shall be measured in footcandles at the property line with a direct reading from a portable light meter. The meter shall be factory tested and calibrated.
- ~~(b) The city council may change, delete or add to the permitted levels of illumination by resolution.~~



Vehicular Parking, Wall Packs, Wall-mounted Security Lights

Secs. 6-148—6-170. Reserved.

ARTICLE VI. POST-DISASTER REDEVELOPMENT PLAN

Sec. 6-171. Purpose and intent.

It is the intent of the city to identify opportunities to mitigate future damages from major or catastrophic disasters through the prudent management and enforcement of community reconstruction. To further this intent, the city will make every effort to develop its capacity to identify and coordinate various post-disaster recovery and reconstruction resources while at the same time ensuring maximum local control over the recovery and reconstruction process.

Following a major or catastrophic disaster, sufficient time must be provided to conduct damage assessments, classify and categorize individual structure damage, and evaluate the effectiveness and enforcement of the existing building code. It is further the intent of the city to allow rebuilding and reconstruction in an orderly manner by controlling the issuance of building permits, development orders, development permits and site plan reviews in order to manage the location, timing, and sequence of reconstruction and repair.

Sec. 6-172. Definitions.

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

Building value means the latest assessment of all improvements on a parcel of land as recorded in the Collier County Property Appraiser's file before the structure was damaged.

Catastrophic disaster is defined as an event that overwhelms local response capabilities and will require mutual aid, state response, federal disaster relief programs, and activation of the state and federal response plans.

~~*Chief building official* means the chief of building services who is hereby designated by the city council to implement, administer and enforce the building permit moratorium provision of this division.~~

Current regulatory standards for new construction includes consideration of the following: Density, floodplain management, building code, land development code and comprehensive plan requirements, site location, and parking requirements.

Damage assessment means a systematic procedure for evaluating damage to public and private property, based on current replacement cost. The assessment may be used to determine if the damaged area can qualify for federal or state disaster assistance.

Damage assessment team means a local group of qualified individuals charged with providing an initial assessment of damage to private and public properties in the aftermath of a significant natural or man-made event.

Development has the meaning given in section 30-10.

Destroyed structure means a structure that is total loss or damaged to such an extent that repairs are not technically or economically feasible. The indicator for this category is if the cost to repair exceeds 50 percent of the replacement cost at the time of damage or destruction.

Development permit has the meaning given in section 30-10.

~~*Development order* has the meaning given in section 30-10. means any order, permit, determination, or action granting with conditions an application for any final development order, building permit, temporary use permit, temporary construction and development permit, spot survey, electrical permit, plumbing permit, boat dock permit, septic tank permit, right-of-way permit, construction approval for infrastructure (including water, sewer, grading, paving) development of regional impact (DRI) development order, zoning ordinance amendment, comprehensive plan amendment, flood variance, coastal construction control line variance, vegetation removal permits, agricultural clearing permits, site development plan approval, subdivision approval (including plats, plans, variances and amendments), rezoning PUD amendment, certification, conditional use, variance, or any other official action of the city having the effect of permitting development as defined in the land development code.~~

Intensity means the gross floor area, number of residential units, height, and amount of land occupied by buildings and roofed structures on a property.

Major damaged structure means a structure that can be made habitable with extensive repairs. Damage may include foundation, roof structure, and major structural components. The indicator for this category is if the cost to repair is greater than 20 percent and up to and including 50 percent of the replacement cost at the time of damage.

1 *Major disaster* is defined as an event that may require mutual aid, state response assistance and federal
2 disaster relief programs.

3 *Minor damaged structure* means a structure that can be made habitable in a short period of time with minimal
4 repairs. Damages may include doors, windows, floors, roofs, central air conditioners, and other minor structural
5 damage. The indicator for this category is if the cost to repair is 20 percent or less than the replacement cost at the
6 time of damage.

7 *Minor disaster* means a structure that is likely to be within the response capabilities of local government and
8 to result in only a minimal need for state or federal assistance.

9 *Nonconforming* means an aspect of a structure that does not comply with a current regulation in the land
10 *development code but was lawfully constructed under previous regulations.*

11 *Replacement cost* means the actual cost to repair, reconstruct, rebuild or replace a damaged structure. It will
12 not include the following parts of a structure or items not considered a permanent part of the structure: building
13 plans, surveys, permits, sidewalks, pools, screens, sheds, gazebos, fences, furniture and carpeting. For purposes of
14 this division, the replacement cost will be compared to the structure's replacement value to determine the percent
15 of the structural damage.

16 *Replacement value* of a structure means the market building value contained in the Collier County Property
17 Appraiser's File multiplied by one of the following factors: 120 percent in a major disaster; 150 percent in a
18 catastrophic disaster. The structure's owner can opt to establish replacement value by hiring a state licensed
19 contractor to make such determinations rather than use the formula stated in this definition.

20 *Structure* means anything constructed or erected requires a fixed location on the ground, or attached to
21 something having a fixed location on or in the ground.

22

23 **Sec. 6-173. Recovery coordination.**

24 Recovery coordination shall follow policies and procedures contained in the Comprehensive Emergency
25 Management Plan (CEMP), and the Hurricane Action Plan (HAP). Local recovery efforts will be coordinated with
26 Collier County Emergency Management based on existing mutual aid and other interlocal agreements.

27 **Sec. 6-174. Post-disaster redevelopment priorities.**

28 The following priority sequence will govern community rebuilding and redevelopment efforts:

- 29 (1) Re-establishing services that meet the physical and safety needs of the community to include: water,
30 food, ice; medical care; emergency access; continuity of governmental operations; communications;
31 security of residents and possessions from harm; health, and temporary housing.
- 32 (2) Re-establishing infrastructure necessary for community reconstruction such as: electrical distribution
33 systems; potable water and sanitary sewer service; restoring medical and health care; rebuilding
34 damaged stormwater and transportation facilities; and housing facilities.
- 35 (3) Restoring the community's economic base per accepted econometric principles and practices.
- 36 (4) Improving the community's ability to withstand the effects of future major or catastrophic disasters.
- 37 (5) Re-opening or re-establishment of public beach access points.

38 **Sec. 6-175. Essential service and facility restoration priorities.**

39 Priorities for power, water and sewerage treatment, and communication restoration will be in accordance with
40 existing protocols established by the individual utilities and any terms and conditions contained in executed

franchise agreements with the city. All protocols are intended to emphasize health, safety and essential community services as priorities.

Sec. 6-176. Post-disaster debris clearance and disposal strategies.

The following policies will govern emergency debris clearance, removal and disposal strategies:

- (1) Clearing debris from roads and streets beginning with arterials, then local collectors, then local streets.
- (2) Priorities will be to clear roadways and bridges to provide for emergency operations, to provide access to critical public service locations, and access to designated staging areas and distribution centers supporting disaster relief efforts.
- (3) City parks and other public properties will be used to store debris on an interim basis.

The city shall have in place executed contracts with qualified debris management firms to effectuate the implementation of this section in the aftermath of a disaster event.

Sec. 6-177. Determination of damage and buildback policy.

(a) *Determination of damage.* The primary task of the local damage assessment team is to identify structures which have been damaged as a result of the disaster. The city damage assessment team will catalogue and report to the ~~chief of~~ building official those structures which have:

- (1) Been destroyed;
- (2) Received major damage; and
- (3) Received minor damage.

The chief building official will then, as may be necessary, inspect the damaged structures and place each structure in one of the damage categories provided for by this ~~division~~article. The assessment will also serve as a basis for determining if federal and state disaster declaration are warranted.

(b) *Buildback policy.* Structures which have been damaged by natural or manmade disasters to the extent that the cost of their reconstruction or repair exceed 50 percent of the replacement value of the structure may be reconstructed, but in accordance with the legally documented actual use, ~~intensity~~density, ~~size~~, style and type of construction ~~including square footage~~ existing at the time of destruction, thereby allowing such structures to be rebuilt or replaced to the ~~size~~intensity, style, and type of their original construction, ~~including their original square footage~~; provided, however, that the affected structure, as rebuilt or replaced, complies with all applicable federal and state regulations and local regulations which do not preclude reconstruction otherwise intended by this policy. In accordance with this policy:

- (1) Structures damaged up to and including 50 percent of their replacement value at the time of disaster can be rebuilt to their original conditions, with repair work subject to current building and life safety codes.
- (2) Structures damages by the disaster by more than 50 percent of their replacement value at the time of disaster can be rebuilt to their original square footage and density, provided that they comply with:
 - a. Federal requirements for elevation above the 100-year flood level;
 - b. The ~~city~~ building code requirements for flood proofing;
 - c. Current building and life safety codes;
 - d. Marco Island and State of Florida Department of Environmental Protection Coastal Construction Control Line regulations;
 - e. Applicable disability access regulations of the Americans with Disabilities Act (ADA); and

- 1 f. Any required city zoning or other development regulations with the exception of existing ~~density~~
2 ~~or intensity requirements established~~, unless compliance with such zoning or other development
3 regulations would preclude reconstruction otherwise intended by this buildback policy as
4 determined by the city manager in paragraph (3), below, or otherwise by resolution of the city
5 council.
- 6 (3) To minimize the need for individual variances or compliance determinations prior to reconstructions, the
7 regulations of the ~~city~~ land development code affecting setbacks, parking, buffering and open space may
8 be modified. City manager ~~or designee~~ may require documentation as to the actual uses, ~~densities~~, and
9 intensities existing prior to the disaster event and at the time of the original construction through such
10 means as photographs, diagrams, plans, affidavits, and permits prior to authorizing modifications to the
11 above requirements. These requirements may be modified as follows:
- 12 a. Front, rear, side or water body setbacks may be modified to permit the reconstruction of existing
13 structures that are nonconforming with regard to a specific setback so long as the reconstruction
14 will not result in an increase in the height of the structure as defined by the land development
15 code; and the reconstruction will not result in a further diminution of the setback. City manager ~~or~~
16 ~~designee~~ may approve bay windows, chimneys and similar architectural features that may
17 encroach further into the setback provided the encroachment does not protrude beyond the
18 existing overhang of the building.
- 19 b. Front, rear, side, or water body setbacks may be modified to permit the construction of an an
20 ~~handicapped~~ access appurtenance for disabled persons to any reconstruction.
- 21 c. Front, rear, side or water body setbacks may be modified to allow for the replacement of stairs or
22 decking that provides access into any reconstructed dwelling unit.
- 23 ~~d.~~ Front, rear, side or water body setbacks may be modified to legitimize minor existing
24 encroachments in setbacks discovered at the time of reconstruction.
- 25 ~~e. Buildings or structures that are not in compliance with current setback regulations and which can~~
26 ~~be proven to have been permitted prior to the adoption of such regulations shall be considered~~
27 ~~legally nonconforming and may also be reviewed by the city manager or designee under this~~
28 ~~section.~~
- 29 f. A diminution of the front yard setbacks on a collector or arterial roadway shall be consistent with
30 future road widening requirements.
- 31 (4) The city manager ~~or designee~~ is authorized to modify the parking requirements for nonresidential uses
32 as established by the ~~city~~ land development code. In no instance shall the parking requirements be
33 modified where the reconstruction involves the increase ~~of density or intensity~~ of use. Such
34 requirements may be modified under the following circumstances:
- 35 a. To improve ingress and egress to the site in accordance with the county access management plan.
- 36 b. To eliminate or reduce the instances where conditions require that parked vehicles back out onto
37 the public streets.
- 38 c. To allow for the provision of ~~handicapped disabled permit~~ parking spaces in accordance with the
39 ~~city land development building~~ code.
- 40 (5) The city manager ~~or designee~~ is authorized to modify the buffering or open space requirements of the
41 land development code when such modifications ~~and reconstruction~~ will:
- 42 a. Accommodate modifications to existing parking or additional parking.
- 43 b. To accommodate changes as a result of reconstruction.
- 44 In no instance shall buffering or open space areas be eliminated.

- (6) Damaged structures ~~may shall~~ not be reconstructed ~~at to a more-greater intense-intensity use or higher density than originally legally constructed prior to the disaster permitted by the comprehensive plan and land development code. No redevelopment at a higher density or more intense use will be permitted~~ unless appropriate zoning, development review, building permit and other applicable land development approvals are granted through normal processes as set forth in the land development code.

Sec. 6-178. Moratoria.

- (a) *Conditions for declaration.* City council may, ~~pursuant to F.S. ch. 252,~~ declare a moratorium under the following conditions in order to prioritize the repair and reconstruction of damaged critical public facilities immediately needed for public health, safety and welfare purposes.

* * *

(7) *Outstanding development order moratorium.*

- a. All development orders and permits as defined herein issued prior to the disaster will be suspended for a minimum period of 30 days following the expiration of the initial building moratorium. Suspension of the development order means no development permit will be issued under the development order. Suspension o the development permit means that no ~~development order~~ work under the development permit is authorized and that no ~~development order~~ inspections ~~by the community development department under the development permit~~ will be performed during the moratorium. Applications for development orders and permits suspended under this section will be adjusted accordingly to reflect the time period covered by this 30-day moratorium.
- b. The city reserves the right to reinspect any and all ~~development order~~ work in place under the development permit prior to the disaster to verify that the work in place was not damaged during the disaster. In the event that the city determines that development ~~order permit~~ work in place was damaged during the disaster or suspects that damage occurred, the developer will be responsible for rework, removal, retesting, and uncovering work to facilitate inspection so that compliance with the development order documents and the land development code can be ensured.

* * *

Sec. 6-179. Emergency repairs and emergency permitting.

(a) *Emergency repairs.*

- (1) No construction or reconstruction activity may be undertaken without a building permit; while a building moratorium is in effect; however, emergency repairs necessary to prevent injury, loss of life, imminent collapse of a structure or other additional damage to the structure or its contents will not be subject of the temporary moratoria provided for by this division and shall not require individual building permits. Such emergency repairs shall include but not be limited to:
- a. Temporary roof repairs with plywood or plastic sheeting to make structures habitable or to prevent continuing damage due to rain and wind to building interiors and exteriors;
- b. Covering exterior wall openings with plywood or plastic sheeting;
- c. Repairs to interior ceilings and sheetrock to make buildings habitable or to drain accumulated flood waters;
- d. Repairs to steps; and
- e. Temporary stabilization measures to avoid imminent building or structure collapse.
- (2) Emergency repairs to buildings or infrastructure that house the following organizations or activities shall not be subject to any temporary moratorium because of their necessity to protect the public health and

safety by providing electrical power, potable water, waste water, and communications facilities; emergency stabilization of roadways; police, fire and medical facilities; essential governmental facilities; response/recovery centers and distribution centers; debris removal activities; and stabilization or removal of structures about to collapse.

(3) Nothing in this division shall be construed to suspend state and federal permit regulations.

(b) *Emergency permitting.* An emergency permitting system will be established by the most recent building and construction administrative codes to assure the quality of the reconstructed buildings and structures, and to implement the city's buildback policy as set forth herein.

* * *

Sec. 6-183. Penalties.

(a) ~~Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 14 of this code. Any person, firm, company or corporation who fails to comply with or violates any section of this division~~article, or the emergency measures which may be effective pursuant to this division, is guilty of a misdemeanor of the second degree, and upon conviction for such offense, may be punished by a fine not to exceed \$500.00 or by imprisonment not to exceed 60 days in the Collier County Jail, or both, in discretion of the court hearing the case. Each day of continued noncompliance or violation will constitute a separate offense. In addition to this penalty, any construction licensee of the city or the state who violates any provision of this divisionarticle or the emergency measures which are effective as a result of this divisionarticle, will be charged with said violation and have the matter heard before the appropriate city board, state administrative body, or court of law.

~~(b) Nothing contained herein prevents the city from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any failure to comply with, or violation of, this division or the emergency measures which may be made effective according to this division. Such other lawful action includes, but it is not limited to, an equitable action for injunctive relief or an action at law for damages.~~

ARTICLE VII. HURRICANE PREPAREDNESS

Sec. 6-1. ~~Hurricane preparedness property maintenance~~Title.

~~(a) Title.~~ This article shall be referred to as the "Marco Island Hurricane Preparedness Property Maintenance Code."

Sec. 6-2. Weather emergencies.

~~(b) Weather emergencies.~~

(1) *Declaration.* The provisions of this article apply ~~at the direction of the city manager, or upon issuance of a tropical storm or hurricane warning by the National Weather Service or National Hurricane Center said manager's designee, or upon direction of the city manager~~ in the event of other significant expected inclement weather conditions, ~~or other similar types of inclement weather warnings,~~ for any part of Collier County.

(2) *Construction sites.*

a. All construction materials, including roof tiles, within the city shall be secured, stored or removed so as not to create a safety hazard because of hurricane or tropical storm force winds, or similar inclement weather.

- 1 b. ~~Media broadcasts or notices issued by the National Weather Service or National Hurricane Center~~
2 ~~of a hurricane or tropical storm warning shall be deemed sufficient notice to the~~ The owner of real
3 property upon which construction is occurring or any contractor responsible for the construction
4 ~~to shall~~ secure, store or remove loose construction debris and loose construction materials against
5 the effects of high wind.
- 6 c. Materials stockpiled on top of any structure under construction shall be permanently installed by
7 the property owner or contractor ~~at the direction of the city manager, or said manager's designee.~~
8 However, if such installation cannot be timely completed, then the property owner or contractor
9 shall:
- 10 1. Band together the construction materials and mechanically fasten them to the top of the
11 structure in such a manner so a threat of becoming airborne during a tropical storm or
12 hurricane is not experienced;
- 13 2. Remove the construction materials from the top of the structure and mechanically tie them
14 down to the ground;
- 15 3. Remove the construction materials from the job site; or
16 4. Store the construction materials inside a protected structure.
- 17 d. Interiors of structures under construction shall be secured to prevent materials from becoming
18 airborne.
- 19 e. All debris on a construction site shall be stored in commercial containers and shall be properly
20 secured.
- 21 f. Commercial containers and portable toilets must be removed from a construction site or
22 mechanically tied to the ground.
- 23 g. Piles of dirt, sand, and stone on a construction site shall be located away from the canals, right of
24 ways, adjoining properties, swales, culverts, and inlet grates.
- 25 h. All construction materials or debris required to be secured, stored or removed shall remain so
26 ~~secure, stored or removed hereunder from the property~~ until the National Weather Service,
27 National Hurricane Center or other appropriate weather agency has removed all portions of Collier
28 County from those areas included in a hurricane or tropical storm warning, or the city manager, ~~or~~
29 ~~said manager's designee~~, lifts an inclement weather directive pursuant to this Code section/article,
30 whichever event ~~shall~~ first occurs.
- 31 i. In the event of a violation of this article, in addition to all other remedies provided ~~in this Code or~~
32 ~~otherwise~~ by law, the city may take whatever emergency action it deems necessary to secure, store
33 or remove all loose construction materials and debris, including, but not limited to, roof tiles and
34 roofing materials. In such circumstances, the city shall seek reimbursement bill the property owner
35 and/or his/her agent/contractor for all charges and expenses incurred to eliminate these potentially
36 unsafe conditions pursuant to section 14-62 by any means necessary. The securing of an outside
37 contractor to perform these services shall be deemed to be the securing of emergency services
38 and shall not require the city to utilize a competitive bid process to select a contractor. A notice of
39 violation shall be posted at the job site and mailed to the property owner or contractor. The written
40 notice shall constitute a stop work order and shall remain in effect until the bill is paid. Upon receipt
41 of payment, the building official ~~or his designee~~ shall allow resumption of work. If the bill for such
42 services remains unpaid for a period of 30 days or more, the city may record a claim of lien
43 encumbering the property and thereafter proceed according to law to enforce the lien.
- 44 j. The owner of the property and the contractor shall be jointly and severally responsible for
45 compliance with the provisions of this article.

- 1 k. The owner or contractor, ~~personally or through their agent or representative, shall have the right~~
2 ~~to may~~ appeal the decision of the city ordering the cessation of all work and appear before the
3 ~~construction~~ board of adjustments and appeals ~~pursuant to section 6-40 at a specified time and~~
4 ~~place to show cause why they should not be responsible for weather emergency code compliance.~~
- 5 (3) *Developed sites.*
- 6 a. On ~~all~~ developed property, all household furnishings including, but not limited to, furniture and
7 lawn equipment not secured by a fence or screen enclosure, shall be secured, stored or removed
8 so as to not create a safety hazard due to hurricane force winds.
- 9 b. All materials and household furnishings required to be secured, stored or removed shall remain so
10 ~~secure, stored or removed hereunder from the property at the direction of~~ until the city manager;
11 ~~or said manager's designee,~~ lifts an inclement weather directive pursuant to this ~~Code~~ section, or
12 until the National Weather Service, National Hurricane Center or other appropriate agency has
13 removed all portions of Collier County from those areas included in a hurricane or tropical storm
14 warning, whichever event occurs first.
- 15 c. ~~Media broadcasts or notice at the direction of the city manager, or said manager's designee issued~~
16 ~~by the National Weather Service or National Hurricane Center of a hurricane or tropical storm~~
17 ~~warning for Collier County shall be deemed sufficient notice to the owner of developed real~~
18 ~~property to store or secure furnishings or to remove furnishings not secured or stored from the~~
19 ~~property.~~
- 20 (c) *Penalties.*
- 21 (1) *Penalty.* The violation or failure to comply with any provision of this ~~Code article shall is punishable~~
22 ~~according to the penalties and procedures set forth in chapter 14 of this code. constitute an offense~~
23 ~~against the city. Penalties shall be assessed in accordance with section 1-14 of this Code, or its successor.~~
- 24 ~~(2) Stop work order; order to abate. Additionally, where a violation related to any construction or condition~~
25 ~~for which a permit has been issued; or is subject to issuance, the violation may be enforced by the~~
26 ~~building official or designee through the issuance of a stop work order in accordance with the procedures~~
27 ~~set forth in the Florida Building Code; or an order to repair, restore or demolish the work; to vacate the~~
28 ~~premises; or otherwise to abate the violation enforceable.~~
- 29 ~~(23) Nuisance.~~ Any violation of this article is subject to abatement as a public nuisance.
- 30 ~~(4) The provisions of this article are cumulative with and in addition to any other remedy provided by law.~~

Chapter 8 BUSINESSES

ARTICLE I. IN GENERAL

Secs. 8-1—8-30. Reserved.

ARTICLE II. DISPLAY AND SALE OF TOBACCO PRODUCTS

Sec. 8-31. Intent.

This article is intended to prevent the sale and delivery of tobacco products to persons under the age of 18 by regulating the commercial marketing and placement of such products. This article ~~shall not be interpreted or construed to does not~~ prohibit the sale or delivery of tobacco products which are otherwise lawful or regulated pursuant to F.S. ch. 569.

Sec. 8-32. Definitions.

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

Open display unit means a case, rack, shelf, counter, table, desk, kiosk, booth, stand, or other surface that allows direct public access to the product placed therein.

Restricted access area means a physically confined area with immediate access limited to the vendor or the vendor's employee(s).

Self-service tobacco merchandising means an open display of tobacco products that the public has access to without the intervention of the vendor or employee(s) of the vendor.

Specialty tobacco store means an establishment primarily in the business of selling cigars, pipe tobacco and other tobacco products.

Tobacco products include loose tobacco leaves, and products made from tobacco leaves, in whole or in part, which can be used for smoking, sniffing, or chewing, including but not limited to cigarettes, cigars, pipe tobacco, snuff or smokeless tobacco, and chewing tobacco. Tobacco product also includes cigarette wrappers.

Vendor means any individual, sole proprietorship, joint venture, corporation, partnership, cooperative association, or other legal entity licensed as a dealer in tobacco products pursuant to F.S. ch. 569 and any employee or agent of said dealer.

* * *

Sec. ~~Penalties. 8-35. Enforcement.~~

Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 14 of this code. The provisions of this article shall be enforced by any procedure permitted by Florida Statutes.

Sec. ~~8-36. Applicability.~~

The provisions of this article shall apply to all areas of the City of Marco Island within the corporate limits of the city.

Secs. 8-~~367~~—8-50. Reserved.

ARTICLE III. SOLICITORS

* * *

Sec. 8-52. Definitions.

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

Solicitation means going to a residential property or dwelling unit without the express consent of or invitation from the owner or occupant for either (i) the sale or offer for sale of any goods, wares, merchandise, real estate (including timeshares), subscriptions, or services, or (ii) the offer of money for services of any kind, or other consideration, or the enticement or importunity thereof.

Solicitor means any person who engages in solicitation.

* * *

Sec. 8-55. Permit application; contents.

Except as otherwise provided in section 8-53, all persons before entering into or upon a residential premises within the city to engage in solicitation, shall file an application for a permit with the police department-chief or the police chief's designee and include with such application the following information:

- (1) The name, local and permanent addresses, age, race, weight, height, color of hair and eyes and any other distinguishing physical characteristics of the applicant.
- (2) A color photo identification.
- (3) The nature or purpose for which solicitations will be made, including a description of any goods, wares, merchandise, real estate, subscriptions, or services to be offered for sale.
- (4) The name, address and phone number of the business for which the solicitor will be soliciting, which customers can contact with questions and complaints.
- (5) A current copy of the county occupational license-business tax receipt applicable to the solicitor.
- (6) A statement as to whether the applicant has been convicted of any felony or misdemeanor, and if so, the nature of the offense, when and where convicted and the penalty or punishment assessed therefor.
- (7) A complete set of fingerprints of the person registering, such fingerprints to be taken by the city manager or the city manager's designee.

* * *

Sec. 8-59. Fees.

A permit application fee, which fee shall be fixed by established by resolution of the city council, shall be paid to the city manager or the city manager's designee when the application is filed. The fee shall cover the costs of a background investigation of the applicant and processing of the application.

Sec. 8-60. Revocation authorized; grounds.

Permits issued as provided by 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 conduct of the solicitation.
- (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 occurring subsequent to city issuance of the permit.
- (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.

Sec. 8-61. Notice of revocation.

Written notice of revocation of a permit issued under this article and the grounds therefor shall be mailed or delivered to a permittee at the address listed in permittee's application.

Sec. 8-62. Appeal.

Any person aggrieved by the denial of a permit or revocation of a permit shall have the right of appeal to the city council per the procedure in section 1-15 of this code. ~~Such appeal shall be taken by filing with the city manager, 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 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. 8-63. Penalties.

Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 14 of this code. ~~(a) 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 a fine not exceeding \$500.00 or imprisonment not exceeding 60 days or by both such fine and imprisonment.~~

~~(b) In addition to the penalties provided in subsection (a) of this section, any condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be abated by the city as provided by law, and each day that such condition continues shall be regarded as a new and separate offense.~~

Secs. 8-64—8-69. Reserved.

ARTICLE IV. MARCO ISLAND LAWN AND LANDSCAPE MAINTENANCE REGISTRATION REGULATIONS

Sec. 8-70. Intent and purpose.

The intent and purpose of this article is to require any person (including ~~or a~~ business entity) performing lawn or landscaping maintenance work in the city to possess minimum 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.

1 **Sec. 8-71. Definitions.**

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

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

7 *Certification* means the process of completing the state-approved course and test for fertilizer application as
8 required in F.S. § 482.1562.

9 *Commercial fertilizer applicator*, ~~except as provided in F.S. § 482.1562(9),~~ means any individual person who
10 applies fertilizer for payment or other consideration to property not owned by the ~~person~~ individual or firm applying
11 the fertilizer or their and includes the employer of the applicator, and excludes yard workers who apply fertilizer
12 only to individual residential properties using fertilizer and equipment provided by the residential property owner
13 or resident.

14 *Institutional applicator* means any person, other than a private, noncommercial or commercial applicator who
15 applies fertilizer for the purpose of maintaining turf or landscape plants. Institutional applicators shall include, but
16 shall not be limited to, owners and managers or employees of public lands, schools, parks, religious institutions,
17 utilities, industrial or business sites, and any residential properties maintained in condominium or common
18 ownership.

19 Landscaping means planting and installation of trees, lawns and other plants.

20 *Landscape architect* means an individual licensed by the state responsible for the preparation of landscaping
21 plans and design.

22 *Lawn and landscape professional* means any ~~person-individual who~~ not exempt from this article pursuant to
23 section 8-72, who engages in solicitation for the delivery of lawn, landscaping or lawn or landscaping maintenance
24 services, which may include application of fertilizer.

25 *Noncommercial applicator* means any ~~person-individual~~ other than a commercial fertilizer applicator or
26 institutional applicator who applies fertilizer on turf or landscape plants in the city, such as an individual owner of a
27 single-family residential unit.

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

30 **Sec. 8-72. Exemptions.**

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

- 32 (1) Any individual noncommercial property owner engaging in ~~lawn, landscaping or~~ lawn or landscaping
33 maintenance on one's own property;
- 34 (2) Any landscape architects licensed by the state engaging in lawn or landscaping maintenance services;
- 35 (3) Any ~~person-individual or business entity, which that~~ possesses a license from the state to apply
36 herbicides, pesticides, chemicals; ~~or and~~
- 37 (4) Any ~~individual or business entity~~ person possessing a valid specialty contractor's license from Collier
38 County 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 ~~c~~Code to provide any lawn and landscaping maintenance and services in the city without first being certified and registered with the city as a lawn and landscape professional, except as provided in this section 8-72.
- (b) Any lawn and landscaping 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 the city as a lawn and landscape professional. In addition, all business entities under contract with the city shall have at least ten percent of their staff certified and registered with the city as a lawn and landscape professional within six months of entering into a contract with the city; and at least 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.
- (c) Any lawn and landscaping maintenance or services, including fertilizer application, provided by lawn and landscape professionals within the city, shall have at least one supervisor certified 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 registered by the city as a lawn and landscape professional within one year of adoption. Any lawn and landscaping professional applying fertilizer is required to be state certified and city registered.

Sec. 8-74. Certification application; contents.

- (a) *Training and licensing.*
- (1) ~~F.S. § 482.1562 contains language regarding the limited certification of urban landscape commercial fertilizer application. Commercial f~~Fertilizer applicators, ~~as shall be~~ certified under ~~F.S. § 482.1562 that~~ section of state statute, and shall have and carry evidence of their certification in their possession at all times when applying fertilizer, ~~evidence of that certification.~~
- (2) 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 the University of Florida Extension program (or approved equivalent), ~~as well as local ordinance requirements, as amended.~~
- (b) *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 by~~ the state and ~~business being~~ registered with the city as provided herein. It shall be the responsibility of the landscape professional to complete required training, obtain certification and to register with the city.
- (1) Any ~~lawn,~~ landscaping ~~and or~~ landscape maintenance business that applies fertilizer shall register supervisors/crew leaders with the city.
- (2) Lawn and landscape professionals registering with the city as such shall:
- a. Attend and successfully complete the six-hour training program as described above.
- b. Attend and successfully complete the three-hour annual refresher course (or approved equivalent) for renewal of registration.
- c. Obtain cCertification under F.S. 482.1562 and registration pursuant to this article. shall be based on demonstrated ability, experience, and education in the following areas of competency:
- ~~1. Effects of the environment from sediment, nutrients, and pesticides moving off-site through surface or ground water.~~
- ~~2. Site design and plant selection to enhance the natural environment.~~

- 1 3. ~~— Rates and methods of applying fertilizer and irrigation that minimize negative environmental~~
2 ~~consequences.~~
- 3 4. ~~— Utilization of integrated pest management to both minimize pests and decrease chemical~~
4 ~~applications.~~
- 5 d. ~~— Illustrate an ability to apply his or her knowledge of the concepts identified herein by providing a~~
6 ~~written, detailed management plan that outlines maintenance activities to be carried out for~~
7 ~~specific locations.~~
- 8 de. Provide an initial application fee ~~of \$50.00~~ and a fee for each renewal as established by
9 resolution of the city council, which shall be used to defray the costs of the program. ~~A fee of~~
10 ~~\$15.00 shall be charged to renew certification. The application fee may be amended by~~
11 ~~resolution of the city council as may be necessary.~~
- 12 (3) ~~— The city shall provide any person who has satisfied the requirement set forth herein and paid the~~
13 ~~application fee, registration and a decal indicating the city considers that person to be a certified lawn~~
14 ~~and landscape maintenance professional.~~
- 15 (4) ~~— The registration program shall be managed and administered by the growth management department.~~
16 ~~However, the city manager or designee shall retain the authority to approve registration of any~~
17 ~~applicant for lawn and landscape registration.~~
- 18 (5) ~~— It shall be the responsibility of the landscape professional to complete required training and to register~~
19 ~~with the city.~~

20 **Sec. 8-75. Duration, renewal.**

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

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

- 28 (a) *Identification.* Every registered lawn and landscaping professional shall carry ~~his or her~~ their registration and
29 photo identification at all times while engaged in lawn or landscaping maintenance work in the city.
- 30 **(b)** The city-issued lawn and landscape professionals decal shall be displayed on every state-licensed motor vehicle
31 used by a commercial fertilizer applicator or institutional applicator, and by lawn and landscape maintenance
32 professionals when performing services within the city limits. One decal will be issued with each registration;
33 each additional decal will cost \$5.00. The decal shall be displayed prominently and in such a manner as not to
34 be obstructed.
- 35 **(c)** *Permitting.* All registered landscape professionals are required to obtain appropriate permits from the city.
- 36 (1) A minimum of one business day prior to fertilizer application within the city, the registered professional
37 must apply for an e-mail permit, free of charge, indicating the location, type of fertilizer and
38 acknowledgement that a spreader deflector will be utilized.
- 39 (2) ~~A Codes enforcement~~ code enforcement official may visit any site where fertilization is occurring and
40 stop work if a permit was not received or if improper products or methods are being employed.

Sec. 8-77. ~~Penalty, R~~evocation authorized; grounds.

~~Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 14 of this code. In addition to the penalties provided in section 1-14 of this code, R~~egistration issued under this article may be revoked by the city manager ~~or 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 this ~~Code~~code.

Sec. 8-78. Notice of revocation.

- (a) Written notice of revocation of a 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.
- (b) 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. 8-79. Appeal.

Any person aggrieved by the denial of a registration or revocation of a registration shall have the right of appeal to the city council ~~per the procedure in section 1-15 of this code. 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. 8-80. 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 registration issued under this article, and other penalties as may be imposed by the code enforcement magistrate pursuant to state law or this Code.~~

Secs. 8-80~~1~~—8-99. Reserved.

Chapter 10 CIVIL EMERGENCIES

Sec. 10-1. Definitions Reserved.

For the purpose of this chapter, an emergency is defined, as provided in F.S. ch. 252, as follows: any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

Sec. 10-2. Violations; penalties; additional remedies.

~~Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 14 of this code. Any person who refuses to comply with or violates any section of this article, or the emergency measures which may be made effective pursuant to this article, shall be guilty of a misdemeanor, and upon conviction for such offense shall be punished by a fine not to exceed \$500.00 or by imprisonment not to exceed 60 days in the county jail, or both, in the discretion of the court. Each day of continued noncompliance or violation shall constitute a separate offense. In addition, any licensee of the county or the city found guilty of violating any provision of this article, or the emergency measures which may be made effective pursuant to this article, may have his license suspended or revoked by the city council. Nothing contained in this section shall prevent the city from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.~~

Sec. 10-3. Authority to declare state of emergency.

Pursuant to F.S. ~~ch§. 252~~§. 25238, which authorizes the waiver of procedures and formalities otherwise required of political subdivisions ~~to take whatever prudent action is necessary~~ to ensure the health, safety, and welfare of the community in the event of a state of emergency, the ~~chairman~~ of the city council ~~, or the vice chairman in his absence, or the city manager in the absence of the chairman and vice chairman,~~ is hereby designated and empowered to declare a local state of emergency whenever the chair ~~she~~ shall determines that a natural or manmade disaster has occurred or that the occurrence or threat of one is imminent and requires immediate and expeditious action. In the absence of the chair, authority granted to the chair under this chapter shall pass to the vice chair and in the absence of both the chair and vice chair, to the city manager.

Sec. 10-4. Proclamation of state of emergency.

A state of emergency shall be declared by proclamation of the ~~chairman, or the vice chairman in his absence, or by the city manager in the absence of the chairman and vice chairman.~~ The state of emergency shall continue until the ~~chairman, or the vice chairman in his absence, or the city manager in the absence of the chairman and vice chairman,~~ finds that the threat or danger no longer exists and/or until an emergency meeting of a quorum of the city council can take place and terminate the state of emergency by proclamation.

Sec. 10-5. Activation of disaster emergency plans.

A proclamation declaring a state of emergency shall activate the disaster emergency plans applicable to the city and shall be the authority for use or distribution of any supplies, equipment, materials, and/or facilities assembled or arranged to be made available pursuant to such plans.

1 **Sec. 10-6. Emergency measures.**

- 2 (a) In addition to any other powers conferred by law, upon the declaration of a state of emergency pursuant to
3 this ~~article~~chapter, the chairman, ~~or the vice-chairman in his absence, or the city manager in the absence of~~
4 ~~the chairman and vice-chairman~~, may order and promulgate all or any of the following emergency measures
5 to be effective during the period of such emergency in whole or in part, and with such limitations and
6 conditions as ~~he~~the chair may deem appropriate to protect the health, safety and welfare of the community:
- 7 (1) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and
8 combustibles.
- 9 (2) Establish curfews, including but not limited to the prohibition of or restrictions on pedestrian and
10 vehicular movement, standing and parking, except for the provision of designated essential services,
11 such as fire, police, emergency medical services and hospital services, including the transportation of
12 patients, utility emergency repairs and emergency calls by physicians.
- 13 (3) Utilize all available resources of the city government as reasonably necessary to cope with the disaster
14 emergency.
- 15 (4) Declare certain areas off limits to all but emergency personnel.
- 16 (5) Make provisions for availability and use of temporary emergency housing and emergency warehousing
17 of materials.
- 18 (6) Establish emergency operating centers and shelters in addition to or in place of those provided for in the
19 city's emergency plan.
- 20 (7) Declare that during an emergency it shall be unlawful and an offense against the city for any person to
21 use the fresh water supplied by the county or local water company for any purpose other than cooking,
22 drinking or bathing.
- 23 (8) Declare that during an emergency it shall be unlawful and an offense against the city for any person
24 operating within the city to charge more than the normal average retail price for any merchandise,
25 goods, or services sold during the emergency. The average retail price as used in this subsection is
26 defined to be that price at which similar merchandise, goods, or services were being sold during the 90
27 days immediately preceding the emergency or at a markup which is a larger percentage over wholesale
28 cost than was being added to wholesale cost prior to the emergency.
- 29 (b) Preceding or during the emergency, the chair, ~~or in the chair's absence, the vice-chair, or in both of the chair~~
30 ~~and vice-chair's absence, the city manager~~man, or the vice-chairman in his absence, or the city manager in the
31 ~~absence of the chairman and vice-chairman~~, shall have the authority to call on the National Guard or the Army,
32 Coast Guard, or other law enforcement division or other agency as necessary to assist in the mitigation of the
33 emergency or to help maintain law and order, rescue, and traffic control.

34 **Sec. 10-7. Authority of council.**

35 Nothing in this article shall be construed to limit the authority of the city council to declare or terminate a state
36 of emergency and take any action necessary by law when sitting in regular or special session.

37

38

39 **Chapter 11****ARTICLE VII. MISCELLANEOUS OFFENSES**

40 **ARTICLE I. SEXUAL OFFENDERS AND SEXUAL PREDATORS**

1 **Sec. ~~11-118-200~~. Sexual offender and sexual predator residency prohibition.**

2 (a) *Findings and intent.*

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

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

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

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

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

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

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

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

26 (c) *Sexual offender and sexual predator residency prohibition.*

27 (1) It is unlawful for any person who has been convicted of a violation of F.S. § 794.011 (sexual battery), §
28 800.04 (lewd and lascivious acts on/in presence of persons under age 16), § 827.071 (sexual performance
29 by a child), § 847.0135(5) (sexual acts transmitted over computer) or § 847.0145 (selling or buying of
30 minors for portrayal in sexually explicit conduct), or a similar law of another jurisdiction within the United
31 States, in which the victim or apparent victim of the offense was less than 16 years of age, to reside
32 within 2,500 feet of any school, child care facility, park, playground or designated public school bus stop.

33 (2) For purposes of determining the minimum distance separation, the requirement shall be measured by
34 following a straight line from the outer property line of the permanent residence or temporary residence
35 to the nearest outer property line of a school, child care facility, park, playground or designated public
36 school bus stop.

37 (d) *Penalties.* Violation of this article shall be punishable according to the procedures and penalties set forth in
38 chapter 14 of this code. A person who violates subsection 18-200(c)(1) shall be punished by a fine not to exceed
39 \$500.00 or by imprisonment for a term not to exceed 60 days, or by both such fine and imprisonment.

40 (e) *Exceptions.*

41 (1) A person residing within 2,500 feet of any school, child care facility, park, playground or designated public
42 school bus stop does not commit a violation of subsection ~~18-200~~11-1(c)(1) if any of the following apply:

43 a. The person established the permanent residence prior to the effective date of this article (April 20,
44 2015).

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

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

(2) The exceptions in subsections ~~18-20011-1~~(e)(1)a. and c. shall not apply to a sexual offender or sexual predator who is convicted of a subsequent sexual offense as an adult after residing at a registered residence within 2,500 feet of school, child care facility, park, playground or designated public school bus stop.

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

Chapter 14 CODE COMPLIANCE ENFORCEMENT ORDINANCE

ARTICLE I. IN GENERAL

Sec. 14-1. Legislative intent.

(a) It is the intent of this chapter to promote, protect, and improve the health, safety, and welfare of the residents and visitors to the city ~~of Marco Island~~ by authorizing the designation of special magistrates with authority to impose administrative fines and other noncriminal penalties and to provide an equitable, expeditious, and effective method of enforcing any codes and ordinances in force in the ~~city~~ City of Marco Island.

(b) It is the intent of this chapter to establish a procedure by which duly designated code enforcement officers are authorized to issue citations, notices of violations, and notices to appear, under the circumstances set forth in this chapter, for civil violations which are reasonably believed to be violations of duly enacted codes or ordinances of the ~~city~~ City of Marco Island.

Sec. 14-2. Title and citation.

This chapter shall be known and may be cited as the "City of Marco Island Code Compliance Enforcement Ordinance."

Sec. 14-3. Applicability.

This chapter ~~shall apply to, and be enforced in, all incorporated areas of the city~~ City of Marco Island and shall be deemed in addition to and supplemental to F.S. ch. 162, pts. I and II, or as otherwise provided by general law.

1 **Sec. 14-4. Definitions.**

2 The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them
3 in this section, except where the context clearly indicates a different meaning. Said definitions are inclusive as well
4 as supplemental to those definitions set forth in F.S. ch. 162. These definitions are supplemental to the definitions
5 in section 1-2 of this code and shall prevail in case of conflict.

6 *City prosecutor* means the city attorney, ~~their designee, or others as~~ unless otherwise approved by council.

7 *Code* means this code of ordinances and any uncodified ordinances of the city.

8 ~~*Code enforcement compliance official* has the meaning ascribed to it in section 1-2 of this code means the city~~
9 ~~manager or any designated employee or agent of the city whose duty it is to ensure compliance with codes and~~
10 ~~ordinances enacted by the city. Employees or agents hereby designated as code compliance officials include, but are~~
11 ~~not limited to, code inspectors, zoning administrator, building officials, code compliance officers, code administrator,~~
12 ~~police officers, community service officers, fire safety inspectors, city environmentalists, or other designated~~
13 ~~employees of the city designated by the city manager.~~

14 *Irreparable or irreversible violation* means a violation which is irreparable or irreversible in nature, and which
15 cannot be remedied after the violation has been committed because the violation constitutes a single prohibited act
16 rather than an ongoing condition or circumstance.

17 *Special magistrate* means a person designated by the council pursuant to article ~~II IV~~ of this chapter and F.S.
18 § 162.03, with the authority to hold hearings and assess fines for violations and such reasonable costs incurred by
19 the city of its agents in procuring compliance with a violation of city codes and ordinances. The special magistrate
20 ~~shall have~~has no power to initiate code enforcement proceedings.

21 *Transient violation* means a violation that is of a temporary or fleeting in nature, or where the violator is
22 itinerant or otherwise has no legal residence within the city.

23 *Violator* means the person or entity legally responsible for the violation (the property owner, tenant, or
24 business entity on the premises, or any combination thereof) and may include the property owner on whose
25 property the violation occurs regardless of who commits the violation.

26 **Sec. 14-5. Notice to subsequent owners.**

27 Any owner of property that is subject to a code enforcement proceeding under this chapter who transfers
28 ownership of such property between the time the initial notice or pleading was served and the time of the hearing
29 is required to comply with the provisions of F.S. § 162.06(5), ~~as amended.~~

30 **Secs. 14-6—14-20. Reserved.**

31 * * *

32 **Secs. ~~214~~-23—~~214~~-30. Reserved.**

33 **ARTICLE III. CODE COMPLIANCE-ENFORCEMENT NOTICE OF VIOLATION**
34 **PROCEDURE**

35 **Sec. 14-31. Notice of violation.**

36 (a) The city hereby adopts the code enforcement provisions of F.S. ch. 162, pt. I, as supplemented by this chapter.
37 It shall be the duty of the code ~~compliance enforcement officer~~ official to initiate enforcement proceedings of
38 the various codes.

- (b) Except as provided in subsections (e) and (f) of this section, if a violation of any code is found, the code ~~compliance~~enforcement-officer-official shall notify the violator and give them a reasonable time to correct the violation.
- (c) Should the violation continue beyond the time specified for the correction, the code enforcement official shall execute a written notice of violation, ~~which shall include a statement of facts and circumstances of the alleged violation and shall identify the code or ordinance provision which has been violated,~~ and shall schedule a public hearing before the special magistrate. The notice of violation shall include a statement of facts and circumstances of the alleged violation and identify the code provision which has been violated. Written notice of the scheduled hearing, which shall contain the date, time, and place of the hearing, and a copy of the notice of violation, shall be provided to the violator. Failure to provide proper notice may be grounds for continuing the hearing but shall not be grounds for dismissal of the charges.
- (d) If the violation is corrected and thereafter recurs, or if the violation is not corrected by the time specified for the correction, the case shall be presented to the special magistrate even if the violation has been corrected prior to the hearing, ~~and, if practicable, the notice shall so state.~~
- (e) If a repeat violation is found, the code enforcement ~~officer-official~~ shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code enforcement ~~officer-official~~, upon notifying the violator of a repeat violation, shall schedule a hearing before the special magistrate and shall provide notice pursuant to F.S. § 162.12, ~~as amended.~~ The case may be presented to the special magistrate even if the repeat violation has been corrected prior to the hearing, and the notice shall so state. If the repeat violation has been corrected, the special magistrate retains the right to schedule a hearing to impose the payment of reasonable enforcement fees upon the repeat violator.
- (f) If the code enforcement ~~officer-official~~ has reason to believe a violation presents a serious threat to public health, safety, or welfare, or if the nature of the violation constitutes an irreparable or irreversible violation, the code enforcement ~~officer~~ official shall make a reasonable effort to notify the violator and may immediately notify the special magistrate and request a hearing.

Sec. 14-32. Fines; costs of repairs.

- (a) ~~A special magistrate, upon~~Upon notification by the code enforcement official that an order of the special magistrate or the prior code enforcement board has not been complied with by the set time, or upon finding that a repeat violation has been committed, the special magistrate may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the special magistrate for compliance or, in the case of a repeat violation, for each day the repeat violation continues beginning with the date the repeat violation is found to have occurred by the code enforcement ~~officer-official~~. In addition, the special magistrate may direct that all reasonable repairs which are required to bring the property into compliance are made and charge the violator with the reasonable cost of the repairs, along with the fine imposed pursuant to this section. If a finding of a violation or of a repeat violation has been made as provided in this chapter, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, the special magistrate finds a violation to be irreparable or irreversible in nature, they may order the violator to pay a fine as specified in this section.
- (b) A fine imposed pursuant to this section shall not exceed \$250.00 per day for a first violation and shall not exceed \$500.00 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (a) of this section. However, if the special magistrate finds the violation to be irreparable or irreversible in nature, they may impose a fine not to exceed \$5,000.00 per violation.
- (c) In determining the amount of any fine, the special magistrate shall consider the following factors:
- (1) The gravity of the violation;
 - (2) Any actions taken by the violator to correct the violation; and
 - (3) Any previous violations committed by the violator.

Secs. 14-33—14-40. Reserved.

ARTICLE IV. CIVIL VIOLATION CITATION PROCEDURE

Sec. 14-41. Civil violation.

The city hereby adopts the code enforcement provisions of F.S. ch. 162, pt. I, as supplemented by this chapter. A violation of any codes or ordinances for which a citation is issued, under the authority provided in this chapter, is a civil violation subject to the enforcement procedures set forth in this chapter and any other applicable enforcement procedure set forth in any other city ordinance or in Florida Statutes. Said civil violation shall carry a ~~minimum~~ civil penalty not to exceed \$500.00. Each day the violation shall continue beyond the time period for correction stated in the written warning notice or citation shall be deemed to constitute a separate civil violation. A civil penalty of less than the maximum civil penalty may apply if the person who has committed the civil violation does not contest the citation. By separate resolution, the council shall approve a schedule of violations and penalties of less than the maximum penalty ~~if for the violator does not un~~contested the violations.

Sec. 14-42. Irreparable or irreversible civil violations; violations that present threat to the public.

~~A code compliance enforcement officer official~~ may issue a civil violation citation to a person ~~or entity~~ with no prior notice of violation when the code ~~compliance enforcement officer official~~, upon personal investigation, has reasonable cause to believe that the violation presents a serious threat to the public health, safety or welfare, is a repeat violation, ~~or~~ if the violator is involved in a transient violation, or if the violation constitutes an irreparable or irreversible violation.

Sec. 14-43. Citations in general.

- (a) ~~The~~ code ~~compliance enforcement officer official~~ is authorized to issue a citation to an alleged violator when, based upon personal investigation, the code ~~compliance enforcement officer official~~ has the reasonable cause to believe that the person has committed a violation of the code.
- (b) The issuance of the civil violation citation shall comply with the following requirements:
- (1) The maximum civil penalty for each violation is \$500.00;
 - (2) ~~The~~ code ~~compliance enforcement officer official~~ shall only issue a citation upon reasonable cause to believe that a person has committed an act in violation of a code or an ordinance;
 - (3) A citation issued shall be subject to contest before county court or special magistrate, as may be provided by code and general law.

Sec. 14-44. Procedure for issuing citations.

Except as provided in this chapter, prior to issuing a citation, a code ~~compliance enforcement~~ official shall provide notice of violation to the alleged violator and shall establish a reasonable amount of time within which the person must correct the violation. Such time period shall be no more than 30 days. If upon personal investigation, the code ~~compliance enforcement~~ official finds that the person has not corrected the violation within the time period specified, the code ~~compliance enforcement~~ official may issue a citation to the violator responsible for the violation.

Sec. 14-45. Form of citation.

The form of the civil violation citation issued pursuant to this section shall be in the form as provided by general law.

Sec. 14-46. Schedule of civil penalties and fines.

- (a) By resolution, the council shall establish a schedule of civil penalties with fines for violation of the various ~~that lists the~~ sections of the code or ordinances, ~~as they may be amended from time to time; which that~~ may be enforced pursuant to the provisions of this chapter ~~and prescribe the dollar amount of civil penalty for the violation of those sections.~~
- (b) The "description of violations" described in such table is for informational purposes only and the civil penalties attached are meant only as proposed figures not intended to limit the nature, number of, or amount of fines to be imposed for the violations that may be cited in this section. To determine the exact nature of the activity prescribed or required by this code, the relevant code section, or ordinance cited in the specific violation must be examined.
- (c) Any violation of the code that is not specified by any fee resolution of the council shall be assessed a civil penalty of \$100.00. The violation of any provision of this code for which no specific penalty is provided shall be punished by a fine not exceeding \$500.00 as established by resolution of the city council.
- (d) A person ~~or entity~~ who receives a civil violation citation from ~~at the~~ code ~~compliance enforcement officer official~~ for a code or ordinance violation has committed a civil violation and shall be subject to a maximum fine of \$500.00 if that citation is contested unless a lower maximum is prescribed in accordance with the adopted fee schedule resolution.

Secs. 14-47—14-50. Reserved.

ARTICLE V. ADDITIONAL COMPLIANCE ENFORCEMENT AUTHORITY

Sec. 14-51. Additional compliance authority Consent agreements.

- (a) The city ~~attorney, or designee~~ ~~prosecutor~~ shall have prosecutorial discretion, including, but not limited to, the right to negotiate a plea with the violator and present that plea to the special magistrate for approval, to recommend the disposition of a case to the special magistrate, and to decline to prosecute a case.
- (b) The city manager has the authority to enter into consent agreements to facilitate compliance with the terms and conditions of this code. Such agreements may only be entered into prior to the violator's receipt of a notice of hearing of code enforcement action before the special magistrate. Any agreement must be in writing, signed by all parties, executed in recordable form, and entered into the record before the special magistrate. The special magistrate's review is a mere formality as the special magistrate has no authority to approve, deny, or modify the terms of any consent agreement under this subsection. The special magistrate is not responsible for the enforcement of compliance agreement obligations, however dependent upon the terms of such agreement, the recordation before the special magistrate may ~~establish~~ subject the violator to increased penalties for repeat violation in the event of breach of the agreement or subsequent violations. At a minimum, the agreement must specifically set forth the terms and obligations necessary for the violator to comply with the code, indicate that the violator must pay all costs incurred in enforcing the agreement, and provide a specific time frame for the violator to comply.

1 The city, at its option, may record the consent agreement in the public records of Collier County. Upon
2 fulfillment of its terms, the city will record a satisfaction or release of the agreement, if recorded. The violator
3 must pay all costs of recording the original agreement and any satisfaction or release thereof.

4 If the violator fails to comply with the consent agreement, the city may:

- 5 (1) Pursue code enforcement action, in which case the consent agreement will automatically deemed to be
6 null and void, will have no further effect on the parties, and will not be binding on the special magistrate;
7 or
8 (2) Enforce the terms and conditions of the consent agreement in a court of competent jurisdiction by
9 injunction or an action for specific performance, in the city's sole discretion.

10 11 **Sec. 14-52. Additional enforcement measures.**

12 In addition to the fines provided in this section, the city may apply any of the following penalties and measures:

13 (a) Stop work order; order to abate.

14 (1) Where a violation related to any construction or condition for which a permit has been issued; or
15 is subject to issuance, the violation may be enforced by the building official or designee through
16 the issuance of a stop work order in accordance with the procedures set forth in the Florida
17 Building Code; or an order to repair, restore or demolish the work; to vacate the premises; or
18 otherwise to abate the violation enforceable.

19 (2) For any violation of this code that constitutes a threat to life or to public or private property not
20 enforceable through the Florida Building Code, the city manager shall have the authority to issue
21 a stop work order in the form of a written official notice issued to the owner of the subject
22 property, their agent or other person engaging in the activity. Upon issuance of such notice from
23 the city manager, the action or work shall immediately be stopped. The notice shall state the
24 conditions under which the action or work may be resumed. Where any emergency exists, oral
25 notice given by the city manager shall be sufficient.

26 (b) For certain offenses that constitute nuisances as specified throughout this code, the city may enter
27 upon a property to abate the nuisance and be reimbursed pursuant to article VI upon failure of the
28 property owner or their agent to remedy the violation.

29 (c) Suspension or revocation of a city permit or license issued pursuant to the article or chapter of this
30 code under which the violation occurred.

31 (d) Nothing contained in this article shall prevent or restrict the city from taking such other lawful action
32 in any court of competent jurisdiction as is necessary to prevent, abate or remedy any violation or
33 noncompliance of this code or any emergency measure that may be made effective pursuant to this
34 code, including but not limited to injunctive relief; or to recover damages suffered by the city as a
35 result of a violation; or to recovery of reasonable attorney's fees, court costs, court reporter's fees and
36 other expenses of litigation.

37 (e) Remedies provided in section 14-71.

38 (e) All remedies and penalties provided for in this section shall be cumulative and independently available
39 to the city, and the city shall be authorized to pursue any and all remedies set forth in this section to
40 the full extent allowed by law.

41 **Secs. 14-51~~2~~—14-60. Reserved.**

ARTICLE VI. NUISANCE ABATEMENT; RECOVERY OF ABATEMENT COSTS; LIENS

Sec. 14-61. Liens, generally.

Violations of code as provided in this chapter may result in liens being recorded and imposed upon any real or personal property owned by the violator as provided by general law. Liens which have been recorded may only be released by action of the council independently, in accordance with any lien mitigation program instituted and adopted by resolution of the council, or as otherwise provided by law.

Sec. 14-62. Procedures.

- (1) Upon becoming aware of the presence of a violation of the city's code, including, but not limited to those violations that create a public nuisance, the city shall use all reasonable efforts to notify any responsible person for the affected property. Notice shall be deemed served by personal service, certified or registered mail with return receipt requested, or posting of a notice of violation upon the property where the violation exists, or adjacent to the right-of-way, if the violation is within the adjacent public right-of-way. Delivery by certified or registered mail shall be deemed to occur upon deposit in the U.S. mail with sufficient postage attached. The notice shall require correction of the violation, and compliance with the city's code pursuant to section 14-31.b.
- (2) If, in the opinion of the city manager, there is an emergency condition that necessitates that the city take action to protect the public's health, safety, and welfare, the physical safety of the traveling public, to protect public property, and/or if the offending condition is an unauthorized sign, the violation shall be corrected upon 24 hours' notice to any responsible person with respect to the property and/or adjacent sidewalks and right-of-way.
- (3) If the property owner or their agent has refused to abate the activity or condition described in the notice by the specified date, the city may, through its employees, servants, agents, or contractors, enter upon the property and take such steps as are reasonably required to affect the abatement of the nuisance.
- (4) After the abatement of the nuisance by the city, the cost to the city shall be calculated, and shall include an administrative fee as established by the city council. An invoice for the costs and administrative fee shall be sent to the property owner or their agent and shall be paid within twenty (20) days of the mailing of the invoice.
- (5) If the invoice is not paid in full, a certified letter, return receipt requested, shall be mailed to the property owner or agent advising that a notice of assessment of lien shall be recorded in the official records of the county and thereafter shall constitute a lien against the land on which the violation occurred or exists and upon any other real or personal property owned by the violator. The notice of assessment of lien shall include the lien number, the date, a legal description of the property, the name of the recorded owners, and an explanation of the cause of the lien. The owner or agent shall be afforded the opportunity to pay all assessments due, plus a late fee as established by resolution of the city council, within 14 days from the date of mailing. If full payment is not received within the 14-day period, the city manager shall record the notice of assessment of lien in the official records of the county. Such assessment shall be a legal, valid, and binding obligation which shall run with the property until paid.
- (7) After the expiration of one year from the date of recording of the notice of assessment of lien, as provided in this section, a suit may be filed to foreclose the lien. Such foreclosure proceedings shall be instituted, conducted, and enforced in conformity with the procedures for the foreclosure of municipal special assessment liens, as set forth in Chapter 173, Florida Statutes, which provisions are incorporated in this section in their entirety to the same extent as if such provisions were set forth in this section verbatim.

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

(9) Any appeal of any assessment imposed by the city to correct any violation may be filed with the city clerk within fourteen (14) days of the date of the notice of assessment of lien provided pursuant to paragraph (6) of this section. Any appeal shall be filed in writing and include all facts and circumstances on which the appeal is based, as well as the payment of the appeal processing fee as established by the city council. Any information not included in the appeal submitted to the city clerk shall not be considered. Within 45 days of the filing of the appeal, the city clerk shall provide for the appeal to be heard by the city's special magistrate at a duly scheduled hearing. At the appeal hearing, the special magistrate may grant the appeal or deny the appeal. The special magistrate's decision shall be final.

Secs. 14-63—14-70. Reserved.

ARTICLE VII. SUPPLEMENTAL PROVISION

Sec. 14-71. Supplemental provision.

It is the intent of this chapter and F.S. ch. 162, pts. I and II, to provide an additional or supplemental means of obtaining compliance with local codes and ordinances. Nothing contained in this chapter shall prohibit the city from enforcing its codes by any appropriate civil action, or by referral to the state attorney's office for prosecution in the case of criminal violation, and/or by presentation to any other city board or agency with jurisdiction to hear and act upon the alleged code or ordinance violation. Penalties under the supplemental means of enforcement may include up to 60 days imprisonment.

Chapter 18 ENVIRONMENT

ARTICLE I. IN GENERAL

Secs. 18-1—18-30. Reserved.

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

Sec. 18-31. Title of article.

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

Sec. 18-32. Definitions.

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

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

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

Code ~~enforcement~~ compliance official has the meaning ascribed to it in section 1-2 of this code. ~~means any person employed by the city who is authorized by the city manager to investigate and enforce code violations. This includes the chief of code compliance, code compliance officers, chief of building services, building division inspectors, zoning administrator, public safety director, public safety officers, the sheriff and deputy sheriffs of the county, or any other law enforcement officer of the state.~~

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

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

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

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

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

Public nuisance has the meaning ascribed to it in section 1-2 of this code. ~~means the commission or omission of any act, by any person, or the keeping, maintaining, propagation, existence or permitting of anything, by any person, by which the life, health, safety, or welfare of any person may be threatened or impaired. Additionally, permitted uses and conditional uses in any residentially zoned area which create smoke, dust, noise, odor, vibration, or glare which by themselves or in combination may be harmful or injurious to human health or welfare~~

or which unreasonably interfere with the customary use and enjoyment of life or property are a public nuisance. Nothing in this subsection shall be construed to prevent a person from using a barbecue grill or fireplace.

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

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

(a) ~~Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 14 of this code. In addition to the remedies set forth in section 18-37, if any person fails or refuses to obey or comply with or violates any of the provisions of this article, such person, upon conviction of such offense, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$500.00 or by imprisonment not to exceed 60 days in the county jail, or both, in the discretion of the court. Each violation or noncompliance shall be considered a separate and distinct offense. Further, each day of continued violation or noncompliance shall be considered as a separate offense.~~

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

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

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

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

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

- (1) The accumulation of litter and abandoned property on public and private property constitutes a hazard and is detrimental to the health, safety, and welfare of the citizens of the city.
- (2) The accumulation of weeds, grass, or prohibited noxious plants on or in close proximity to residentially, commercially, or industrially zoned land is detrimental to the health, safety, and welfare of the citizens of the city.
- (3) The obstruction of the public rights-of-way with litter, weeds, bushes, trees, or other objects is a hazard to the citizens of the city in that injuries can occur from the obstruction of sight triangles and from striking objects that should be cleared from the right-of-way.
- (4) Protection of the quality of life and economy for the city, its businesses, and its citizens can be accomplished by maintaining a good community appearance.

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

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

Sec. 18-36. Prohibited activities and conditions.

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

- (1) Dumping/Littering. No person shall ~~cause or allow~~ dump any litter or pollution in any manner or any amount ~~or pollute on~~ any public property, private property, public right-of-way, ~~public street, highway,~~

or body of water. This prohibition shall not be construed as to prohibit the placement of trash or yard wastes for removal by the waste management authority ~~pursuant to as per Section 18-36 subsection (8) of this section.~~

- (2) *Burial of waste materials.* Inert waste materials may be buried on-site on a parcel of property after a valid building permit for such property has been obtained, and provided that such disposal is in conformance with federal, state, and local laws and regulations. For purposes of this section, inert waste materials are specifically limited to brick, block, concrete, rock, stone, earth, and sand that is free from contamination and of other types of waste, and that is capable of serving as fill material without environmental harm to, or pollution of, groundwater or surface water. All other wastes, including garbage, hazardous waste, rubbish, refuse, paper products, containers, cloth, wood and wood products, sweepings, liquids other than water, sludge, tree limbs and trunks, undergrowth, and materials produced by clearing and grubbing, and other horticultural wastes shall not be buried on a parcel of property but shall be otherwise lawfully disposed of.
- (3) *Noxious plants.* The growth of ~~certain~~ noxious plants on developed and undeveloped lots in all areas of the city is hereby prohibited, except for existing trees which were allowed to remain on developed property before June 11, 1991, when county Ordinance No. 91-47 initially prohibited the practice. At the time of development of undeveloped land, all noxious plants shall be removed from the site. When an existing structure is renovated which causes changes to the square footage as authorized by the building permit, all noxious plants shall be removed from the property prior to the issuance of a certificate of occupancy or certificate of completion. No person shall plant, sell, or distribute noxious plants or their seeds within the city.
- (4) *Public nuisances.* No owner ~~or occupant of a property, lessee, occupant, guest, or agent for the owner~~ shall allow the ~~keeping existence~~ of a public nuisance on ~~any such property, developed or undeveloped.~~
- (5) *Weeds, litter or obstructions in right-of-way.* All owners ~~and occupants of property, lessees, occupants or agents for the owner of developed and undeveloped lots~~ shall ~~maintain control all excessive growth of~~ grasses ~~or and~~ weeds within the ~~right-of-way roadway swale~~ adjacent to ~~their such property to a maximum height of 15 inches by cutting or removing the grasses and weeds,~~ and shall maintain the ~~abutting street~~ right-of-way free from any accumulation of ~~abandoned property,~~ litter, pollution, ~~or and~~ other matter. No ~~owner, lessee, occupant, guest, or other~~ person shall place or construct any object, ~~other than one mailbox or change the landscaping~~ in the public right-of-way without first obtaining a city permit ~~pursuant to section 42-76 of this code of ordinances except as provided in subsection (8) for trash pickup.~~ Any lawfully permitted encroachment into the public right-of-way may be continued unless such encroachment causes a nuisance as described in this article. ~~For purposes of this subsection, excessive growth is defined as grasses or weeds exceeding 15 inches in height.~~
- (6) *Sidewalk maintenance.* All owners ~~and, lessees, occupants or agents for the owner of developed and undeveloped lots~~ shall control bushes, trees, grasses, litter, ~~or and~~ other objects which cover, impede, delay or restrict the public's access to the sidewalk ~~adjacent to the owners' or occupants' property.~~ All owners ~~and, lessees, occupants or agents for the owner of a property~~ shall maintain a clearance zone for all sidewalks adjacent to ~~their such property~~ies and this clearance zone shall remain clear to allow for public access.
- (7) *Trash receptacles for public establishments.* Each ~~person owning~~ ~~and occupant of~~ any establishment open to the public shall provide receptacles adequate to contain litter generated from the establishment.
- (8) *Placement of waste at curb.* ~~Owners, lessees, commercial businesses, or occupants of any property~~ ~~It is a violation of this article to shall not place their~~ ~~any~~ trash receptacle, bagged garbage, yard waste, recycle bin, or other waste or abandoned property out by the curb of ~~their property~~ for trash pickup before 6:00 p.m. of the evening before the scheduled pickup day. All owners ~~and, lessees, commercial~~

- 1 ~~businesses, or~~ occupants of any property shall remove any such containers and place them inside their
2 garage or to the side or rear of their dwelling or structure by 7:00 p.m. on the evening of trash pickup.
- 3 (9) *Wind-driven debris and litter.* All ~~person~~~~owners, occupants, contractors, disposal contractors, and~~
4 ~~cleaning persons, and commercial businesses~~ shall ~~ensure that store their litter in such a manner as to~~
5 ~~eliminate no~~ wind-driven ~~debris and litter is generated from their property or activities in and about the~~
6 ~~city, their residence, or their business.~~ Spillage and overflow around containers shall constitute an
7 illegal accumulation of litter and shall be cleaned up immediately.
- 8 (10) *Weeds and litter on private property.* Owners ~~and, lessees,~~ occupants ~~of a property, or agents of the~~
9 ~~owner of any lot, developed or undeveloped,~~ shall ~~control all excessive growth of maintain~~ grasses
10 ~~or and~~ weeds ~~on such property to a maximum height of over 15 inches by cutting the grasses and~~
11 ~~weeds.~~ Owners, lessees, occupants or agents for the owner of developed and undeveloped lots shall
12 ~~control all excessive growth of grasses or weeds within the right-of-way adjacent to their property by~~
13 ~~cutting or removing the grasses and weeds.~~ The practice of scalping or removing grass or weeds by
14 clearing the topsoil is prohibited except when done as part of the building process when a permit has
15 been issued for the property. All accumulations of litter ~~and, pollution, abandoned property, downed~~
16 ~~trees or other matter~~ on or within such ~~lots private property or the public street right-of-way adjacent~~
17 ~~to the lot~~ shall be removed by the owner ~~or, occupant, lessee, or agent of an owner, except that trash~~
18 ~~may be placed in the right-of-way as part of trash pickup as outlined in subsection (8) of this section.~~
- 19 (11) *Abandoned property.* ~~Abandoning property, allowing property to be abandoned, or allowing~~
20 ~~abandoned property to persist, is a violation of this article.~~

21 **Sec. 18-37. Penalties; aAbatement of nuisances.**

- 22 (a) ~~Violation of this article shall be penalized in accordance with ch. 14 of this code. The city may abate~~
23 ~~violations of this article in accordance with the procedures in section 14-62. Whenever the city manager or~~
24 ~~designed code compliance official shall determines that an activity or condition as described in section 18-~~
25 ~~36(1) through (9) and (11) exists, then a notice of violation may be served on the owner of record of the~~
26 ~~property. The notice shall include a property description, the date, the ordinance code number which has~~
27 ~~been violated, a description of the violation, the name of the recorded owner, a correction deadline date to~~
28 ~~be no more than 20 days from the date of the letter or notice, and the name of the city manager or designed~~
29 ~~code compliance official. Notice shall be deemed served by personal service, by certified or registered mail~~
30 ~~with return receipt requested, or by posting a notice at the property and city hall for a period of seven days~~
31 ~~when the property owner refuses to accept the certified letter or the letter is returned as not deliverable. For~~
32 ~~the purposes of this section, delivery by certified or registered mail shall be deemed to occur upon deposit in~~
33 ~~the U.S. mail with sufficient postage attached. If the activity or condition described in the notice is not~~
34 ~~abated after the correction date passes, the city manager or designated code compliance official may initiate~~
35 ~~abatement of the activity or condition as prescribed in subsection (c) of this section.~~
- 36 ~~(b)—Annually, the city manager or designated code compliance official shall publish the code compliance policy~~
37 ~~and abatement procedure regarding violations of section 18-36(10). Whenever the city manager or code~~
38 ~~compliance official shall determines that grass or weeds on a developed or undeveloped lot exceed 15 inches~~
39 ~~is in violation of section 18-36(10) (weeds over 15 inches), a notice of violation shall be posted on the lot and~~
40 ~~at the code compliance office. The notice shall include the date, the location, the type of violation, the~~
41 ~~ordinance number, the date by which the violation must be corrected, and the name and phone number of~~
42 ~~the investigating code compliance officer. Notice shall require corrective action in no more than seven days~~
43 ~~from the date the notice is posted. If the overgrown weeds are not truly abated as described in the notice~~
44 ~~after the passing of seven days, the city manager or his designated code compliance official may, initiate~~
45 ~~abatement of the overgrown weeds as prescribed in subsection (c) of this section.~~
- 46 ~~(be) After the property owner or his agent has refused to abate the activity or condition described in the notice~~
47 ~~by the specified date, the city may, through its employees, servants, agents, or contractors, enter upon the~~
48 ~~property and take such steps as are reasonably required to effect the abatement of the nuisance.~~

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

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

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

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

~~(gh) Nothing in this section shall be construed to limit the city from pursuing other enforcement measures as provided in code the right of any code compliance official to cite the owner into court or before the code enforcement board after giving notice as required by state statutes in addition to the abatement of the nuisance.~~

Sec. 18-38. Appeals and adjustments.

~~(a) Any property owner receiving notice for failure to pay an invoice in full for nuisance abatement may file an appeal to the city manager within 14 days from the date the notice was mailed.~~

~~(b) The appeal must specifically address the reason for failing to pay the invoice, including any unusual or special circumstances that the property owner deems pertinent to justify his failure or refusal to pay.~~

~~(c) Upon receipt of the appeal, the city manager may, at his discretion:~~

~~(1) Adjust fees assessed and/or administrative costs imposed for corrective action taken by the city; or~~

~~(2) Instruct the code compliance official to initiate proceedings before the special magistrate?code enforcement board.~~

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

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

~~(a) Any property owner receiving notice from the city manager or his designated code compliance official of the existence of a public nuisance as described in subsections 18-36(1) through (9) and (11) may contest this determination by filing an application for a hearing before the code enforcement board special magistrate within 15 days from the date affixed on the notice of violation. The owner of property posted for a public nuisance as described in subsection 18-36(10) may contest this determination by filing an application for a hearing before the code enforcement board special magistrate within seven days from the posting date of the notice of violation.~~

- (b) ~~Prior to the expiration of the 20 days provided for in subsection 18-37(c), any owner shall have a right to request a hearing before the code enforcement board special magistrate to show cause, if any, why the expense and charges incurred by the city under this article are excessive or unwarranted or why such expenses should not constitute a lien against the property.~~
- (c) ~~If, after the hearing, the code enforcement board special magistrate determines that the assessment is fair, reasonable, and warranted, the assessment resolution shall be recorded forthwith. If the code enforcement board special magistrate determines that the charges are excessive or unwarranted, it the magistrate shall direct the city manager or his designated code compliance official to recompute the charges and the code enforcement board shall hold a further hearing after notice to the owner upon the recomputed charges.~~

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

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

Secs. 18-~~3841~~—18-60. Reserved.

ARTICLE III. FERTILIZER REGULATIONS

* * *

Sec. 18-63. Definitions.

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

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

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

1 *Approved best management practices training program* means a training program approved per F.S. §
2 403.9338, or any more stringent requirements set forth in this article that includes the most current version of the
3 Florida Department of Environmental Protection's "Florida-Friendly Best Management Practices for Protection of
4 Water Resources by the Green Industries, 2008," as revised, and approved by the city manager ~~or designee.~~

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

9 *City manager* has the meaning ascribed to it in section 1-2 of this code ~~means the city manager or his~~
10 ~~designee, who will administer and enforce the provisions of this article.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

44 * * *

1 **Sec. 18-64. Fertilizer regulations.**

2 * * *

3 (b) *Exemptions.* This section shall not apply to:

4 * * * (4) Athletic fields that are maintained by a public entity and used by the public are exempt from the
5 fertilizer application regulations underin section 18-64(f)(1) of this article.

6 (5) * * *

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

8 (a) *Permitting.* All persons intending to apply fertilizer are required to obtain appropriate permits from the city.

9 (1) A minimum of one business day prior to fertilizer application within the city, the person must apply for
10 an e-mail permit, free of charge, indicating the location, type of fertilizer and acknowledgement that a
11 spreader deflector will be utilized.

12 (2) ~~A~~ codes enforcement official may visit any site where fertilization is occurring and stop work if a
13 permit was not received or if improper products or methods are being employed.

14 (b) Upon the request of a code enforcement official, applicators shall be required to provide the label for
15 fertilizer being applied to verify compliance with this article.

16 (c) ~~Violation of this article shall be Any person who violates any provision of this article shall be guilty of a~~
17 ~~noncriminal infraction. Violators will be~~ subject to the issuance of a citation imposing the following
18 penalties:

19 ~~(1) First violation: a fine up to \$150.00; and~~

20 ~~(2) Each subsequent violation: a fine not to exceed \$300.00.~~

21 ~~(d) Any person or persons, firm or corporation, or any agent thereof, who violates~~ Violation of any of the
22 provisions of any section of this article shall be punishable according to the procedures and penalties set
23 forth in chapter 14 of this code and punished by revocation of any certification issued under this article, and
24 other penalties as may be imposed by the code enforcement magistrate pursuant to this Code, chapter 14 of
25 this Code, and Florida law.

26 **Secs. 18-66—18-100. Reserved.**

29 **ARTICLE IV. NOISE CONTROL**

30 **Sec. 18-101. Short title.**

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

32 **Sec. 18-102. Intent and purpose.**

33 (a) It is the public policy of the city that every person is entitled to ambient sound levels that are not detrimental
34 to life, health, and enjoyment of his or her property.

35 (b) The ~~Marco Island City~~ City ~~Council~~ finds that ~~unreasonably~~ excessive noise degrades the environment of the
36 city to a degree that such noise:

- (1) Is harmful to the health, safety, and welfare of city residents and visitors; and
 - (2) Interferes with the comfortable enjoyment of life and property; and
 - (3) Interferes with the well-being, tranquility, and privacy of one's home; and
 - (4) Can cause and aggravate health problems.
- (c) The effective control of ~~unreasonably~~ excessive noise is essential to the health, safety, and welfare of city residents and visitors, and fosters the comfortable enjoyment of life, including, but not limited to, recreation, work, communication, and rest.
- (d) This section is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of residents and visitors of the ~~City of Marco Island~~ through the control, reduction, and prevention of ~~unreasonably excessive~~ noises that disturb, injure, or endanger the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivities.
- (e) Nothing contained in this ~~section~~ article is intended to infringe upon the constitutionally protected rights guaranteed by the Florida Constitution and the First Amendment of the United States Constitution. This section enacts narrowly drawn; content-neutral regulations that are to be interpreted to not unduly restrict constitutionally protected rights.

Sec. 18-103. Definitions.

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

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

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

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

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

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

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

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

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

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

Duplex means a structure containing two dwelling units.

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

Emergency ~~has the meaning ascribed to it in section 1-2 of this code~~ means any occurrence or set of circumstances involving actual or imminent physical injury to persons or property which demands immediate action. It shall be the burden of the alleged violator to prove the "emergency".

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

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

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

Excessive noise (see noise disturbance)

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

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

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

Holiday means those days designated as legal holidays by the ~~Ccity of Marco Island~~ and federal government.

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

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

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

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

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

Noise disturbance or excessive noise means any sound, which because of its volume level, duration, and character, as articulated in the standards of this article, disturbs the peace and comfort, injures, or endangers the ~~comfort,~~ health, ~~peace, or safety and welfare, or is a nuisance to~~ reasonable persons of ordinary sensibilities, ~~constituting a nuisance. Noise disturbance means any sound which endangers or injures the health of humans or disturbs a reasonable person of ordinary sensitivities.~~

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

Person ~~has the meaning ascribed to it in section 1-2 of this code~~ means any natural person, individual, association, partnership, corporation, municipality, governmental agency, business trust, estate, trust, two or more persons having a joint or common interest or any other legal entity and includes any officer, employee, department, agency or instrumentality of the United States, a state or any political subdivision of a state or any other entity whatsoever or any combination of such, jointly or severally.

Person(s) responsible means, but, is not limited to, any person who has any manner of control over a property, premises, dwelling, structure, location, business, vehicle, device, stereo, or source of sound and may include, but is not limited to, any property owner, tenant, subtenant, business owner, resident, operator or person having operational control, person(s) creating or controlling the volume of sound, property manager, or person(s)

in charge or otherwise authorized to make decisions regarding the use of sound equipment, or any combination of such, jointly and severally.

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

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

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

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

Public right-of-way ~~has the meaning ascribed to it in section 1-2 of this code means any street, avenue, boulevard, highway, alley, or public space, which is dedicated to, owned, or controlled by a public governmental entity.~~

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

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

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

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

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

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

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

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

Sec. 18-104. General noise prohibitions.

(a) *Prohibition of ~~unreasonably~~ excessive noise from a property.* It ~~shall be~~ unlawful for any person(s), including the property owner(s), to permit, cause, allow, create, emit, or sustain ~~unreasonably~~ excessive noise from a property, including ~~the~~ air space ~~above the property thereof, located in the City of Marco Island.~~ Noise ~~disturbances violations~~ are ~~considered~~ irreversible and irreparable ~~violations of this article.~~

(b) *Prima facie evidence.* For the purposes of this subsection, the following shall constitute prima facie evidence that ~~a sound noise~~ (whether recurrent, intermittent, or continuous) is ~~unreasonably~~ excessive ~~and raucous if:~~

(1) Between the hours of 10:00 p.m. and 7:00 a.m., the sound is plainly audible a minimum of 50 feet from the property line of the source of the sound or within a fully enclosed structure or residence on any receiving property; or

(2) Sound pressure levels by receiving land use;

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

(b) (3) Multifamily dwellings and duplexes. ~~In the case of multifamily dwellings and duplex dwelling units, it shall be~~ unlawful to create or permit to be created any sound that exceeds a sound pressure level of 50 dBA, during the hours between 7:00 a.m. to 9:00 p.m., or 45 dBA during the hours between 9:00 p.m. and 7:00 a.m., ~~daily,~~ measured from inside any other neighbor's dwelling unit within such multifamily or duplex structure. The plainly audible standard does not apply to this paragraph ~~multifamily dwellings and duplexes.~~

(cd) It ~~shall be~~ unlawful for any person owning or in possession of any building or premises to use or rent the same for any purpose business or residential use, or for any purpose of pleasure or recreation if such use makes, continues, or causes to be made or continued, any noise disturbance, ~~as defined in this article within the limits of the city.~~

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

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

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

Sec. 18-106. Exemptions.

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

- (1) Sound made by a horn or other warning device required or permitted by F.S. § 316.271 or ~~F.S. § 327.65~~ other statutory provision shall be regulated in accordance with state law.
- (2) Noises resulting from any authorized emergency vehicle, when responding to an emergency call or acting in time of emergency or any other public safety operation.
- (3) Noises resulting from emergency work, which is to be construed as work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from any imminent exposure to danger. It shall be the burden of an alleged violator to prove an emergency.
- (4) Noises incidental to city approved refuse collection.
- (5) Community events such as parades, festivals, sporting events, or fairs being conducted in accordance with the conditions contained in a special event permit granted by the city manager ~~or designee~~.
- (6) Noises associated with city operations, construction, or maintenance.
- (7) Noises associated with police or fire department training.
- (8) Sound from cCommunity and organized sporting events and school activities.
- (9) Noise associated with lightning warning systems.
- (10) Non-amplified crowd ~~sounds-noise~~ resulting from otherwise lawful public gatherings.
- (11) Noise from aAny aircraft operating in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instructions used pursuant to and within the duly adopted federal air regulations.
- (12) Amplified sound on property controlled by a governmental agency during governmental sponsored activities.
- (13) Sound produced by activities in the fields, grounds, or facilities of any sporting venue to which the public or community has access.
- (14) Sounds generated by Houses of worship ~~(excluding between 7:00 a.m. and 7:00 p.m.)~~.

Sec. 18-107. Temporary exemption.

- (a) A person may seek a temporary exemption from the provisions of this section ~~by seeking an exemption from the city manager~~. A completed exemption application must be submitted, on a form provided by the city, and submitted to the designated city department. An exemption may only be issued for a specified limited period of time and ~~shall set forth is subject to such~~ conditions or requirements ~~as shall be~~ deemed necessary to mitigate potential adverse effects upon neighboring properties and to otherwise ensure that the public health, safety, and general welfare is protected. The city manager may adopt administrative rules, ~~as he or she deems necessary~~, to implement the provisions of this section.
- (b) In determining whether an exemption shall be issued, the city manager shall consider the following criteria:
 - (1) The granting of the exemption will not establish a precedent of or encourage more incompatible uses in the surrounding area; and
 - (2) The applicant has demonstrated that enforcement of the provisions of this ~~chapter-article~~ would create an undue hardship on the applicant because of unique circumstances peculiar to the applicant; ~~and~~.

- (c) The city manager shall grant or deny an application for an exemption within 15 days from the date of the filing of a complete application. An application may be denied if it is determined to be incomplete. If no ruling has been made, upon the expiration of the 15th day, or if the 15th day is a Saturday, Sunday, or holiday, upon the following working day, the application shall be deemed to be granted.
- (d) Any violation of any conditions imposed upon the granting of the exemption shall be deemed a violation of this section/article.

Sec. 18-108. Enforcement and penalties.

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

- (1) Any person(s) ~~responsible for a violation of the City of Marco Island Noise Control Ordinance violating this article~~ shall be given a warning that a notice of violation or citation will be issued for violation of the city's noise ordinance if the person(s) responsible fails to bring the sound level into compliance within five minutes and maintain a compliant sound level for the ~~next~~ 48 hours that follow. The notice and warning may be given in writing or verbally and to inform the person(s) responsible for a purported ~~excessive noise disturbance violation of that there is a the~~ violation of the City of Marco Island's Noise Control Ordinance. No warnings will be issued after 11:00 p.m. ~~The notice shall include, at a minimum, the following:~~
- ~~You are being notified that you are in violation of the City of Marco Island's Noise Control Ordinance. You are being given a five minute warning to bring the sound level into compliance with the City of Marco Island's Noise Control for the next 48 hours. The failure to timely bring the sound level into compliance is a violation of the City of Marco Island's Noise Ordinance.~~
- (2) ~~The enforcement official may issue a notice of violation or citation to any person(s) responsible who Failure to does not~~ timely bring the sound level into compliance shall be enforced under the provisions of chapter 14.
- (3) Any person(s) responsible for a violation of this article ~~the City of Marco Island Noise Control Ordinance, which violations are that jars, injures, or endangers the health, safety, welfare, or wellbeing of a reasonable individual of ordinary sensibilities, because of the volume level or duration of the noise, considered irreparable and irreversible in nature,~~ may, without warning, be immediately issued a citation or notice of violation for an irreparable and irreversible offense. ~~by an officer.~~
- (4) ~~Regardless of whether if the property owner person(s) caused responsible for a the violation noise disturbance occurring on their property of the City of Marco Island Noise Control Ordinance is not the property owner,~~ the property owner will be issued a notice of violation or citation for each individual violation of ~~the City of Marco Island Noise Control Ordinance by a property owner,~~ this article. The first violation ~~of the City of Marco Island Noise Control Ordinance by a property owner,~~ in a rolling twelve-month period, will result in the issuance of a notice of violation, which shall constitute an official warning. All subsequent violations in a rolling twelve-month period shall result in issuance of citations, or notices of violations issued to the property owner, in a rolling twelve-month period, shall that require a hearing before the ~~City of Marco Island Code Enforcement's~~ Special ~~M~~agistrate, and the potential imposition of a fine for the violation(s).
- (5) Any person(s), including the property owner(s), who violates any of the provisions of this section/article shall be subject to a civil penalty as adopted by Resolution of the City Council, not to exceed \$250.00 for a first violation (excludes the violation which resulted in the property owner's first warning), \$500.00 for the second violation, and \$1,000.00 for the third violation, \$2,000.00 for the fourth violation, \$4,000.00 for the fifth violation, and \$5,000.00 for the sixth and subsequent violations occurring within

one year after a finding of violation of the previous offense or the payment of a citation for a violation of this ordinance article. Each violation of this section article shall constitute a separate and distinct offense for which a civil citation or notice of violation may be issued.

- (6) Joint and several responsibility. Any person(s) responsible for unreasonably excessive noise from a property or from a vehicle, as defined herein, may be liable for the violation under this section. More than one person may be found to be responsible for the violation.

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

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

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

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

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

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

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

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

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

ARTICLE V. ENDANGERED, THREATENED OR LISTED SPECIES PROTECTION

Sec. 18-141. Purpose and intent.

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

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

1 **Sec. 18-142. Definitions.**

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

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

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

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

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

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

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

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

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

24 **Sec. 18-143. New development.**

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

29 * * *

- 30 (3) Further, a management plan for a protection zone during construction shall be submitted to the city
31 for review and approval by the community affairs department for the management of on-site habitat
32 and wildlife, including measures for protection and/or relocation of species of special status. Such
33 plans shall comply with current federal, state and local policies. The city may consider and utilize
34 recommendations and letters of technical assistance of the FWC, and recommendations and guidelines
35 of the USFWS, in issuing developmental orders on property containing wildlife species of special status.

36 **Sec. 18-144. Activities within protection zones.**

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

40 * * *

Sec. 18-145. Protection and permitting procedures.

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

- (1) No active or inactive owl and/or gopher tortoise burrow, or nests of any other listed species, may be taken without proper state or federal permits issued by the FWC or USFWS, as required.
- (2) If state or federal permit(s) are issued, they shall be posted on site during all phases of the construction.
- (3) No city building permits will be issued for applicants to take a gopher tortoise burrow, unless FWC has issued permit to take the tortoise burrow(s) and construction can commence with a protection zone in place. No city permits will be issued for applicants to take a burrowing owl burrow unless an FWC migratory nest/burrow removal permit has been issued and provided to the city. Only inactive burrows can be taken per FWC migratory nest/burrow removal permit provisions and the FWC Burrowing Owl Guidelines. For burrowing owls, the protection zone ~~requirement shall be a protection zone, shall~~ consisting of silt fencing, erected prior to construction activities around two to three sides of each affected burrow, leaving one or two sides open for species ingress and egress, as follows:
 - a. Ten-foot buffer in all directions around the entrance of burrowing owl burrows during the non-breeding season (July 11 through February 14).
 - b. Thirty-three-foot buffer in all directions around the entrance of burrowing owl burrows during the breeding season (February 15 through July 10).
 - c. FWC or Audubon trained contractors will be responsible for maintaining the protection zone during construction and informing all workers and subcontractors to avoid the protection zone and to not do anything that would violate the burrow(s) in such a way as to make it collapse. Any contractor that violates or destroys a protection zone will be subject to penalties, as provided in this article. Such protection zone shall be removed upon completion of construction activities.
- (4) No city permits will be issued for applicants to take a gopher tortoise burrow, unless FWC has issued permit to take the tortoise burrow(s) and construction can commence with a protection zone in place.

The protection zone requirements for gopher tortoises shall be:

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

All protection plans shall be subject to review and approval by the ~~city~~ environmental specialist ~~of the community affairs department~~. The city may consider and utilize recommendations and letters of technical assistance of the FWC, and recommendations and guidelines of the USFWS, in issuing development orders on property containing wildlife species of special status. No development order will be effective until all required state and federal permits and authorizations have been obtained and submitted to the city.
- (5) All FWC and USFWS rules and guidelines relating to protection and/or taking procedures shall be followed if not described in this article.
- (6) The city will enforce trash and food waste management policies to protect listed species and control nuisance wildlife and human health threats. Trash bins must remain closed at all times and secured

- 1 from wildlife entry. Discarding of food waste or other trash is prohibited anywhere outside proper
2 receptacles.
- 3 (7) Feeding any wildlife is prohibited in the city, except the use of bird feeders at least 300 feet from any
4 designated conservation area.
- 5 (8) State and federal protections will be enforced for bald eagles, ospreys, shorebirds, wading birds, brown
6 pelicans, and their nests and roost sites, including required protection buffer zones.
- 7 (9) State and federal protections for manatees will be enforced within the city, including manatee speed
8 zones on waters of the city.
- 9 (10) Mangroves, dunes and dune vegetation are protected from damage and destruction because of their
10 value to listed species as habitat and the well-documented protection they provide from tropical
11 storms and coastal inundation and erosion. Trimming of mangroves is regulated by the state
12 department of environmental protection. Any permits issued for the removal of mangroves or any
13 required mitigation related to mangrove impacts shall be administered by FDEP.
- 14 (11) To protect the regionally significant populations of beach-nesting birds and migratory flocks within the
15 city, the following policies are in effect:
- 16 a. No trespassing in posted or closed nesting or habitat areas (protection zones).
- 17 b. Fireworks, dogs and other lethal disturbance sources are prohibited on beaches.
- 18 c. Drones, kites, and other aerial disturbances are prohibited within 500 feet of posted avian listed
19 species nests or habitats.

20 **Sec. 18-146. Enforcement and penalties.**

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

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

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

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

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

1 **Sec. 18-147. Penalties.**

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

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

7 ~~a. First offense—Minimum of \$150.00, not to exceed \$500.00 for each offense as provided for in~~
8 ~~F.S. § 162.22;~~

9 ~~b. Second offense—Minimum of \$500.00, not to exceed \$1,500.00, as provided for in F.S. § 162.09;~~
10 ~~and~~

11 ~~c. Third offense—Minimum of \$1,500.00, not to exceed \$2,000.00, as provided for in F.S. § 162.09.~~

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

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

17 **Secs. 18-148—18-170. Reserved.**

18 **ARTICLE VI. PALM LETHAL YELLOWING (PLY) DISEASE**

19 **Sec. 18-171. Intent and purpose.**

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

26 **Sec. 18-172. Definitions.**

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

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

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

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

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

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

3 *Public nuisance* ~~has the meaning ascribed to it in section 1-2 of this code~~ ~~shall means any tree infected with a~~
4 ~~plant disease known as the PLY, including without limitation, all species of coconut palm trees and any tree that is~~
5 ~~a carrier of the disease.~~

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

7 (a) F.S. ch. 252 authorizes the waiver of procedures and formalities otherwise required in order to take
8 whatever prudent action is necessary to ensure the health, safety and welfare of a community in the event
9 of a state of emergency. In the case of PLY, city council shall make a determination that a localized state of
10 emergency exists. However, if the threat is deemed imminent, the city manager ~~or designee~~ may make the
11 declaration, subject to ratification by city council at the next regularly scheduled meeting. The city manager
12 ~~or designee~~ shall provide city council with the boundary for the area(s) subject to the localized state of
13 emergency.

14 (b) Upon declaration, the localized state of emergency from the PLY shall continue until the city manager ~~or~~
15 ~~designee~~ determines that the threat of danger no longer exists and terminates the emergency. The
16 declaration of termination of the localized state of emergency is subject to ratification or rejection by the city
17 council at the next regularly scheduled meeting after the declaration or termination occurs.

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

19 In addition to any other powers conferred by law, the city manager ~~or designee~~ may order and promulgate
20 one or more of the following measures to be effective within designated areas during the period of such declared
21 emergency, and with such limitations and conditions as may be deemed appropriate to protect against damage or
22 loss of property by PLY:

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

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

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

37 (a) Upon declaration of a localized state of emergency, it shall be unlawful for any owner of ~~any parcel of~~ land
38 within an area designated for mandatory inoculation to keep or maintain any coconut palm tree, Christmas
39 palm tree or other carrier of PLY without providing inoculation and/or treatment documentation as
40 approved by the city manager ~~or designee~~.

- (b) If inoculation of a tree(s) is mandated pursuant to this article, it shall be the duty and responsibility of ~~the property owners of any such property or parcel of land containing such tree~~ to have the trees on their property inoculated, pursuant to this section, with an antibiotic approved by the city manager ~~or designee~~.
- (c) Inoculations shall be performed a minimum of three times a year, at the intervals of every 100 to 120 days, with inoculation to begin within 15 days after public notification of the mandatory inoculation. Trees which were inoculated within 90 days prior to public notification of the state of local emergency may continue inoculations at intervals of 100 to 120 days from the last inoculation, provided proof of that inoculation is given to the city ~~manager or designee~~ within 30 days after public notification. The inoculation schedule may be modified by the city manager ~~or designee~~ as necessary to affect the intent and purpose of this article.

Sec. 18-176. Public notice.

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

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

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

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

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

Sec. 18-178. Disposal of PLY trees.

It ~~shall be~~ is unlawful for any property owner ~~of any parcel of land within the city~~ to permit or retain ~~on said property~~ any tree infected with PLY. Trees determined to be infected with PLY by the city ~~manager or designee~~

1 must be removed and disposed of by burial at a county owned disposal facility within five days after notification to
2 owner.

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

4 ~~(a) Within the time period referred to in this article for mandated inoculation, the property owner of any parcel~~
5 ~~of land within the city on which said trees are located must inoculate or make provision for inoculation of~~
6 ~~trees by persons who have been approved by the city manager or designee to provide the treatment~~
7 ~~necessary to abate PLY.~~

8 ~~(ab)~~ If a property owner fails to provide for inoculation, the city may inoculate or have its agent inoculate such
9 trees and the property owner shall be liable for the expenses incurred by the city, its agents or contractors,
10 in treating the affected palms. The expenses of inoculation shall constitute a lien on the real property upon
11 which the inoculation has taken place in accordance with section 18-180.

12 ~~(be)~~ If infected trees have not been removed by owner within five days after notification, the city shall abate the
13 nuisance and shall, through its employees, agents or contractors, be authorized to enter upon the property
14 and take steps as are reasonably required to effect abatement. The expenses of tree removal shall constitute
15 a lien on the real property upon which the tree removal has taken place, in accordance with section 18-180.

16
17 ~~(c) The city shall recover the expenses incurred for nuisance abatement in accordance with the procedure in~~
18 ~~section 14-62 of this code.~~

19 **Sec. 18-180. Assessment for work done by city. Reserved**

20 ~~(a) For abatement work performed by the city as provided for in section 18-179(b) and (c), an invoice shall be~~
21 ~~mailed to the property owner for all costs associated with the inoculation or tree removal, including any~~
22 ~~administrative costs actually incurred by the city.~~

23 ~~(b) If the property owner fails to pay the invoice within a 20-day period, the city may assess such costs against~~
24 ~~such parcel. The costs shall be reported to the city council. Thereupon, the city council, by resolution may~~
25 ~~assess the costs against such parcel. The resolution shall describe the land and show the cost of~~
26 ~~inoculation(s) and/or tree removal, and administrative costs actually incurred by the city. Such assessment~~
27 ~~shall be a legal, valid, and binding obligation which shall run with the property until paid. The assessment~~
28 ~~shall be due and payable 20 days following the mailing of the notice of assessment, after which interest shall~~
29 ~~accrue at the rate of 12 percent per annum on any unpaid portion thereof.~~

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

33 ~~City of Marco Island~~

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

35 ~~Legal Description:~~

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

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

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

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

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

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

Sec. 18-182. Violations and penalties.

- ~~Violations of this article shall be punishable according to the procedures and penalties set forth in chapter 14 of this code.~~ (a) ~~Pursuant to F.S. § 162.22, a person found to be in violation of this article may be charged with a fine, not to exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days, or by both such a fine or imprisonment. Each violation or noncompliance shall be considered a separate and distinct offense. Further, each day of continued violation or noncompliance shall be considered as a separate offense.~~
- (b) ~~Nothing contained in this section shall prevent or restrict the city from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.~~
- (c) ~~Further, nothing in this section shall be construed to prohibit the city from prosecuting any violation of this article by means of a code enforcement board established pursuant to the authority of F.S. ch. 162, and chapter 14, article II of this Code.~~
- (d) ~~All remedies and penalties provided for in this section shall be cumulative and independently available to the city, and the city shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law.~~

Secs. 18-183—18-199. Reserved.

ARTICLE VII. SEXUAL OFFENDERS AND SEXUAL PREDATORS

****[Moved to new Chapter 11]****

Secs. 18-201—18-209. Reserved.

ARTICLE VIII. STORMWATER REGULATIONS

1 **Sec. 18-210. Short title.**

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

4 **Sec. 18-211. Definitions.**

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

8 *Best management practices* or *BMPs* means schedules of activities, prohibitions of practices, general good
9 housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other
10 management practices, to prevent or reduce the discharge of pollutants directly or indirectly to stormwater,
11 receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating
12 procedures, and practices to control erosion, site runoff, spillage or leaks, sludge or water disposal, or drainage
13 from raw materials storage. BMPs include but are not limited to geosynthetic barriers, temporary or permanent
14 vegetation, sediment traps, silt fences, turbidity barriers, or inlet protection measures.

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

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

21 *Department* means the city's public works department.

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

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

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

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

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

31 *Emergency* has the meaning ascribed to it in section 1-2 of this code means, as provided in section ~~10-1 of~~
32 ~~this Code, any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace,~~
33 ~~which results or may result in substantial injury or harm to the population or substantial damage to or loss of~~
34 ~~property.~~

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

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

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

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

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

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

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

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

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

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

28 *MS4 (see Municipal separate storm sewer system)*

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

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

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

40 *Person* has the meaning ascribed to it in section 1-2 of this code ~~means an individual, corporation, limited~~
41 ~~liability company, governmental agency, business trust, estate, trust, partnership, association, two or more~~
42 ~~persons having a joint or common interest, or any other legal entity.~~

43 *Pollutant* means anything that causes or contributes to pollution. Pollutants may include, but are not limited
44 to paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard
45 wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that the
46 same may cause or contribute to pollution; floatables; pesticides; herbicides; fertilizers; hazardous substances and

wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

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

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

Rendered or rendition ~~has the meaning ascribed to it in section 1-2 of this code means the issuance of a written order, including approval, approval with conditions, or denial of a determination by the city council, the department director, the city manager (or said manager's designee), or other administrative official, effective upon the date of signing by the authorized city official of such order or final letter of determination and its filing in the records of the city council or said department director, city manager (or said manager's designee), or other administrative official.~~

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

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

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

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

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

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

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

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

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

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

Swale ~~has the meaning ascribed to it in section 1-2 of this code means excavated areas that can be either used for water conveyance, retention or any combination of the two. A roadway swale means a depression along a roadway used to retain and/or convey the movement of surface water runoff. The roadway swale is generally the area between the edge of the pavement of a roadway and the sidewalk or right-of-way limit.~~

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

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

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

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

4 **Sec. 18-212. Illicit discharges.**

5 (a) *Purpose and intent.* The purpose of this section is to provide for the health, safety, and general welfare of the
6 citizens of the city by minimizing discharge of pollutants through the regulation of non-stormwater
7 discharges to the city's municipal separate storm sewer system (MS4) to the maximum extent practicable.
8 This section establishes methods for controlling the introduction of pollutants into the city's MS4 within the
9 requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives
10 of this section are:

- 11 (1) To regulate the contribution of pollutants to the city's MS4 by from stormwater discharges by any user;
- 12 (2) To prohibit illicit connections and discharges to the city's MS4; and
- 13 (3) To establish legal authority to carry out all inspection and monitoring procedures, necessary to ensure
14 compliance with this section.

15 (b) *Applicability; interconnected MS4s.* This section shall apply to the entire city's MS4, unless explicitly
16 exempted by the city in writing.

17 (c) *Ultimate responsibility.* The standards set forth herein, and promulgated pursuant to this section, are
18 minimum standards. This section does not intend or imply that compliance by any person will ensure there
19 will be no contamination, pollution, nor unauthorized discharge of pollutants.

20 (d) *Control of pollutant contributions from interconnected MS4s.* Interconnected MS4s, including MS4s not
21 owned by the city, shall be controlled so that they do not impair the operation of the receiving MS4 or
22 contribute to the failure of the receiving MS4 to meet any applicable local, state, or federal law or regulation.
23 Owners of sections of an interconnected MS4 shall be responsible for the quality of stormwater within their
24 portion of the system and shall coordinate with the owners of the downstream segments.

25 (e) *Prohibitions; ~~illicit~~illegal discharges ~~and illegal dumping~~.*

- 26 (1) It is a violation of this article to No person shall throw, drain, or otherwise discharge, cause, or allow,
27 continue, or maintain others under such person's control to similarly discharge into the city's MS4 that
28 is not composed entirely of stormwater or otherwise in compliance with federal, state or local permits,
29 any pollutants or waters containing any pollutants, other than stormwater, whether such discharges
30 occur through piping connections, runoff, exfiltration, infiltration, seepage, or leaks. Polluting matter
31 includes, but is not limited to, the following:

- 32 a. Petroleum products, including, but not limited to oil, gasoline, grease;
- 33 b. Solid waste;
- 34 c. Paints;
- 35 d. Steam cleaning waste;
- 36 e. Pesticides, herbicides or fertilizers, or as regulated by existing ordinance;
- 37 f. Degreasers, solvents;
- 38 g. Sanitary sewage;
- 39 h. Chemically treated cooling water;
- 40 i. Antifreeze and other automotive products;
- 41 j. Lawn clippings, leaves, branches, or yard trash;

- 1 k. Animal carcasses;
- 2 l. Recreational vehicle gray waters;
- 3 m. Dyes;
- 4 n. Construction materials and waste;
- 5 o. Any liquids in quantity or quality that are capable of causing a violation of the city's NPDES
- 6 stormwater permit; and
- 7 p. Solids in such quantities or of such size capable of causing interference or obstruction to the flow
- 8 of the city's MS4.
- 9 (2) No lawn mowing, clipping or other such discharge of debris is permitted towards or into waterbodies
- 10 or watercourse(s).
- 11 (3) No direct discharge of roof drains to the city's canal system is permitted.
- 12 (f) *Prohibitions; illicit connections.*
- 13 (1) It is a violation of this article to ~~No person may~~ maintain, use, or establish, any direct or indirect
- 14 connection to the city's MS4 that introduces non-stormwater discharge or results in any discharge in
- 15 violation of any provision of federal, state, or local governmental law, rule, regulation, including:
- 16 a. Any drain or conveyance, whether on the surface or subsurface, which allows a discharge in
- 17 violation of this article to enter the MS4, including but not limited to any conveyances that allow
- 18 any non-stormwater discharge, including sewage, process wastewater, and wash water to enter
- 19 the storm drain system and any connections to the MS4 from indoor drains and sinks, regardless
- 20 of whether said drain or connection had been previously allowed, permitted, or approved by the
- 21 department; or
- 22 b) Any drain or conveyance connected from a commercial or industrial land use to the MS4 which
- 23 has not been documented in plans, maps, or equivalent records and approved by the
- 24 department.
- 25 (2) ~~Any This subsection is effective upon adoption of the ordinance and applies to illicit connections to the~~
- 26 ~~city's MS4~~ made prior to March 5, 2018 (the effective date of the ordinance from which this article is
- 27 derived) that does not comply with this article is prohibited and shall be made to comply, regardless of
- 28 whether made under a permit or other authorization, or whether permissible under laws or practices
- 29 applicable or prevailing at the time the connection was made.
- 30 ~~(3) A person is considered to be in violation of this section, if the person connects a line conveying sewage~~
- 31 ~~to the city's MS4 or allows such a connection to continue.~~
- 32 (g) *Violation of permits.* Any discharge into the city's MS4 ~~in violation of any federal, state, or local governmental~~
- 33 ~~law, rule, regulation or permit is prohibited,~~ except those discharges as set forth authorized in this article or
- 34 in accordance with a valid NPDES permit.
- 35 (h) *Stormwater discharges from commercial, industrial or construction activities to the MS4 or regulated waters.*
- 36 (1) Stormwater from areas of any commercial activity, industrial activity, or construction activity shall be
- 37 controlled, treated and managed on-site using best management practices so as not to cause ~~an illicit~~
- 38 ~~or illegal~~ discharge to the city's MS4 or regulated waters in violation of this article.
- 39 (2) All erosion, pollutant, and sediment controls required by this city code or by any applicable local, state,
- 40 or federal permit, including elements of a stormwater pollution prevention plan required under an
- 41 NPDES permit, shall be properly implemented, installed, operated, and maintained.
- 42 (3) Authorized discharges to the city's MS4 shall be controlled so that they do not impair the operation of
- 43 the city's MS4 or contribute to the failure meet any applicable local, state, or federal law or regulation.

- (4) Authorized discharges to regulated waters as defined by the Clean Water Act, shall be controlled so that they do not adversely impact the quality or beneficial uses of those waters, or result in violation of any applicable local, state, or federal law or regulation.
- (5) Any person who has been issued an NPDES permit authorizing discharges to the city's MS4 shall submit a complete copy of the permit to the city's building department ~~within 30 days after March 5, 2018 (the effective date of the ordinance from which this article is derived), or~~ within 30 days after the issuance of a permit.
- (i) *Authorized exemptions.* The ~~following commencement, conduct, or continuance of any illicit or illegal discharges to the city's MS4 is prohibited~~ are not a violation of this article, except as described as follows:
- * * *
- (k) *Emergency conditions.*
- (1) Notwithstanding any other provisions of this section, whenever the city manager, ~~or said manager's designee,~~ or as otherwise provided pursuant to section 10-3 of this ~~Code~~ code, determines that emergency conditions or activities require immediate action to protect the public health, safety or welfare, or to provide for compliance with these regulations, city approved construction plans, city inspectors and employees are authorized to enter at a reasonable time in or upon any property, consistent with subsection (l) of this ~~section provision,~~ section, for the purpose of testing, inspecting, investigating, measuring, sampling and correcting such emergency conditions. Failure to admit personnel responding to emergency conditions, shall constitute a separate violation of this section only if actual violation is determined.
- (2) Suspension due to illicit discharges in emergency conditions. The city manager, ~~or said manager's designee,~~ may, without prior notice, suspend MS4 discharge access ~~to a person such suspension is~~ when the manager deems necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4. If the violator fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.
- (3) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this section may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. ~~It is considered an offense of this section, if the person reinstates~~ Reinstatement of MS4 access to premises terminated pursuant to this section ~~is prohibited~~ without the prior city approval of the city.
- (l) *Inspection and monitoring for compliance.* City code inspectors may request access for inspection of facilities discharging or suspected of discharging to the city's MS4 to effectuate the provisions of this section and to investigate violations or potential violations of any of the terms ~~herein~~ of this article.
- (m) *Reporting requirements.* ~~Illicit discharges to the city's MS4 are prohibited.~~ Any person owning or occupying a premise or facility who has knowledge of a discharge of pollutants from those premises or facilities or other type of evidence which might result in a violation of the prohibitions found in this section shall immediately take action to abate the discharge of pollutants and shall notify the department and city code enforcement department within 24 hours of the discharge of pollutants. The initial notification may be by telephone, but the person responsible shall submit a written report within 72 hours of discovery. The written report shall include a description of the discharge volume, content, frequency, discharge point location to the MS4, measures taken or to be taken to terminate the discharge, and the name, address and telephone number of the person who may be contacted for additional information.
- (n) *Penalty.* Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 14 of this code; additional remedies. ~~Enforcement of this article shall be conducted pursuant to F.S. ch. 162. Penalties for violations of this article shall be as specified therein, or any other appropriate remedy provided by law. The city may seek enforcement action against the owner or developer of record, any person~~

1 in actual or constructive possession, and any person or entity responsible for carrying out any prohibited
2 action. The provisions of this section are an additional and supplemental means of enforcing city codes and
3 ordinances. Nothing in this section shall prohibit the city from enforcing this code by injunctive relief, or by
4 any other means provided by law.

- 5 (o) *Appeals.* Appeals ~~relating to or~~ any administrative decision or determination ~~made to concerning in the~~
6 ~~administration of implementation or application of the provisions of this article section~~ shall ~~follow be the~~
7 ~~procedures and requirements in section 1-15 of this code. filed in writing within 30 calendar days after the~~
8 ~~decision is rendered by the city council, city manager (or said manager's designee), department director, or~~
9 ~~building official, all as provided for herein. Appeal of the decision of the city manager's designee, department~~
10 ~~director, or building official will be considered by the city manager. Appeal of the city manager's decision will~~
11 ~~be considered by the city council.~~

- 12 ~~(p) *Injunctive and other relief.* City council, through the city attorney, may file a petition in the name of the city~~
13 ~~in the circuit court of the county or such other courts as may have jurisdiction seeking the issuance of an~~
14 ~~injunction, damages, or other appropriate relief to enforce the provisions of this article or other applicable~~
15 ~~law or regulation. Suit may be brought to recover any and all damages suffered by the city as a result of any~~
16 ~~action or inaction of any person who causes or suffers damage to occur to the city's storm sewer system, or~~
17 ~~for any other expense, loss or damage of any kind or nature suffered by the city.~~

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

- 19 (a) *Activities; purpose and intent.* The purpose of this section is to provide for the health, safety, and general
20 welfare of the citizens of the city through the regulation of potential pollution from construction activities.
21 These activities would include connections or areas not connected to the city's MS4 system.

- 22 (1) No building permit shall be issued for any building in the city, unless a site plan is submitted with the
23 application for such building permit illustrating ~~the location of driveways, sidewalks if required by this~~
24 ~~code, parking strips consistent with this code and a~~ perimeter retaining structures or a surface water
25 management plan which provides for containment of runoff on-site with surplus routed to rights-of-
26 way or right-of-way swales for drainage as applicable.

- 27 (2) Site plans for construction projects in all zoning districts shall be reviewed and administratively
28 approved by staff for on-site erosion control per applicable code provisions outlined herein.
29 Appropriate erosion control devices must be planned, implemented, and maintained in accordance
30 with the best management practices (BMPs) described in the Florida Department of Environmental
31 Protection's "Erosion & Sediment Control Designer & Reviewer Manual," most current edition, and
32 required as part of any permit review, approval, and compliance. If approved BMPs are not working
33 properly, it is the responsibility of the developer or contractor to utilize new BMP methods as
34 necessary to provide erosion and sediment control.

- 35 ~~(b) *Erosion and sediment control.* Construction activity can result in the generation of significant amounts of~~
36 ~~pollutants, which may reach surface or ground waters. One of the primary pollutants of surface waters is~~
37 ~~sediment due to erosion. Excessive quantities of sediment which reach water bodies of floodplains have~~
38 ~~been shown to adversely affect their physical, biological, and chemical properties. Transported sediment can~~
39 ~~obstruct stream channels, reduce the hydraulic capacity of water bodies of floodplains, reduce the design~~
40 ~~capacity of culverts and other works, and eliminate benthic invertebrates and fish spawning substrates by~~
41 ~~siltation. Excessive suspended sediments reduce light penetration and, therefore, reduce primary~~
42 ~~productivity. Therefore, the minimum standards set forth in subsection (c) below shall apply to any~~
43 ~~construction activity within the city.~~

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

* * *

(10) Sediment ~~will~~ shall be prevented from entering any storm drain system, ditch, or channel. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered, or otherwise treated, to remove sediment;

* * *

(17) Where construction vehicle access routes intersect paved public roads, provisions shall be made to minimize the transport of sediment by tracking onto the paved surface. Where sediment is transported onto a public road surface with curbs and gutters, the road shall be cleaned thoroughly at the end of each work day. Sediment shall be removed from the roads by shoveling or sweeping and then transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual subdivision lots as well as to larger land-disturbing activities;

* * *

(c) *Development of an erosion and sediment control plan.* An erosion and sediment control plan must be submitted as part of the building permit application that include land disturbing activities. This plan and its implementation is a way of providing reasonable assurance that water quality standards will not be violated during the construction phase of a project. The plan must identify the location, relative timing, and specifications for all erosion and sediment control and stabilization measures that will be implemented as part of the project's construction. This plan can be prepared on a site plan/plot plan depicting the improvements proposed. The plan must illustrate methods that would provide reasonable assurances that no offsite discharges of pollutants will be allowed. Said plan shall be prepared by a state licensed professional engineer. The preparer will certify the plans to and for reliance by the city with the submittal that they are familiar with state stormwater best management practices, and that the proposed plan meets or exceeds those criteria.

(d) *Development of a stormwater pollution prevention plan (SWPPP) for NPDES requirements.* Applicants are advised that preparation and adherence to a SWPPP is required where the permitted activity also requires an NPDES construction permit pursuant to F.A.C. § 62-621.300(4). Namely, those construction activities resulting in greater than one acre of soil disturbance discharging to waters of the state or a permitted MS4 must also apply for and receive coverage from Florida Department of Environmental Protection under Florida's NPDES Generic Permit for Stormwater Discharge from Large and Small Construction Activities (CGP) before disturbing the soil.

* * *

Sec. 18-215. Stormwater management design criteria.

(a) *Applicability.* This article shall apply to any development not specifically exempted by subparagraph (b) below.

(b) *Exemptions.* The following are exempt from the requirements of this section:

- (1) Construction of, or related to, oneOne single family home dwelling containing not more than three dwelling units, on an individual site, a lot of record not shared or approved to be shared with any other dwelling, and that is not part of a site plan that includes any adjacent lots of recordused for housing.
- ~~(2) One duplex structure, on an individual site, used for housing.~~
- ~~(3) One triplex structure, on an individual site, used for housing.~~
- ~~(4) Storage buildings, sheds, swimming pools, and other accessory structures constructed on (1), (2), or (3) above.~~

(25) Model homes. Additional temporary parking spaces may be installed as long as they are removed when the model home use changes.

(36) Fences.

(47) Agricultural related activities, which cause insignificant hydrological impacts as determined by the city engineer.

(c) ~~Special circumstances~~ Development within approved master stormwater systems.

(1) Any development located within a subdivision or other area that has a city or county approved master stormwater system is only subject to review for compliance with parameters of the approved master stormwater management plan.

* * *

(g) *Content of stormwater plans.* All stormwater plans must be signed and sealed by a Florida professional engineer. These plans will present, at the minimum:

(1) The existing hydrological conditions of the site and of receiving water shall be described where appropriate, including the following:

a. The direction, flow rate, and volume of flow of surface water runoff under predevelopment conditions for both the 10 year-1 hour and 25 year-72-hour return periods.

b. The location of areas on the site where surface waters collect.

c. A description of all watercourses, wetlands, and water bodies on or adjacent to the site.

d. Groundwater levels, including seasonal fluctuations, using U.S. Soil Conservation Service ("SCS") methodology or other appropriate means. (Give elevations based on North American Vertical Datum ("NAVD") wherever possible.)

e. A map and description of the 100-year floodplain.

f. Plans ~~drawn shall be~~ at a scale acceptable to the city engineer.

g. Elevations in floodplains shall be NAVD.

h. A current boundary description ~~is required as~~ prepared by a professional land surveyor.

i. A site plan ~~is required~~ showing any easements of records.

j. ~~The engineer of record shall provide A~~ a soil percolation rate and an estimated wet season groundwater elevation from the engineer of record, including and shall describe the methodology used for determining each, which shall be consistent with the application submittal.

k. ~~Provide a~~ A topographic survey, which is needed to accommodate review of stormwater management facilities.

l. Dimensions used in stormwater computation shall be shown on plans.

m. Other information and data may be required by the city engineer.

* * *

Chapter 22 FIRE PREVENTION AND PROTECTION

ARTICLE I. IN GENERAL

Secs. 22-1—22-30. Reserved.

ARTICLE II. FIRE PREVENTION AND PROTECTION CODE

Sec. 22-31. NFPA-Florida Fire Prevention Code~~codes and standards~~ adopted.

Under the authority of Chapter 633, Florida Statutes, the standards and code sections of the "Florida Fire Prevention Code," as adopted by the rules of the Division of the State Fire Marshal Section 69A-3.012, 69A-60.005 Florida Administrative Code are hereby adopted by reference and made a part of the City of Marco Island Fire Prevention and Protection Code, intended to protect the public health, safety and welfare. The provisions of the City of Marco Island Fire Prevention and Protection Code shall be regulatory within the City and within the boundaries of any jurisdiction, municipal service taxing unit (MSTU), municipality, or unincorporated area that has entered into an interlocal agreement for fire services from the City of Marco Island Fire Rescue Department, unless otherwise stipulated within the interlocal agreement.

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

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

The Florida Fire Prevention Code, Florida-specific National Fire Codes, NFPA 1, Fire Prevention Code, ~~2018~~2021 edition, is hereby amended by local amendment as follows:

(A) Chapter 1 Administration

(1) Fire Code Board of Appeals

(i) Add to 1.10.1.1.1 to Read as Follows:

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

(2) Notice of Violations and Penalties

(i) Amend 1.16.4 Penalties as Follows:

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

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

* * *

(7) Notice of Violations and Penalties.

Add Sub-Section 1.16.1.1 as follows:

Violations of this code are to be administered according to city's administrative construction code, section 6-111 of the city Code of Ordinances and ch. 14 of this code. Pursuant to F.S. § 162.22, a person found to be in violation of this code may be charged a fine, and all actual City costs incurred, and may be sentenced to a definite term of imprisonment, not to exceed 60 days. Violations of this code may also be prosecuted before the code enforcement board, as established by the city, pursuant to chapter 14, article II of the city Code of Ordinances, or its successor. Nothing herein contained is intended to prevent the City from taking such other lawful action in any court of competent jurisdiction as the department deems necessary to prevent or remedy any violation. Such other lawful action shall include, but shall not be limited to, any equitable action for injunctive relief or action at law for damages. The Fire-Rescue department shall also retain the power to enforce the provisions of this code and ordinances by means of the State Fire Marshal's Office.

* * *

(B) Chapter 4 General Requirements

(1) Conditions for Occupancy.

(i) Amend Subsection 4.5.4 to Add Condition (4)

(4) All tenants and occupants shall obtain a "Notice of Fire Compliance" certificate from the Fire Rescue Department prior to occupancy and use of a new or existing building as evidence of compliance with the City Fire Prevention and Protection Code. Such original certificate shall be displayed in a prominent location within the structure, building, or portion thereof. A copy of the Compliance Certificate shall be forwarded to the Collier County Tax Collector, Business Tax Receipt Office~~Occupational License Department~~ for processing.

Exception: Occupants of one and two-family dwellings and residential tenants in multi-family buildings are exempt from the requirement of obtaining a "Notice of Fire Compliance."

* * *

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

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

A. Fire Code Compliance Plan Review Fees

B. Fire code compliance inspection fees ~~through permit process~~

C. Planning, zoning and development review fees (including without limitation, commercial land use fees)

DE. Fire department fees ~~Special events fee~~ (including without limitation, other permitting related fees, such as early work authorizations, red tags, yellow tags, and working without a permit)

ED. Fire prevention services (including without limitation, special event fees, fire flow tests, and notices of violation inspections) ~~New or change of occupancy inspections~~

1) Architectural plan review fees:	
Less than or equal to \$120,000.00	.60% of job value
Greater than \$120,000.00 and less than or equal to \$600,000.00	.057% of job value
Greater than \$600,000.00 and less than or equal to \$1,200,000.00	.082% of job value
Greater than \$1,200,000.00	.037% of job value
2) Fire Sprinkler Systems:	\$52.00 + \$0.98 per head
3) Underground Fire Line	\$103.00 + \$0.21 per foot
	(Rounded Up)
4) Standpipes	\$52.00 + \$6.00 per riser
5) Fire Pumps	\$285.00 each
6) Generators	\$285.00 each
7) Pre-engineered Fire Suppression Systems (new)	\$67.00 + \$21.00 per Bottle of Suppression Agent
8) Pre-engineered Systems (existing)	\$67.00 + \$2.10 per head altered or added
9) Kitchen Hood Ventilation Systems	\$103.00 per system
10) Fire Alarm Systems (zoned systems)	\$93.00 + \$16.00 per zone
11) Fire Alarm Systems (intelligent system) Includes Wireless Monitoring Permits	\$93.00 + \$0.67 per device
12) Monitoring Only (excludes wireless)	\$42.00
13) Low Voltage Wiring (All Except Fire Alarm)	\$42.00
14) Fuel Storage Systems Including LPG (Install, Removal or Abandonment)	\$72.00 + \$52.00 per tank
15) Commercial Hurricane Shutters impacting:	
2 Egress and/or access points	Initial \$50.00
Each additional egress or access point	\$2.00
16) Back Flow Prevention Devices	\$50.00
17) Docks (New, Replace or Repair)	\$100.00
18) Minimum Review Fee and Items Not Listed Above	\$42.00
19) Fast Track Permit Review Fee (After Hours/Weekends, Subject to availability)	Time and one half, plus 30%
20) Technology Fee on all Plan Reviews, Revisions, SDP/SIP/CU, Inspections.	5% of fee up to maximum of \$10,000.00
21) All fees listed above include the initial review and one re-review. Additional re-reviews will be provided in accordance with the following schedule:	
—2 nd Re-Review	10% of Original Review \$42.00 minimum
—3 rd Re-Review	25% of Original Review \$52.00 minimum
—4 th Re-Review	50% of Original Review \$103.00 minimum
—5 th Re-Review	100% of Original Review \$206.00 minimum
22) Revisions/Additions to original or previously approved plans	25% of Original Review \$42.00 minimum
23) Administrative fee for correcting plans	\$52.00
(Removing, adding or copying required information not done properly by submitter)	
24) Fire Permit Extension (90 Days)	\$52.00
25) Expired Fire Permit Re-issuance Fee	Original review fee × 30% not to exceed \$500.00
26) SDP (Site Development Plan)	\$206.00
SDPA (Site Development Plan Amendment)	\$155.00

SIP (Sit Improvement Plan), CU (Conditional Use) and all others	\$155.00
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B. — Fire Code Compliance Inspection Fees Through Permit Process:

1. SITE PLAN INSPECTION (All Categories)	\$206.00
2. BUILDING <u>S</u> — Square footage is defined as the total area of the structure(s) under roof.	
Construction Types I, II, III, IV, & V:	
New Single Story:	\$309.00 + \$0.03 per sq. ft.
New Multi Story:	\$155.00 per floor, per tower + \$0.03 per sq. ft.
Construction Type VI:	\$309.00 per floor + \$0.04 per sq. ft.
Remodels and Alterations	
Commercial: Multiple Units or Floors	\$270.00 per floor, per tower + \$0.16 per sq. ft.
Commercial: Individual Units	\$258.00 per unit + \$0.16 per sq. ft.
Plumbing Stack Replacements Fire Stop Insp.	\$150.00 per unit stack
Single Apartment Units	\$103.00 per unit + \$0.16 per sq. ft.
3. FIRE SPRINKLERS	
New:	\$309.00 per floor, per tower + \$0.67 per head
Remodels:	\$206.00 per floor, per tower + \$1.03 per head
15 Heads or less relocated or added	\$103.00 + \$1.03 per head
4. FIRE ALARM SYSTEMS	
New:	\$309.00 per floor, per tower + \$0.67 per device
Remodels:	\$206.00 per floor, per tower + \$1.03 per device
4 Devices or less relocated or added	\$103.00 + \$1.00 per device
Monitoring including Wireless:	\$103.00 per system
5. LOW VOLTAGE WIRING	\$103.00 per floor
6. KITCHEN HOODS	\$206.00 + \$1.03 per foot of duct
7. SUPPRESSION SYSTEMS	\$52.00 per bottle + \$2.06 per head
	Total Flood & Pre-Engineered
8. SPRAY BOOTHS	\$52.00 per bottle + \$.52 per sq. ft.
9. UNDERGROUND FIRE LINES	\$103.00 + \$1.03 per linear ft.
10. STANDPIPES (New or Replacement)	\$150.00 per independent riser
11. FIRE PUMPS	\$309.00 each
12. GENERATORS	\$309.00 each
13. FUEL STORAGE TANK AND LPG TANK INSTALLATIONS	
Above Ground:	
Up to 1,000 gal.	\$103.00 per tank
1,001 gals. to 3,000 gals.	\$155.00 per tank
3,001 gals. to 4,000 gals.	\$206.00 per tank
Larger than 4,000 gals.	\$206.00 + \$31.00 for each additional 1,000 gals.
Under Ground:	
Up to 1,000 gals.	\$155.00 per tank
1,001 gals. to 3,000 gals.	\$206.00 per tank
3,001 gals. to 4,000 gals.	\$257.50 per tank
Larger than 4,000 gals.	\$257.50 + \$31.00 for each additional 1,000 gals.
14. HYDRANT RESTRAINTS AND BREAKAWAY PADS	\$52.00 per hydrant
15. HYDRANT/BACKFLOW ACCEPTANCE TEST	\$77.00 per device
16. HYDRANT FLOW TEST: Initial Flow Point	\$77.00

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

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2 •Working without Permit Card on site.

3 •Safety violations on site.

4 •Combustibles on site without water supply (hydrants/approved alternative water supply).

5 •Job sites inaccessible to fire apparatus.

6 •Working without Marco Island Building or Fire Permit (4x permit fee)

7 C. — SPECIAL EVENTS FEE:

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

Sec. 22-35. Inspection Fees: New, change of, or existing occupanciesReserved.

~~1. A fee will be assessed for a notice of fire compliance certificate inspection for all new commercial and/or change of ownership of commercial occupancies, or those required to be inspected on a recurring basis.~~

~~2. Each occupancy type is assessed a fee based upon its use. Properties with multiple structures or uses will incur a fee for each structure or use inspected.~~

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

~~Fee per Apartment/ Condominium Building:~~

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

~~Assembly Occupancies:~~

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

~~Assisted Living Facilities:~~

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

~~Business Occupancies:~~

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

~~Day Care Centers and Nursery Schools:~~

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

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

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

~~Industrial/Manufacturing Occupancies:~~

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

Marinas:

Docking facilities \$155.00

Fueling facilities add \$55.00

Associated facilities such as storage and mercantile incur separate fees in accordance with this schedule.

Nursing Homes/Health Care Facilities:

Up to 100 Beds \$205.00

Each additional bed over 100 \$2.50

Maximum \$925.00

Mercantile:

1,000 to 3,000 sq. ft. \$75.00

3,001 to 5,000 sq. ft. \$80.00

5,001 to 10,000 sq. ft. \$110.00

10,001 to 25,000 sq. ft. \$165.00

25,001 to 50,000 sq. ft. \$215.00

Storage Occupancies:

1,000 to 5,000 sq. ft. \$100.00

5,001 to 10,000 sq. ft. \$130.00

10,001 to 25,000 sq. ft. \$155.00

25,001 to 50,000 sq. ft. \$205.00

Exception:

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

3. Re-inspection Fees All Occupancies.

a. First re-inspection:

1. No fee if all violations are corrected or other arrangements have been made with the fire prevention bureau.

2. A fee of \$75.00 if violations still exist.

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

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

(a) The fee schedule for malfunctioning or nuisance fire alarms, detection and suppression systems is established by resolution of the city council, as amended from time to time, will be evaluated annually to make adjustments to keep the fee generated in line with expenses. This will be done at the time the city's normal budget progress is being considered. The city may change, delete or add to the listed fees by resolution.

(b) There is a need for proper operation and maintenance of fire alarm, fire detection and fire suppression systems. The response of fire rescue and other city personnel and equipment to structures with these systems that have malfunctioned causes an added burden on the resources of the city and endangers the lives of the public and employees.

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Authority of city.*

(1) The fire department is hereby authorized to take such steps as necessary, to protect the life, safety and health of the public and to take all such steps necessary to respond and abate emergencies and recover all associated costs as outlined within this section, including but not limited to the following: actual labor costs of personnel or its authorized agents, costs and operation of equipment, necessary rental, subcontracting, or purchase and costs of expendable items, etc.

(2) The city manager ~~or designee~~ is hereby authorized to collect and recover costs associated with such services and work, including forfeiture and restitution pursuant to the procedures in section 14-62 of this code.

(3) ~~The city manager or designee shall be is authorized to adopt administrative policies regarding the collection of the fees, assessments, and liens.~~ Costs will be based on the applicable schedule of rates provided by: the current FEMA table; the Florida Fire Chiefs Association; the Collier County Fire Chiefs Association cost recovery schedules; and actual costs for consumables, equipment, response and fill in personnel, subcontractors, and other city departments requested by fire-rescue.

(c) *Liability for costs.*

(1) Any person ~~(s), property owner, renter or agent~~ charged with a violation of ~~the this city's Code of Ordinances code, or~~ Florida Statutes, including driving under the influence of drugs and/or alcohol, or otherwise responsible for action by the fire department or its authorized agents in accordance with provisions of this section, shall reimburse the city as provided in subsection (b)(3) above.

(2) ~~Reimbursement for expenses is due upon invoice from the city. Failure to pay the cost recovery invoice within 30 days will constitute a civil infraction with this article and as such will be shall be enforced in accordance with the procedures in section 14-62 of this code enforceable in accordance with this article, this Code, and state law.~~

(d) *Additional remedies.*

(1) The remedy provided for in this section ~~shall be is~~ supplemental ~~to and in addition~~ to all other available remedies at law and equity, inclusive of forfeiture and restitution as defined in ~~state statute~~ Florida Statutes, and may be negotiated or waived by the city manager when in the best interest of the city.

(2) Actions of a juvenile resulting in fire rescue response under this article shall be the responsibility of the legal guardian. The city manager may waive charges upon the enrollment of the child in an approved juvenile fire setters or counseling program.

* * *

Secs. 22-39—22-50. Reserved.

ARTICLE III. FIREFIGHTERS' PENSION PLAN

* * *

Sec. 22-52. Definitions.

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

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

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

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

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

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

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

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

* * *

Chapter 26 FLOODS

ARTICLE I. IN GENERAL

Secs. 26-1—26-30. Reserved.

ARTICLE II. FLOODPLAIN MANAGEMENT

DIVISION 1. ADMINISTRATION

* * *

Sec. 26-32. Applicability.

(a) *General.* Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

(b) *Areas to which this ordinance applies.* This ordinance shall apply to all [applications for development, including building permit applications and subdivision proposals within the](#) flood hazard areas within the City of Marco Island, as established in subsection 26-32(c) of this ordinance.

* * *

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

- 2 (a) *General.* The ~~Marco Island City~~ Council shall hear and decide on requests for appeals and requests for
3 variances from the strict application of this ordinance. Pursuant to F.S. § 553.73(5), the ~~Marco Island City~~
4 Council shall hear and decide on requests for appeals and requests for variances from the strict application
5 of the flood resistant construction requirements of the Florida Building Code. This section does not apply to
6 Section 3109 of the Florida Building Code, Building.
- 7 (b) *Appeals.* The ~~Marco Island City~~ Council shall hear and decide appeals pursuant to section 1-15 of this code
8 when it is alleged there is an error in any requirement, decision, or determination made by the floodplain
9 administrator in the administration and enforcement of this ordinance. Any person aggrieved by the decision
10 of ~~Marco Island the City~~ Council may appeal such decision to the circuit court, as provided by Florida
11 Statutes.
- 12 (c) *Limitations on authority to grant variances.* The ~~Marco Island City~~ Council shall base its decisions on
13 variances on technical justifications submitted by applicants, the considerations for issuance in subsection
14 26-37(f) of this ordinance, the conditions of issuance set forth in section 26-37(g) of this ordinance, and the
15 comments and recommendations of the floodplain administrator and the building official. The ~~Marco Island~~
16 ~~City~~ Council has the right to attach such conditions as it deems necessary to further the purposes and
17 objectives of this ordinance.
- 18 * * *
- 19 (f) *Considerations for issuance of variances.* In reviewing requests for variances, the ~~Marco Island City~~ Council
20 shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida
21 Building Code, this ordinance, and the following:
- 22 * * *
- 23 (g) *Conditions for issuance of variances.* Variances shall be issued only upon:
- 24 (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics
25 of the size, configuration, or topography of the site limit compliance with any provision of this
26 ordinance or the required elevation standards;
- 27 (2) Determination by the ~~Marco Island City~~ Council that:
- 28 * * *

29 **Sec. 26-38. Violations.**

- 30 * * *
- 31 (c) *Unlawful continuance.* Any person who shall continue any work after having been served with a notice of
32 violation or a stop work order, except such work as that person is directed to perform to remove or remedy a
33 violation or unsafe condition, shall be subject to penalties set forth in chapter 14 of this code as prescribed
34 by law. Pursuant to F.S. § 162.22, a person found to be in violation of this article may be charged a fine not to
35 exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days.
- 36 ~~Violations of this article may also be prosecuted before a code enforcement board established by the city.~~

37 **Secs. 26-39—26-60. Reserved.**

38 ***DIVISION 2. DEFINITIONS***

1 **Sec. 26-61. General.**

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

9 **Sec. 26-62. Definitions.**

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

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

16 * * *

17 ***DIVISION 4. MISCELLANEOUS PROVISIONS***

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

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

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

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

Chapter 32 LAW ENFORCEMENT

ARTICLE I. IN GENERAL

Secs. 32-1—32-30. Reserved.

ARTICLE II. POLICE OFFICERS' PENSION PLAN

* * *

Sec. 32-32. Definitions.

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

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

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

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

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

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

City means City of Marco Island, Florida.

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

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

Credited service means the total number of years and fractional parts of years of service as a police officer with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a police officer. "Fractional parts of years" shall mean a fraction whose numerator is the number of completed days and whose denominator is 365. Members may voluntarily leave their accumulated contributions in the fund for a period of five years after leaving the employ of the police department, pending the possibility of being reemployed as a police officer, without losing credit for the time as a member of the plan. If a vested member leaves the employ of the police department the member's accumulated contributions will be returned only upon written request of the member. If a member who is not vested is not reemployed as a police officer with the police department within five years, the member's accumulated contributions shall be returned at the member's request. Upon return of a member's accumulated contributions, all rights and benefits under the plan are forfeited and terminated. Upon any reemployment, a member shall not receive credit for the years and fractional parts of years of service for which the member has withdrawn the accumulated contributions from the fund, unless the member repays into the fund the contributions withdrawn, with interest as determined by the board, within 90 days after reemployment.

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

- (a) The member must return to employment as a police officer within one year from the earlier of the date of military discharge or release from active service.
- (b) The member is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), (P.L.103-353).
- (c) The maximum credit for military service pursuant to this subsection shall be five years.

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

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

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

* * *

Sec. 32-35. Contributions

(1) *Member contributions.*

- a. *Amount.* Effective October 1, 2014, each member of the plan shall be required to make regular contributions to the fund in the amount of one-half of one percent of compensation. Effective October 1, 2023, each member of the plan shall be required to make regular contributions to the fund in the amount of three percent of compensation. Effective October 1, 2015, should the amount in excess of \$137,352.30 (i.e. the "frozen amount") of insurance premium tax revenues received by the plan in a given fiscal year be insufficient to fund a "contribution shortfall," as defined in section 32-35(2), and as determined by the plan's actuary in its most recent actuarial valuation report for that fiscal year, then member contributions may be temporarily increased for that fiscal year to such an amount to satisfy such balance. Notwithstanding, any such contribution shortfall shall first be addressed by allocation of 185 premium tax funds according to this section and then a temporary increase in member contributions, should it be necessary. In no event, however, shall member contributions be increased to exceed five percent of compensation. Any increase to member contributions shall be temporary and shall immediately return in the following plan fiscal year. Member contributions withheld by the city on behalf of the member shall be deposited with the board immediately after each pay period. The contributions made by each member to the fund shall be designated as employer contributions pursuant to Section 414(h) of the Internal Revenue Code. Such designation is contingent upon the contributions being excluded from the members' gross income for federal income tax purposes. For all other purposes of the plan, such contributions shall be considered to be member contributions.

* * *

Sec. 32-36. Preretirement death.

- (1) *Prior to vesting or eligibility for retirement.* The beneficiary of a deceased member who had completed less than six years of credited service, was not receiving monthly benefits or was not eligible for early or normal retirement, shall receive a refund of 100 percent of the member's accumulated contributions.
- (2) *Deceased members vested or eligible for retirement.* The beneficiary of any member who dies and who, at the date of death had completed six or more years of credited service or who was eligible for early or normal retirement, shall be entitled to the member's accrued monthly benefit payable for 120 months beginning at the member's normal retirement date. In lieu of this benefit, the beneficiary may elect to receive on immediate distribution of the member's accumulated contributions.

- (3) *Death while performing USERRA-qualified active military service.* In the case of a member who dies on or after January 1, 2007 while performing "Qualified Military Service" under Title 38, United States Code, Chapter 43, Uniformed Services Employment and Reemployment Rights Act ("USERRA") within the meaning of Section 414(u) of the Internal Revenue Code, any "additional benefits" (as defined by Section 401(a)(37) of the Internal Revenue Code) provided under the plan that are contingent upon a member's termination of employment due to death shall be determined as though the member had resumed employment immediately prior to his death. With respect to any such "additional benefits," for vesting purposes only, credit shall be given for the period of the member's absence from covered employment during "Qualified Military Service".

Sec. 32-37. Disability.

- (1) *Disability benefits in-line of duty.* Any member who shall become totally and permanently disabled to the extent of being unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a police officer, which disability was directly caused by the performance of duties as a police officer, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to three percent of average final compensation multiplied by the total years of credited service, but in any event the minimum amount paid to the member shall be 42 percent of average final compensation, which shall commence on the first day of the month coincident with or next following disability retirement and be continued thereafter during the member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. Terminated members, either vested or nonvested, are not eligible for disability benefits, except that those terminated by the city for medical reasons may apply for a disability within 30 days after termination.
- (2) *Disability benefits not-in-line of duty.* Any member with eight or more years of credited service who shall become totally and permanently disabled to the extent of being unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a police officer, which disability is not directly caused by the performance of duties as a police officer shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to three percent of average final compensation multiplied by the total years of credited service, but in any event the minimum amount paid to the member shall be 25 percent of average final compensation, which shall commence on the first day of the month coincident with or next following disability retirement and be continued thereafter during member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. Terminated members, either vested or nonvested, are not eligible for disability benefits.
- (3) *Conditions disqualifying disability benefits.* Each member who is claiming disability benefits must establish to the satisfaction of the board that such disability was not occasioned primarily by:
- (a) Excessive or habitual use of any drugs, intoxicants or narcotics.
 - (b) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections or while committing a crime.
 - (c) Injury or disease sustained while serving in any branch of the Armed Forces.
 - (d) Injury or disease sustained after employment as a police officer with the city shall have terminated.
 - (e) Injury or disease sustained while working for anyone other than the city and arising out of such employment.
- (4) *Physical examination requirement.*
- (a) A member shall not become eligible for disability benefits until and unless the member undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board for that purpose. The board shall not select the member's treating physician or surgeon for this purpose except in an unusual case where the board determines that it would be reasonable and prudent to do so.

- (b) Any retiree receiving disability benefits under provisions of this article may be required by the board to submit sworn statements of condition accompanied by a physician's statement (provided at the retiree's expense) to the board annually and may be required by the board to undergo additional periodic re-examinations by a qualified physician or physicians and/or surgeon or surgeons who shall be selected by the board, to determine if such disability has ceased to exist. If the board finds that the retiree is no longer permanently and totally disabled to the extent that the retiree is unable to render useful and efficient service as a police officer, the board shall recommend to the city that the retiree be returned to performance of duty as a police officer, and the retiree so returned shall enjoy the same rights enjoyed at the time the member was placed upon pension. In the event the retiree so ordered to return shall refuse to comply with the order within 30 days from the issuance thereof, such member shall forfeit the right to a pension.
- (c) The cost of the physical examination and/or re-examination of the member claiming or the retiree receiving disability benefits shall be borne by the fund. All other reasonable costs as determined by the board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the fund.
- (d) If the retiree recovers from disability and reenters the service of the city as a police officer, the member's service will be deemed to have been continuous, but the period beginning with the first month for which the retiree received a disability retirement income payment and ending with the date of reemployment with the city will not be considered as credited service for the purposes of the plan.
- (e) The board shall have the power and authority to make the final decision regarding all disability claims.
- (5) *Disability payments.*
- (a) The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be:
1. If the retiree recovers from the disability prior to the normal retirement date, the payment due next preceding the date of such recovery; or
 2. If the retiree dies without recovering from disability or attains the normal retirement date while still disabled, the payment due next preceding death or the 120th monthly payment, whichever is later.
- (b) Provided, however, the disability retiree may elect, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as described in section 32-39, which shall be the actuarial equivalent of the disability benefit otherwise payable.
- (6) *Disability benefit offsets.* When a member retiree is receiving a disability pension, Social Security benefits and/or workers' compensation benefits pursuant to F.S. ch. 440, for the same disability, and the total monthly benefits received from these sources combined both exceed 100 percent of the member's average monthly wage, as defined in F.S. ch. 440, the disability pension benefit shall be reduced so that the total monthly amount received by the retiree does not exceed 100 percent of such average monthly wage. The amount of any lump sum workers' compensation payment shall be converted to an equivalent monthly benefit payable for ten years certain by dividing the lump sum amount by 83.9692. Social Security disability cost of living increases and cost of living increases provided for under the plan shall not be used to further offset disability benefits. Notwithstanding the foregoing, in no event shall the disability pension benefit be reduced below the greater of 42 percent of average final compensation or two percent of average final compensation multiplied by years of credited service.

Sec. 32-38. Vesting.

- (1) A member shall become fully vested upon attaining six years of credited service.
- (2) If a member terminates employment with the city, either voluntarily or by discharge, and is not eligible for any other benefits under this plan, the member shall be entitled to the following:
 - (a) A member with less than six years of credited service upon termination shall be entitled to a refund of accumulated contributions or the member may leave such accumulated contributions deposit with the fund.
 - (b) A member with six or more years of credited service upon termination shall be entitled to a monthly retirement benefit, payable for life, determined in the same manner as for normal or early retirement and based upon the member's credited service, average final compensation and the benefit accrual rate as of the date of termination, payable to the member commencing at the member's otherwise normal or early retirement date, determined as if the member had remained employed, provided the member does not elect to withdraw the member's accumulated contributions and provided the member survives until benefits actually begin. If the member does not withdraw the accumulated contributions and does not survive until benefits actually begin, the designated beneficiary shall be entitled to the member's accrued monthly benefit payable for 120 months beginning at the member's normal retirement date or a return of the member's accumulated contributions.

Sec. 32-39. Optional forms of benefits.

- (1) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified herein, a member, upon written request to the board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:
 - (a) A retirement income of a monthly amount payable to the retiree for the lifetime of the retiree only.
 - (b) A retirement income of a modified monthly amount, payable to the member retiree during the lifetime of the member retiree and following the death of the member retiree, 100 percent, 75 percent, 66⅔ percent or 50 percent of such monthly amount payable to a joint pensioner for the joint pensioner's lifetime. Except where the retiree's joint pensioner is the retiree's spouse, the present value of payments to the retiree shall not be less than 50 percent of the total present value of payments to the retiree and the joint pensioner.
 - (c) A member who retires prior to the time at which social security benefits are payable may elect to receive an increased retirement benefit until such time as social security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of retirement. The amounts payable shall be as recommended by the actuaries for the plan, based upon the Social Security law in effect at the time of the member's retirement.
- (2) The member, upon electing the option described in subsection (1)(b) above, shall designate the joint pensioner to receive the benefit, if any, payable in the event of the member's death, and will have the power to change such designation from time to time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have commenced, the member may thereafter change the joint pensioner up to two times as provided in F.S. § 185.341 without the approval of the board of trustees or the current joint annuitant or beneficiary. The member need not provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living. Upon any such new election, the member's final pension benefit shall be recalculated accordingly by the actuary with all costs resulting directly from the new election borne solely by the member.
- (3) The consent of a member's or retiree's joint pensioner to any such change shall not be required. The rights of all previously-designated joint pensioners to receive benefits under the plan shall thereupon cease.

- (4) Upon change of a retiree's joint pensioner in accordance with this section, the amount of the retirement income payable to the retiree shall be actuarially redetermined to take into account the age of the former joint pensioner, the new joint pensioner and the retiree, to ensure that the benefit paid is the actuarial equivalent of the retiree's then-current benefit at the time of the change. Any such retiree shall pay the actuarial recalculation expenses and shall make repayment of any overage of previously-paid pension benefits as a result of said recalculations. Each request for a change will be made in writing on a form prepared by the board, and on completion will be filed with the board. In the event that no joint pensioner survives the retiree, such benefits as are payable in the event of the death of the retiree shall be paid to the retiree's estate.
- (5) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:
- (a) If a member dies prior to the member's normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under section 32-36.
 - (b) If the joint pensioner dies before the member's retirement, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the member upon retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new joint pensioner is designated by the member prior to retirement.
 - (c) If both the retiree and the joint pensioner designated by member or retiree die before the full payment has been effected under subsection (2)(b), above, the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum to the retiree's estate.
 - (d) If a member continues employment beyond the normal retirement date, and dies prior to actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to the joint pensioner or beneficiary (or beneficiaries) designated by the member, in the amount or amounts computed as if the member had retired under the option on the date of the member's death.
- (6) A retiree may not change retirement options after the date of cashing or depositing his/her first retirement check.
- (7) Notwithstanding anything herein to the contrary, a member or beneficiary may elect to receive a lump sum payment in the event that the monthly benefit amount is less than \$100.00 or the total commuted value of the remaining monthly income payments to be paid do not exceed \$5,000.00. Any such payment made to any person pursuant to the preceding sentence shall operate as a complete discharge of all obligations under the plan with regard to such member or beneficiary.

Sec. 32-40. Beneficiaries.

- (1) Each member or retiree may, on a form provided for that purpose, signed and filed with the board, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of the member's death. Each designation may be revoked or changed by such member or retiree by signing and filing with the board a new designation-of-beneficiary form. Upon such change, the rights of all previously designated beneficiaries to receive any benefits under the plan shall cease.
- (2) If a deceased member or retiree failed to name a beneficiary in the manner prescribed in subsection (1), or if the beneficiary (or beneficiaries) named by a deceased member or retiree predeceased the member or retiree, the death benefit, if any, which may be payable under the plan with respect to such deceased member or retiree, shall be paid to the estate of the member or retiree and the board, in its discretion, may direct that the commuted value of the remaining monthly income benefits be paid in a lump sum.

(3) If both the retiree and the beneficiary (or beneficiaries) designated by member or retiree die before the full value of a benefit providing for payments for a period certain, the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum to the retiree's estate.

(4) Any payment made to any person pursuant to this section shall operate as a complete discharge of all obligations under the plan with regard to the deceased member and any other persons with rights under the plan.

Sec. 32-41. Claims procedures.

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

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

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

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

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

Sec. 32-44. Reserved.

Sec. 32-45. Reserved.

Sec. 32-46. Board of trustees.

(1) The sole and exclusive administration of and responsibility for the proper operation of the plan and for making effective the provisions of this chapter is hereby vested in a board of trustees. The board shall consist of five trustees. Two trustees, unless otherwise prohibited by law, shall be legal residents of the city who shall be appointed by the city council, one of whom shall be the city clerk, or if the city clerk is not a legal resident of the city, a designee who is a legal resident of the city. Two trustees shall be members of the plan, who shall be elected by a majority of the police officers who are members of the plan. The fifth trustee shall be chosen by a majority of the four trustees approved and elected as provided for herein, and such person's name shall be submitted to the city council. Upon receipt of the fifth person's name, the city council shall, as a ministerial duty, appoint such person to the board of trustees as its fifth trustee. The fifth trustee shall have the same rights as each of the other four trustees appointed or elected as herein provided, and shall serve a four-year term unless the trustee sooner vacates the office. Each resident trustee shall serve as trustee for a period of four years, unless the trustee sooner vacates the office or is sooner replaced by the city council at whose pleasure said trustee shall serve. Each member trustee shall serve as trustee for a period of four years, unless the trustee sooner leaves the employment of the city as a police officer or otherwise vacates the office of trustee, whereupon a successor shall be chosen in the same manner as the departing trustee. Each trustee may succeed himself or herself in office. In order to establish staggered terms for the appointed and elected trustees, the term for one elected and one appointed trustee shall be shortened to one year for one term only. All future terms of those and all other trustees shall be four years thereafter, as provided above. The board shall establish and administer the nominating and election procedures for each election.

1 The board shall meet at least quarterly each year. The board shall be a legal entity with, in addition to other
2 powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature,
3 and description.

- 4 (2) The trustees shall, by a majority vote at the first board meeting and annually thereafter, elect a chairman,
5 vice-chairman and a secretary. The secretary of the board shall keep a complete minute book of the actions,
6 proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may
7 receive expenses and per diem as provided by law.

- 8 (3) Each trustee shall be entitled to one vote on the board. Three affirmative votes shall be necessary for any
9 decision by the trustees at any meeting of the board. A trustee shall have the right to abstain from voting as
10 the result of a conflict of interest and shall comply with the provisions of F.S. § 112.3143.

- 11 (4) The board shall engage such actuarial, accounting, legal, and other services as shall be required to transact
12 the business of the plan. The compensation of all persons engaged by the board and all other expenses of
13 the board necessary for the operation of the plan shall be paid from the fund at such rates and in such
14 amounts as the board shall agree. In the event the board chooses to use the city's legal counsel, actuary or
15 other professional, technical or other advisors, it shall do so only under terms and conditions acceptable to
16 the board.

- 17 (5) The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:

- 18 (a) To construe the provisions of the plan and determine all questions arising thereunder.
19 (b) To determine all questions relating to eligibility and membership.
20 (c) To determine and certify the amount of all retirement allowances or other benefits hereunder.
21 (d) To establish uniform rules and procedures to be followed for administrative purposes, benefit
22 applications and all matters required to administer the plan.
23 (e) To distribute to members, at regular intervals, information concerning the plan.
24 (f) To receive and process all applications for benefits.
25 (g) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of
26 approved benefit payments and other expenditures arising through operation of the plan and fund.
27 (h) To have performed actuarial studies and valuations, at least as often as required by law, and make
28 recommendations regarding any and all changes in the provisions of the plan.
29 (i) To perform such other duties as may be required to administer the plan in accordance with this
30 chapter.

- 31 (6) Notwithstanding any provision herein to the contrary, "legal resident" members appointed by the Marco
32 Island City Council to the Board of Trustees of the City of Marco Island Police Officers' Pension Plan pursuant
33 to paragraph (1) of this section, shall serve in the same capacity as members of the board of trustees of the
34 City of Marco Island Firefighters' Pension Plan as follows. Upon the effective date of this section, the "legal
35 resident" members of the firefighters' pension plan board of trustees shall be appointed as the "legal
36 resident" members of board of trustees of this plan. Said trustees shall serve until the expiration of their
37 terms on the firefighters' pension plan board of trustees. Upon expiration of the members' terms and
38 thereafter, the city council shall appoint or reappoint two legal residents pursuant to paragraph (1) of this
39 section, whose duty it shall be to serve on both the board of trustees of this plan and the board of trustees of
40 the firefighters' pension plan.

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

- 42 (a) *Establishment and operation of fund.*

- (1) As part of the plan, there exists the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the plan.
- (2) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board. Payment of benefits and disbursements from the fund shall be made by the disbursing agent but only upon written authorization from the board.
- (3) All funds of the police officers' pension plan may be deposited by the board with the finance director of the city, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as for the safekeeping of funds for the city. However, any funds so deposited with the finance director of the city shall be kept in a separate fund by the finance director or clearly identified as such funds of the police officers' pension plan. In lieu thereof, the board shall deposit the funds of the police officers' pension plan in a qualified public depository as defined in F.S. § 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of F.S. ch. 280. In order to fulfill its investment responsibilities as set forth herein, the board may retain the services of a custodian bank, an investment advisor registered under the Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.
- (4) All funds and securities of the plan may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:
 - a. Current amounts of accumulated contributions of members on both an individual and aggregate account basis;
 - b. Receipts and disbursements;
 - c. Benefit payments;
 - d. Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city;
 - e. All interest, dividends and gains (or losses) whatsoever; and
 - f. Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.
- (5) An audit shall be performed annually by a certified public accountant for the most recent fiscal year of the plan showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete evaluation of assets on both a cost and market basis, as well as other items normally included in a certified audit.
- (6) The board shall have the following investment powers and authority:
 - a. The board shall be vested with full legal title to said fund, subject, however, and in any event to the authority and power of the Marco Island City Council to amend or terminate this plan, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this plan, except as otherwise provided herein. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund. The board shall identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in F.S. § 215.473, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in such company beginning January 1, 2010, and shall thereafter be prohibited from purchasing or holding such securities. The divestiture of any such security must be completed by

September 30, 2010. In accordance with Ch. 2009-97, Laws of Florida, no person may bring any civil, criminal, or administrative action against the board or any employee, officer, director, or advisor of such board based upon the divestiture of any security pursuant to this paragraph.

- b. All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be limited to:

1. Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the members in the fund shall be entitled under the provisions of this plan and pay the initial and subsequent premium thereon.
2. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund or a savings/building and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts

* * *

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

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

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

* * *

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

* * *

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

* * *

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this subsection (1), and the amount payable under the form of benefit in any limitation year shall not exceed the limits of this subsection (1) applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

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

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

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

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

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

* * *

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

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

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

* * *

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

Age as of Annuity Starting Date:	Adjustment of Dollar Limitation:	
Over 65	The smaller of:	(a) The actuarial equivalent of the limitation for age 65, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan, or
		(b) The actuarial equivalent of the limitation for age 65, computed using a 5.00 percent interest rate and the mortality basis prescribed in Internal Revenue Code Section 415(b)(2)(E)(v).
	Any increase in the dollar limitation determined in accordance with this paragraph shall not reflect a mortality decrement between age 65 and the age at which benefits commence if benefits are not forfeited upon the death of the member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.	
62 to 65	No adjustment.	
Less than 62	The smaller of:	(a) The actuarial equivalent of the limitation for age 62, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan, or

		(b) The actuarial equivalent of the limitation for age 62, computed using a 5.00 percent interest rate and the mortality basis prescribed in {Internal Revenue} Code Section 415(b)(2)(E)(v).
		This adjustment shall not apply to any "Qualified Member" as defined in Section 415(b)(2)(H), nor to survivor and disability benefits as defined in Section 415(b)(2)(I) of the {Internal Revenue} Code.

- 1
- 2 d. With respect to clause c.1(i)(A), clause c.1(ii)(A) and paragraph c.2 above, no adjustment shall be
- 3 made to the dollar limitation to reflect the probability of a member's death between the annuity
- 4 starting date and age 62, or between age 65 and the annuity starting date, as applicable, if
- 5 benefits are not forfeited upon the death of the member prior to the annuity starting date. To
- 6 the extent benefits are forfeited upon death before the annuity starting date, such an adjustment
- 7 shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's
- 8 death if the plan does not charge members for providing a qualified preretirement survivor
- 9 annuity, as defined in {Internal Revenue} Code Section 417(c), upon the member's death.
- 10 e. The term "limitation year" is the 12-month period which is used for application of the limitations
- 11 under {Internal Revenue} Code Section 415 and shall be the calendar year.
- 12 * * *
- 13 i. Any portion of a member's benefit that is attributable to mandatory member contributions
- 14 (unless picked-up by the city) or rollover contributions, shall be taken into account in the manner
- 15 prescribed in the regulations under Section 415 of the {Internal Revenue} Code.
- 16 * * *
- 17 l. The determination of the annual pension under b. of this subsection (1) shall take into account
- 18 (in the manner prescribed by the regulations under Section 415 of the {Internal Revenue} Code)
- 19 Social Security supplements described in Section 411(a)(9) of the Internal Revenue Code and
- 20 benefits transferred from another defined benefit plan, other than transfers of distributable
- 21 benefits pursuant [to] Section 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.
- 22 m. The above limitations are intended to comply with the provisions of Section 415 of the {Internal
- 23 Revenue} Code, as amended, so that the maximum benefits provided by plans of the city shall be
- 24 exactly equal to the maximum amounts allowed under Section 415 of the {Internal Revenue}
- 25 Code and regulations thereunder. If there is any discrepancy between the provisions of this
- 26 subsection (1) and the provisions of Section 415 of the {Internal Revenue} Code and regulations
- 27 thereunder, such discrepancy shall be resolved in such a way as to give full effect to the
- 28 provisions of Section 415 of the {Internal Revenue} Code. The value of any benefits forfeited as a
- 29 result of the application of this subsection (1) shall be used to decrease future employer
- 30 contributions.
- 31 n. For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal
- 32 Revenue Code, compensation shall include any elective deferral (as defined in ~~Code~~ Section
- 33 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the
- 34 employer at the election of the member and which is not includible in the gross income of the
- 35 member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years
- 36 beginning on and after January 1, 2001, for the purposes of applying the limitations described in
- 37 this subsection (1), compensation paid or made available during such limitation years shall
- 38 include elective amounts that are not includible in the gross income of the member by reason of
- 39 Section 132(f)(4) of the Internal Revenue Code. For limitation years on or after July 1, 2007,
- 40 compensation shall include payments that otherwise qualify as compensation and that are made
- 41 by the later of: (a) two and one-half months after severance from employment with the

1 employer, and (b) the end of the limitation year that includes the date of severance. With respect
2 to plan years beginning on or after December 31, 2008, compensation shall also include
3 differential wage payments within the meaning of Section 3401(h)(2) of the Internal Revenue
4 Code.

5 * * *

6 (3) *Required minimum distributions.*

7 * * *

8 d. *Form of distribution.* Unless the participant's interest is distributed in the form of an annuity
9 purchased from an insurance company or in a single sum on or before the required beginning
10 date, as of the first distribution calendar year distributions will be made in accordance with
11 subparagraphs d.1., d.2. and d.3. below. If the participant's interest is distributed in the form of
12 an annuity purchased from an insurance company, distributions thereunder will be made in
13 accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the
14 Treasury regulations. Any part of the participant's interest which is in the form of an individual
15 account described in Section 414(k) of the Internal Revenue Code will be distributed in a
16 manner satisfying the requirements of Section 401(a)(9) of the Internal Revenue Code and the
17 Treasury regulations that apply to individual accounts.

18 * * *

19 f. *Definitions.*

20 1. *Designated beneficiary.* The individual who is designated as the beneficiary under the plan
21 and is the designated beneficiary under Section 401(a)(9) of the Internal Revenue Code
22 and Section 1.401(a)(9)-4 of the Treasury regulations.

23 * * *

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

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

29 1. *Eligible rollover distribution.* An eligible rollover distribution is any distribution of all or any
30 portion of the balance to the credit of the distributee, except that an eligible rollover
31 distribution does not include:

- 32 (i) Any distribution that is one of a series of substantially equal periodic payments
33 (not less frequently than annually) made for the life (or life expectancy) of the
34 distributee or the joint lives (or joint life expectancies) of the distributee and
35 the distributee's designated beneficiary, or for a specified period of ten years or
36 more;
- 37 (ii) Any distribution to the extent such distribution is required under Section
38 401(a)(9) of the Internal Revenue Code;
- 39 (iii) The portion of any distribution which is made upon hardship of the member;
40 and
- 41 (iv) The portion of any distribution that is not includible in gross income
42 (determined without regard to the exclusion for net unrealized appreciation
43 with respect to employer securities), provided that a portion of a distribution
44 shall not fail to be an eligible rollover distribution merely because the portion
45 consists of after-tax employee contributions which are not includible in gross

1 income. However, such portion may be transferred only to an individual
2 retirement account or annuity described in Section 408(a) or (b) of the ~~{Internal~~
3 ~~Revenue}~~ Code, or to a qualified defined contribution plan described in Section
4 401(a) or 403(a) of the ~~{Internal Revenue}~~ Code that agrees to separately
5 account for amounts so transferred, including separately accounting for the
6 portion of such distribution which is includible in gross income and the portion
7 of such distribution which is not so includible.

8 c. *Eligible retirement plan.* An eligible retirement plan is an individual retirement account described
9 in Section 408(a) of the ~~{Internal Revenue}~~ Code, an individual retirement annuity described in
10 Section 408(b) of the ~~{Internal Revenue}~~ Code, an annuity plan described in Section 403(a) of the
11 ~~{Internal Revenue}~~ Code, an annuity contract described in Section 403(b) of the Internal Revenue
12 Code, a qualified trust described in Section 401 (a) of the ~~{Internal Revenue}~~ Code, an eligible
13 plan under Section 457(b) of the ~~{Internal Revenue}~~ Code which is maintained by a state, political
14 subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state
15 and which agrees to separately account for amounts transferred into such plan from this plan, or,
16 with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of
17 ~~{Internal Revenue}~~ Code Section 408A(c)(3)) that accepts the distributee's eligible rollover
18 distribution.

19 d. *Distributee.* A distributee includes an employee or former employee. In addition, the employee's
20 or former employee's surviving spouse and the employee's or former employee's spouse or
21 former spouse who is the alternate payee under a qualified domestic relations order, as defined
22 in Section 414(p) of the ~~{Internal Revenue}~~ Code, are distributees with regard to the interest of
23 the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated
24 beneficiary as defined in Section 401(a)(9)(E) of the ~~{Internal Revenue}~~ Code who is not the
25 surviving spouse and who elects a direct rollover to an individual retirement account described in
26 Section 408(a) of the ~~{Internal Revenue}~~ Code or an individual retirement annuity described in
27 Section 408(b) of the ~~{Internal Revenue}~~ Code shall be considered a distributee.

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

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

33 (6) *Compensation limitations under 401(a)(17).* In addition to other applicable limitations set forth in the
34 plan, and notwithstanding any other provision of the plan to the contrary, the annual compensation of
35 each participant taken into account under the plan shall not exceed the EGTRRA annual compensation
36 limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is
37 \$200,000.00, as adjusted by the commissioner for increases in the cost of living in accordance with
38 Section 401(a)(17)(B) of the ~~{Internal Revenue}~~ Code. The cost-of-living adjustment in effect for a
39 calendar year applies to any period, not exceeding 12 months, over which compensation is determined
40 (determination period) beginning in such calendar year. If a determination period consists of fewer
41 than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator
42 of which is the number of months in the determination period, and the denominator of which is 12.

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

45 (7) ~~*{Interest of members in plan.}*~~ At no time prior to the satisfaction of all liabilities under the plan with
46 respect to members and their spouses or beneficiaries, shall any part of the corpus or income of the
47 fund be used for or diverted to any purpose other than for their exclusive benefit.

- (8) *No reduction of accrued benefits.* No amendment or ordinance shall be adopted by the city council which shall have the effect of reducing the then vested accrued benefits of a member or a member's beneficiaries.
- (9) *Use of forfeitures.* Forfeitures arising from terminations of service of members shall serve only to reduce future city contributions.
- (10) *Compliance with F.S. ch. 185.* This plan is intended to comply with all applicable provisions of F.S. ch. 185.
- (11) This plan is intended to be a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code, and shall be administered at all times in accordance with Section 401(a) of the Internal Revenue Code, as it relates to governmental plans.

* * *

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

* * *

(2) Definitions.

- (a) *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income. Any portion of any distribution which would be includible in gross income will be an eligible rollover distribution if the distribution is made to an individual retirement account described in Section 408(a) of the Internal Revenue Code, to an individual retirement annuity described in Section 408(b) or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.
- (b) *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Internal Revenue Code and which agrees to separately account for amounts transferred into such plan from this plan, an annuity contract described in Section 403(b) of the Internal Revenue Code, or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving spouse.
- (c) *Distributee:* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse.
- (d) *Direct rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

* * *

[*Editor's note: \(No changes to Chapter 33\)*](#)

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

ARTICLE I. IN GENERAL

Sec. 34-1. Title and purpose.

- (a) *Short title.* This article shall be known as and may be cited as the "Parks and Recreation Rules and Public Facilities Ordinance.
- (b) *Purpose and applicability.* This article is enacted under the home rule power of the city for the purpose of providing necessary regulations, conditions and requirements which shall be uniformly applied to the general public's use of city owned parks, traditional public forums and public facilities.

Sec. 34-2. Definitions.

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

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

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

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

~~County. Collier County.~~

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

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

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

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

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

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

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

~~*Person* has the meaning ascribed to it in section 1-2 of this code. An individual, corporation, governmental agency, business, estate, trust, partnership, firm, joint venture, syndicate, fiduciary, society, organization, association, two or more persons having a joint or common interest, or any other entity, and its designated agents, successors or assigns.~~

~~State. State of Florida.~~

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

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

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

- (1) Willfully injure, deface, destroy, disturb, remove or misuse any part of the park or other public facility or any building, sign, equipment, plant, plant material, animals, or other property.
- (2) Operate any motorized or electrical tools or equipment unless authorized by the director, with the exception of motorized wheelchairs and other motorized equipment used by individuals with physical disabilities as defined by state and federal law.

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

- (1) Leave behind or dump any material of any kind in a park except the refuse generated during use of the park or other public facility, and any such refuse shall be deposited in receptacles provided for such purposes.
- (2) Place or permit to be placed waste of any kind in any water body river, brook, stream, lake, pond, canal, ditch, or drain.
- (3) Dispose of household or commercial trash in any park-receptacle.

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

- (1) Discharge, carry, or possess a firearm, except law enforcement officers during the lawful performance of their duties.
- (2) Use, carry, or possess any fireworks or other explosive substance, except duly authorized employees or agents of the department.
- (3) Possess any other dangerous weapons or instruments.

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

- (1) Commit any assault, battery, or engage in fighting.
- (2) Follow a person about the park with the intent to harass, annoy, or alarm such other person.
- (3) Engage in a course of conduct or repeatedly commit acts which alarm or annoy another person and which serve no legitimate purpose.
- (4) Threaten or menace any other person with any instrument or by using any animal to do the same with the intent to harass, annoy, or alarm such other person.

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

- (1) With intent, cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, engage in fighting or in violent, tumultuous, or threatening behavior.
- (2) With intent, cause public inconvenience, annoyance, or harm, or recklessly creating a risk thereof, make unreasonable noise.
- (3) With intent, cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, use abusive or obscene language or make obscene gestures in a public place.
- (4) Commit, perform, or engage in any lewd, lascivious, obscene or indecent act or behavior.

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

- (1) Knowingly approach within eight feet of any individual in a park, or other traditional public forum, or other public facility for the purpose of displaying a sign, engaging in an oral protest, educating the

public, counseling or distributing leaflets or handbills, unless that individual consents to the approach or it is otherwise authorized by Florida law.

(2) Attach posters, signs or other objects to the ground or to trees, or other structures ~~located in or upon any park or any Public facility~~ unless authorized by city permit or facility use policy.

(3) Beg, hawk, peddle, or solicit within the park or public facility, unless authorized by city permit or the facility use policy.

(4) Sell or offer for sale or offer to give any article, thing, privilege, or service unless authorized by city permit or facility use policy. If so authorized, such sale or offer of any article, thing, privilege, or service must be in accordance with all applicable city, county, and state laws, codes, ordinances, rules, or regulations.

* * *

(i) *Fires.* It shall be unlawful for any person to:

(1) Start a fire ~~in the park~~ except small fires for culinary purposes in permanent park grills located in the places or areas approved by the director. The director may, at ~~his/her~~their discretion, prohibit or permit fires at any location or for any purpose when necessary for the protection of park property or the health, safety, or welfare of the public or through the facility use policy.

(2) Leave the immediate vicinity of the culinary fires in permanent park grills before they are extinguished.

* * *

(p) *Hours of closing.*

(1) Hours of closing are regulated according to the signs posted at the entrances of each park as established by the city ~~manager~~.

(2) No person shall be permitted to enter, remain, stop, or park within the confines of any park outside the posted hours, except in emergencies or unless permitted ~~by the director~~ through the facility use policy. In case of an emergency or when, in the judgment of the director, the public interest demands it, any portion of the park may be closed to the public or designated persons.

(q) *Traffic regulations.*

(1) Motor vehicles.

* * *

e. No person shall drive upon or along any park road or drive which has been closed and posted with appropriate signs or barricades. The ~~city manager and~~ director shall have authority to order roads or drives closed.

f. No person shall drive at a speed in excess of that posted for the area as established by the city ~~manager~~.

g. No person shall operate a vehicle along or over any road or drive within a park in a reckless manner or without due regard for the safety and the rights of pedestrians, drivers, or occupants of another vehicle.

* * *

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

(a) ~~Violation of this article shall be punishable according to the penalties and procedures in chapter 14 of this code. It shall be unlawful for any person to violate or fail to comply with any section of this article. The violation or failure to comply with any provision of this Code shall constitute an offense against the city, said offense being a misdemeanor of the second degree and punishable in accordance with Florida Statutes. Any~~

person who violates any provision of this article may be punished by a fine not exceeding \$500.00 or imprisonment not exceeding 60 days, or by both such a fine and imprisonment. Each day any violation of this article continues shall constitute a separate offense.

(b) ~~Additionally or alternatively to any other method of enforcement specified here, the city may enforce the provisions of this article by the following:~~

(1) ~~The procedures relating to the code enforcement board of the city;~~

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

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

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

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

Secs. 34-5—34-30. Reserved.

ARTICLE II. COMMUNITY PARK AND RECREATION IMPACT FEE

Sec. 34-31. Definitions.

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

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

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

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

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

Applicant means the person who applies for a building permit.

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

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

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

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

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

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

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

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

14 ~~*Owner* has the meaning ascribed to it in section 1-2 of this code~~ means the person holding legal title to the
15 real property upon which parks and recreational facilities impact construction is to occur.

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

18 ~~*Person* has the meaning ascribed to it in section 1-2 of this code~~ means an individual, a corporation, a
19 partnership, an incorporated association, or any other similar entity.

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

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

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

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

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

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

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

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

41 * * *

42 (7) This section shall not be construed to permit the collection of impact fees in excess of the amount
43 reasonably anticipated to offset the demand on the city park system generated by ~~impact~~ construction

1 ~~of additional dwelling units occurring subsequent to the effective date of the ordinance from which this~~
2 ~~article is derived.~~

- 3 (8) The revenue derived from the impact fee shall be utilized only for the acquisition of improvements and
4 additions to the city park system which are necessitated by the impact of additional dwelling units~~new~~
5 ~~construction.~~

6 * * *

7 **Sec. 34-35. ExemptionsApplicability.**

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

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

16 17 **Sec. 34-36. Payment.**

- 18 (a) Except as otherwise provided in this article, prior to the issuance of a building permit ~~for a parks and~~
19 ~~recreational facilities impact construction~~, an applicant shall pay the community park impact fee as set forth
20 in section 34-40.
- 21 (b) The obligation for payment of the community park impact fee shall run with the land.
- 22 (c) If a building permit ~~issued for a parks and recreational facilities impact construction~~ expires prior to
23 completion of construction for which it was issued, the applicant may, within 90 days of the expiration of the
24 building permit, apply for a refund of the community park impact fee. Failure to timely apply for a refund of
25 the community park impact fee shall waive any right to refund.
- 26 (1) The application for refund shall be filed with the ~~chief of building~~ official services and shall contain the
27 name and address of the applicant, the location of the property which was the subject of the building
28 permit, the date the community park impact fee was paid, a copy of the receipt of payment for the
29 impact fee, and the date the building permit was issued and the date of expiration.
- 30 (2) After verifying that the building permit has expired and that the construction has not been completed,
31 the city ~~manager~~ shall refund the community park impact fee paid for such construction.
- 32 (3) ~~The Any application for new building permit which is subsequently issued~~ on the same property which
33 was the subject of a refund shall require payment of the community park impact fee ~~as required by~~
34 ~~section 34-36.~~

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

36 ~~Impact fees under this article shall be imposed and calculated for the alteration, expansion or replacement of~~
37 ~~a building or dwelling unit or the construction of an accessory building if the alteration, expansion or replacement~~
38 ~~of the building or dwelling unit or the construction of an accessory building results in a land use determined to~~
39 ~~increase the number of dwelling units. The impact fee imposed shall be upon each additional dwelling unit created~~
40 ~~by the alteration, expansion or replacement of the building or dwelling unit or the construction of an accessory~~
41 ~~building.~~

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

* * *

(e) The community park impact fee collected pursuant to this article shall be returned to the then-current owner of the property for which such fee was paid if such fees have not been expended or encumbered prior to the end of the fiscal year immediately following the sixth anniversary of the date upon which such fees were paid. Refunds shall be made only in accordance with the following procedure:

(1) The then-current owner must petition the city ~~manager~~ for the refund prior to the end of the fiscal year immediately following the sixth anniversary of the date of the payment of the community park impact fee.

(2) The petition for refund shall be submitted to the city ~~manager~~ and shall contain:

- a. A notarized sworn statement that the petitioner is the then-current owner of the property for which the impact fee was paid;
- b. A copy of the dated receipt issued for payment of such fee, or such other record as would indicate payment of such fee;
- c. A certified copy of the latest recorded deed; and
- d. A copy of the most recent ad valorem tax bill.

(3) Within three months from the date of receipt of a petition for refund, the city ~~manager~~ will advise the petitioner of the status of the impact fee requested for refund, and if such impact fee has not been expended or encumbered within its applicable time period, then it shall be returned to the petitioner. For the purposes of this section, fees collected shall be deemed to be spent or encumbered on the following basis: The first fee in shall be the first fee out.

Sec. 34-39. Alternative fee calculation.

* * *

Sec. 34-40. Amount of fee.

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

Chapter 38 PLANNING

ARTICLE I. IN GENERAL

Sec. 38-1. Comprehensive plan adopted.

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

Sec. 38-2. Short title.

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

Sec. 38-3. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 ~~*Land use* means the development that has occurred on the land, the development that is proposed by a~~
15 ~~developer on the land, or the use that is permitted or permissible on the land under the comprehensive plan or~~
16 ~~element or portion thereof, land development regulations, or the land development code, as the context may~~
17 ~~indicate.~~

18 ~~*Large scale amendment* shall mean and refer to an amendment to the comprehensive plan other than a~~
19 ~~small scale amendment to the comprehensive plan.~~

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

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

24 ~~*Local government* means Collier County or any municipality.~~

25 ~~*Local planning agency (LPA)* means and refers to the planning board designated in section article II of this~~
26 ~~chapter 38-40(1), Code of Ordinances of the city of Marco Island, Florida.~~

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

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

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

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

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

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

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

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

~~* * *~~

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

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

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

- (a) ~~The comprehensive plan amendment process is regulated by F.S. §163.3187 (small-scale amendments) and F.S. § 163.3184 (all other amendments). F.S. §163.3177 provides general requirements for plan amendments. Further guidance and procedures may be established in the city's administrative code. Application by city. A proposal to amend the comprehensive plan may be initiated by the city council, or the city manager, by filing a written proposal with the director as set forth herein. The written proposal shall be classified as an "applicaton" as that term is used in this chapter. Applications filed pursuant to this subsection (a) shall be classified as administrative applications of the city and shall be required to submit an application as set forth in subsections (c) and (d), but shall be exempt from the requirements of subsection (d)(15) hereof relating to application fees.~~
- ~~(b) Application by a real property owner, or governmental agency. Every applicant, including, but not limited to, a fee simple owner of real property of the specific parcel of land directly and specifically affected by the proposed application, shall be required to file an application pursuant to the requirements of subsections (c) and (d) hereof. Every application that relates to the land use or specific development of a parcel(s) of land must be submitted and executed by the aforesaid real property owner (or said property owners authorized agent) or by the city.~~
- ~~(c) Application form. A complete written application for an amendment to the comprehensive plan shall be submitted to the director. Until all informational items required on the application form are provided, the application shall not be considered to be complete for review and consideration. All items required to be submitted by this section which are not answered on the application form but which may be appended or attached to the application form or which may be on separate sheets of paper shall be deemed to be a part of the application form as if specifically included therein. All applicants shall be required to execute the petition in the presence of a notary public and by oath or affirmation swear to the truth of the statements in the application or that to the best of said applicant's knowledge and belief the statements in the application are true and correct as set forth in section 38-13(c) of this Code. Applications submitted by a corporation shall be executed by an authorized vice-president or superior corporate officer. Applications submitted by a partnership shall be executed by an authorized general partner. Applications submitted by a limited liability company shall be executed by an authorized member or manager, and said member or manager may be required by the city to execute an affidavit attesting to the legal authority to execute the application. Applications submitted by a trust shall be executed by an authorized trustee(s), and said trustee(s) shall be required by the city to execute an affidavit attesting to the legal authority of the trustee to execute the application. So that members of the council or board members hearing applications submitted by a trust can determine whether they have a voting conflict of interest, all trusts shall identify the names and addresses of~~

- all trustees and trust beneficiaries, as well as their respective percentage interest in the trust. Applications submitted by the city shall be executed by the city manager.
- (d) Applications shall be made upon a form to be designed by the director, which form shall include:
- (1) The name, address, e-mail address, and telephone number of the applicant;
 - (2) The name, address, e-mail address, and telephone number of the current property owner, if the application relates to a specific parcel of property;
 - (3) The name, address, e-mail address, and telephone number of any agent who will or might represent the applicant in any city review proceeding regarding the application;
 - (4) A legal description, boundary survey, Collier County property appraiser's parcel number, and street address if available, if the application relates to specific parcel(s) of real property. The boundary survey and legal description shall be prepared by a professional land surveyor and mapper who is registered to engage in the practice of mapping and land surveying by the State of Florida. The boundary survey and legal description shall be prepared in accordance with at least the minimum technical standards for land surveying promulgated from time to time by the State of Florida, Board of Professional Land Surveyors and Mappers, or its successor. The survey shall be certified to and for reliance by the city, executed by the surveyor and mapper and under surveyor's seal;
 - (5) A general description of the proposed amendment to the comprehensive plan, explaining why the amendment is necessary or appropriate;
 - (6) An analysis of the fiscal impact of the proposed amendment on the city's finances, if any;
 - (7) An analysis of the impact of the amendment on the environment and natural and historical resources, if any;
 - (8) An analysis of the degree of internal consistency of the proposed amendment with the city's existing comprehensive plan with supporting data and analysis;
 - (9) An analysis of the impact upon the city's ability to provide adequate public facilities and maintain the existing level of service for public facilities as identified in the comprehensive plan, if the amendment is granted;
 - (10) An analysis of whether an amendment involving a change to the future land use map is compatible with underlying topographic, soil, flooding probability, and existing infrastructure to ensure the development envisioned in the proposed change can be accommodated without adverse impacts or severe limitations due to topographic, soil, or infrastructure services. See Future Land Use Element Policy 1.2.1;
 - (11) An analysis of whether a change to the future land use map or the future land use element goals, objectives, or policies will result in a net increase in density that does not conform to or could exceed the prescribed limitations within the comprehensive plan. See Future Land Use Element Policy 1.2.4;
 - (12) An analysis of whether a change to the future land use map or the future land use element goals, objectives, or policies will result in a negative impact upon hurricane evacuation plans, routes, or shelter facilities. See Future Land Use Element Policy 1.3.1;
 - (13) An examination of the transportation system to determine whether the comprehensive plan amendment which changes the future land use map or the future land use element goals, objectives, or policies to ensure population densities, housing and employment patterns, and land uses, are consistent with the capabilities and capacities of the transportation network. See Transportation Element Objective 1.2;
 - (14) An examination of any parcel of land subject to a future land use map change to ascertain whether any plant or wildlife species listed as endangered, threatened, or of special concern, may be impacted. See Conservation and Coastal Management Element Policy 1.7.1; and
 - (15) Payment of all appropriate processing fees and charges, as set from time to time by resolution of the city council. Processing fees shall be partial compensation for the cost of review by the city administration and administrative expenses. All applicants shall pay all costs necessary for the giving of any public notice or re-advertising of hearings as the director or city clerk determines to be necessary. All applicants shall be

required to pay the cost of city external review consultants, such as attorneys, engineers, surveyor and mappers, and other professionals.

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

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

(b) ~~In addition to other considerations for amending the comprehensive plan, Pursuant to F.S. §§ 163.3184(5), 163.3177(2) and 163.3187(4) require that,~~ the internal consistency of the comprehensive plan ~~must~~ be maintained by all proposed comprehensive plan amendments.

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

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

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

(1) ~~Whether the proposed amendment will have a favorable or unfavorable effect on the city's budget, or the economy of the city or the region;~~

(2) ~~Whether the proposed amendment will diminish the level of service of public facilities;~~

(3) ~~Whether there will be a favorable or unfavorable impact on the environment or the natural or historical resources of the city or the region as a result of the proposed amendment;~~

(4) ~~Whether the city is able to provide adequate service from public facilities to the affected property, if the amendment is granted, and whether the amendment will promote the cost/effective use of or unduly burden on public facilities;~~

(6) ~~Whether the amendment is incompatible with surrounding neighborhoods and land uses and whether property rights have a favorable or adverse effect on subject property or neighboring properties;~~

(7) ~~Whether approval of the amendment will cause the comprehensive plan to be internally inconsistent;~~

(8) ~~Whether the amendment will have a favorable or adverse effect on the ability of people to find adequate housing reasonably accessible to their places of employment;~~

(9) ~~Whether the proposed amendment will promote or adversely affect the public health, safety, welfare, economic order, or aesthetics of the region or the city;~~

(10) ~~Whether an amendment involving a change to the future land use map is compatible with underlying topographic, soil, flooding probability, and existing infrastructure, to ensure the development envisioned in the proposed change can be accommodated without adverse impacts or severe~~

- limitations due to topographic, soil, flooding, or infrastructure services. See Future Land Use Element Policy 1.2.1;
- (11) Whether a change to the future land use map or the future land use element goals, objectives, or policies will result in a net increase in density that does not conform to or could exceed the prescribed limitations within the comprehensive plan. See Future Land Use Element Policy 1.2.4;
- (12) Whether a change to the future land use map or the future land use element goals, objectives, or policies will result in a negative impact upon hurricane evacuation plans, routes, or shelter facilities. See Future Land Use Element Policy 1.3.1;
- (13) Whether a comprehensive plan amendment which changes the future land use map or the future land use element goals, objectives, or policies will ensure that population densities, housing and employment patterns, and land uses are consistent with the capabilities and capacities of the transportation network. See Transportation Element Objective 1.2;
- (14) Whether a future land use map change will affect any plant or wildlife species listed as endangered, threatened, or of special concern. See Conservation and Coastal Management Element Policy 1.7.1; and
- (15) Such other planning and development concerns that the director may identify.

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

- (a) Upon receipt of an application, if the director or the city manager determines that the application will attract a large amount of public attention or will significantly affect neighborhood(s) within the city, the city manager or the director may direct the applicant to hold a neighborhood information meeting ("~~NIM~~"). Alternatively, before submitting an application or before the local planning agency/planning board hearing on the application, the applicant may voluntarily hold a neighborhood information meeting. The results of the neighborhood information meeting, questions asked and answered, shall be presented in writing and video recorded, supplying a copy to the director within not more than ten days after the date of the neighborhood information meeting. A neighborhood information meeting is not an official meeting of the city. It is an opportunity for a comprehensive plan amendment applicant and citizens to resolve concerns about a proposed amendment and to dispel rumors and misinformation.
- (b) ~~Notice.~~ Notice of a neighborhood information meeting shall be given pursuant to section 30-62(c)(2)c. and d. and (f)(2) and (3)a. of the LDC. The caption for the newspaper and courtesy notice shall have a caption "~~NOTICE OF NEIGHBOR INFORMATION MEETING REGARDING PROPOSAL TO AMEND THE CITY'S COMPREHENSIVE PLAN~~", which shall be at the top of the notice page, conspicuously placed, in bold type and shall have a description of the application in ~~layman's~~ English language terms of the subject of the meeting, including the type(s) of approval requested, as well as a legal description, or street address (if any), of any specific parcels of land subject to the application. The ~~NIM~~ shall be held as described in section 30-62(c)(2)c. and d. and (f)(2) and (3)a. of the LDC.

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

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

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

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

comprehensive plan amendments, notice shall be given by newspaper advertisement as provided by section 30-62(3)a. of the LDC.

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

Sec. 38-11. City council review.

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

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

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

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

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

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

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

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

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

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

~~(c) Large scale amendments.~~

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

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

a. ~~Public hearing advertisement.~~ Amendment public hearings shall be advertised and held pursuant to F.S. § 166.041(3)(c)2. The first public hearing shall be held at the initial or transmittal stage. It shall be held on a weekday at least ten days after the day that the first advertisement is published in a newspaper of general circulation. The second public hearing shall be held at the adoption stage. It shall be held on a weekday at least ten days after the day that the second advertisement is published in a newspaper of general circulation. For amendments which change the actual land-use designation of permitted, conditional, or prohibited uses for specific parcel(s) of land, the advertisement shall contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the general area. In addition to being published in the newspaper, the map must be part of the online notice required pursuant to F.S. § 50.0211.

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

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

a. ~~At the initial or transmittal public hearing, the primary questions before the city council will be:~~
~~(i) whether the enacting ordinance and the proposed plan amendment is in proper form and needs to be amended; and (ii) whether to approve the proposed amendment for transmittal to the state land planning agency and other reviewing agencies. The city council shall consider any findings or recommendations by the director or the local planning agency/planning board and shall conduct a public hearing. The report of the director and the local planning agency/planning board, letters or other written communications received by the city, the director's report, any data and analysis with regard to the plan amendment, and any written comments entered into~~

1 the record during the board public hearing, all regarding any pending application for amendment
2 of the comprehensive plan, shall automatically be made a part of the record during the city
3 council public hearing.

4 ~~b. Transmittal of amendment to state.~~ After completion of the initial public hearing, the city council
5 may: approve transmittal of the application and the record to the state land planning agency and
6 other reviewing agencies; approve transmittal of the application with modification and the
7 record to the state land planning agency and the reviewing agencies, or deny the application.

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

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

14 ~~c. Second public hearing by city council.~~

15 1. The second public hearing on a large scale amendment(s), shall occur within not more than
16 180 days after the receipt of reviewing agency comments. If the hearing is not held within
17 said time period, the amendment(s) shall be deemed to have been withdrawn.

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

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

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

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

3 ~~(a) Continuanace and deferrals.~~

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

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

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

24 ~~(ae) Reliance on information presented by applicant. The city and its departments, boards, and agencies, shall~~
25 ~~have the right to rely on the accuracy of statements, documents, and all other information presented to~~
26 ~~them by the applicant, or the applicant's agent or consultants, in review of an application for a plan~~
27 ~~amendment approval issued pursuant to this Code. The applicant shall execute an application form for the~~
28 ~~comprehensive plan amendment must include the following statement: Under penalties of perjury, I declare~~
29 ~~that I have read the foregoing application and all attachments thereto, and that the facts stated in it, are true~~
30 ~~to the best of my knowledge," followed by the signature of the applicant making the declaration. The written~~
31 ~~declaration shall be in conspicuous, bold type and printed or typed at the end of or immediately below the~~
32 ~~document being verified and above the signature of the person making the declaration. Also in conspicuous,~~
33 ~~bold type about the signature line, the applicant shall be advised that "as provided in § 92.525(3), Florida~~
34 ~~Statutes, a person who knowingly makes a false declaration is guilty of the crime of perjury by false written~~
35 ~~declaration, a felony of the third degree, punishable as provided in §§ 775.082, 775.083, or 775.084, Florida~~
36 ~~Statutes."~~

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

44 **Secs. 38-13—38-30. Reserved.**

ARTICLE II. PLANNING BOARD

Sec. 38-31. Established.

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

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

* * *

(c) *Number of members; appointment.* The appointment, removal, and terms of members shall be in accordance with chapter 2, article IV of this [Codecode](#).

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

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

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

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

Secs. 38-34—38-37. Reserved.

Sec. 38-38. Staff.

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

Sec. 38-39. Reserved.

Sec. 38-40. Powers and duties.

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

(1) Serve as the local planning agency (LPA) and land development regulation commission to fulfill their respective duties under ~~as required by~~ F.S. §§ 163.3174 and 163.3194.

(2) Prepare or cause to be prepared the ~~city growth management comprehensive~~ plan or element or portion thereof and submit to the city council an annual report recommending amendments to such plan, element or portion thereof.

(3) Prepare or cause to be prepared the land development regulations and code to implement the ~~city growth management comprehensive~~ plan, and submit to the city council an annual report recommending amendments to the land development code.

(4) Initiate, hear, consider and make recommendations to the city council on applications for amendment to the text of the ~~city growth management comprehensive~~ plan and development code.

- (5) Initiate, review, hear and make recommendations to the city council on applications for amendment to the future land use map of the city-growth-management-comprehensive plan or the official zoning atlas of the land development code.
- (6) Hear, consider, and make recommendations to the city council on applications for conditional use permits.
- (7) Make its special knowledge and expertise available upon reasonable written request to and authorization of the city council to any official, department, board, commission, or agency of the city, other municipalities, the county, or state or federal governments.
- (8) Perform those functions, powers and duties as set forth in the city land development code as may be extended, altered, amended, reenacted or recodified in the future by the city council. Review proposed street names and make recommendations to the city council pursuant to section 42-2 of this code.
- (9) Consider and take final action regarding insubstantial PUD changes pursuant to section 30-63, variances from LDC article XIV (vegetation removal), site development plans, site development plan amendments and site improvement plans pursuant to LDC sections 30-674 and 30-675, preliminary subdivision plats pursuant to LDC section 30-575, and single-family residential boat dock extensions pursuant to section 54-115 of this code, excluding boat dock extensions for multifamily developments and boathouses and other functions and duties as may be assigned in the LDC.

Sec. 38-41. Appeal of decisions.

As to any land development petition or application upon which the planning board takes final action, an aggrieved party may appeal such final action to the city council in accordance with the procedure in section 1-15 of this code. The city council may affirm, affirm with conditions, reverse, or reverse with conditions the action of the planning board. Such appeal shall be filed with the city manager within 30 days of the date of the final action by the planning board and shall be noticed for hearing with the city council, as applicable, in the same manner as the petition was noticed for hearing with the planning board. The cost of the notice shall be borne by the person filing the appeal.

Secs. 38-42—38-70. Reserved.

ARTICLE III. DEVELOPMENT AGREEMENTS

* * *

Sec. 38-73. Computation of time.

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

Sec. 38-73~~74~~. Intent of article.

It is the intent of this article to supplement set forth the procedures and requirements in F.S. 163.3220 – 163.3243 necessary for the city to consider and enter into development agreements.

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

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

Sec. ~~38-74 to 38-76. Reserved.~~

Sec. 38-77. Application.

- (a) Applications for development agreements shall be submitted to the city in the form of a letter request. ~~The city may require an applicant to submit such information as the city considers necessary to process the application. Unless otherwise provided as part of the application form, each application shall be accompanied by a city application form, information required on the form, and the form of development agreement proposed by the applicant. The city council shall establish, by resolution, the schedule of fees and charges imposed for filing and processing of each application. The schedule of fees may from time to time be amended by resolution without further amendment to this article.~~
- (b) Only an qualified applicant may file an application to enter into a development agreement. A qualified applicant ~~is a person who has legal or equitable interest in the real property within the boundaries of the city which that~~ is the subject of the development agreement may file an application to enter into a development agreement. ~~and submits proof of such qualification to the satisfaction of the city as part of the application process. If there is a question as to the sufficiency of the applicant's interest in the subject real property, the city may require such information and verification as deemed necessary by the city to establish the applicant's interest.~~
- ~~(c) If the city determines that an application is insufficient, the city shall provide the applicant with a statement of any additional information required and the processing of such application shall remain pending until such additional information is provided and the application is found sufficient and complete by the city.~~

Sec. 38-78. Contents; implementation.

- (a) A development agreement shall, at a minimum, include the requirements in F.S. 163.3227 and the following:
- ~~(1) A legal description of the lands subject to the development agreement and the names of all legal and equitable owners.~~
- ~~(2) The duration of the agreement.~~
- ~~(3) The development uses permitted on the lands, including population densities and building intensities and height.~~
- (4) The land use designations of the property as set forth in the city's comprehensive master plan ~~of the Future Land Use Element of the county's growth management plan.~~
- ~~(5) The current zoning of the property and the way in which such zoning has been determined to be consistent with the growth management city's comprehensive plan.~~
- ~~(6) A description of public facilities that will service the development, including who shall provide such facilities.~~
- ~~(7) The date any new facilities, if needed, will be constructed.~~
- ~~(8) A schedule, where applicable, to ensure that public facilities are available concurrent with impacts of the development.~~
- ~~(9) A description of any reservations or dedications of land for public purposes.~~

- ~~(10) A description of all local development permits approved or needed to be approved for the development of the land.~~
- ~~(11) A finding that the development permitted or proposed is consistent with the comprehensive plan and land development regulations applicable to the city.~~
- ~~(12) Such conditions, terms, restrictions, or other requirements determined to be necessary by the city for the public health, safety, or welfare of its citizens.~~
- ~~(13) A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the developer of the necessity of complying with the law governing such permitting requirement, condition, term, or restriction.~~
- (14) With respect to any public facilities to be designed and/or constructed by the developer, a statement that the design and construction shall be in compliance with all applicable federal, state, and city standards and requirements in order to ensure the progress, quality and cost effectiveness of construction of the public facilities, to resolve in a timely manner design and construction related problems which may occur, and to protect the safety and welfare of the public. The standards and requirements shall include but not be limited to guarantees of performance and quality and project controls (including scheduling, quality controls, and quality assurance).
- (b) A development agreement shall be implemented through the adoption of planned unit development (PUD) zoning on the property to which land use intensities and densities are transferred and may provide that the entire development or any phase thereof be commenced or concluded within a specific period of time.
- (c) A development agreement may provide for signage, provision of off-street parking and landscaping for the properties to be in accordance with the agreement.
- (d) With respect to developer commitments that would be eligible for impact fee credits, nothing in this section shall affect the eligibility to qualify for credits under appropriate impact fee ordinances.

Sec. 38-79. ~~Term.~~

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

~~Sec. 38-80.~~ Notices and hearings.

- (a) Notice of intent to consider a development agreement shall be provided pursuant to F.S. 163.3225 and :
- ~~(1) By the applicant publishing an advertisement approximately seven days before each public hearing on the application in a newspaper of general circulation and readership in the county.~~
- ~~(2) By the applicant mailing notice~~ by certified mail, return receipt requested, to all owners of property, as reflected on the current year's tax roll, lying within 300 feet in every direction of the subject parcels. Notice shall be mailed at least 15 calendar days prior to the first hearing on the application.
- ~~(b) The form of the notices of intent to consider a development agreement shall specify:~~
- ~~(1) The day, date, time and place of each hearing on the proposed development agreement and the body conducting the hearing;~~
- ~~(2) The location of the lands subject to the development agreement;~~
- ~~(3) The development uses proposed on the property, including the proposed population densities and proposed building intensities and height; and~~

~~(4) Instructions in a form approved by the city for obtaining further information regarding the request, including the fact that a copy of the proposed development agreement can be obtained at the city's community development department office.~~

~~(be)~~ The city may require the applicant to provide the required notification. In such case, the applicant shall provide proof of notification by submittal to the city of the following:

- (1) An affidavit of publication from the newspaper, which shall be submitted at least three workdays prior to each public hearing; and
- (2) A list of all owners of property lying within 300 feet in every direction of the subject parcel and any additional affected property owners, together with the return receipts for the mailed notice, which shall be submitted to the city at least three workdays prior to the first hearing on the application.

~~(d)~~ The ~~city planning advisory board~~ local planning agency shall conduct one hearing and the city council shall conduct one public hearing on each application.

~~(e)~~ The public hearings may take place during the regularly scheduled ~~planning advisory board and city council~~ meetings. ~~The day, time, and place of the second public hearing (held by the city council) shall be announced at the first public hearing (held by the planning advisory board local planning agency). At the conclusion of the second public hearing, the city council shall approve, approve with modifications, or deny the proposed development agreement.~~ Where transfer of density is proposed in connection with a development agreement in accordance with section 38-76, the following factors shall be considered by the planning board and by the city council in determining whether a proposed development agreement for density transfer should be approved:

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

Secs. 38-81 to 38-82 Reserved.~~Sec. 38-81. Amendment or cancellation by mutual consent.~~

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

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

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

Sec. 38-83. Periodic review of development.

~~(a) The city, through its community development department, shall review the development subject to a development agreement every 12 months, commencing 12 months after the effective date of the agreement.~~

1 (ab) The city shall begin the review process by giving notice to the developer that the city intends to undertake a
2 periodic review of the development.

3 (be) Upon receipt of such notice of review, the developer shall submit to the city a monitoring and compliance
4 report which shall address each and every requirement or commitment of the development agreement,
5 including its status and the degree to which compliance has or has not been reached. In addition to the
6 compliance report by the developer, the city shall make such other review as it deems appropriate or
7 necessary.

8 ~~(d) If the city finds and determines that the developer has complied in good faith with the terms and conditions~~
9 ~~of the agreement during the period under review, the review for that period shall be considered concluded.~~

10 (ce) If the city makes a preliminary finding that there has been a failure to comply with the terms of the
11 development agreement, the city council shall conduct a public hearing at which the developer shall be given
12 the opportunity to demonstrate good faith compliance with the terms of the agreement. If the city council
13 finds and determines on the basis of substantial competent evidence that the developer has not complied
14 with the terms and conditions of the agreement during the period under review, the city council may modify
15 or revoke the agreement.

16 **Secs. 38-84 to 38-86 Reserved.**

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

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

21 ~~(b) The city may apply subsequently adopted laws and policies to a development that is subject to a~~
22 ~~development agreement only if the city council has held a public hearing and determined that:~~

23 ~~(1) They are not in conflict with the laws and policies governing the development agreement and do not~~
24 ~~prevent development of the land uses, intensities, or densities in the development agreement;~~

25 ~~(2) They are essential to the public health, safety, or welfare, and expressly state that they shall apply to a~~
26 ~~development that is subject to a development agreement;~~

27 ~~(3) They are specifically anticipated and provided for in the development agreement;~~

28 ~~(4) The city demonstrates that substantial changes have occurred in pertinent conditions existing at the~~
29 ~~time of approval of the development agreement; or~~

30 ~~(5) The development agreement is based on substantially inaccurate information supplied by the~~
31 ~~developer.~~

32 ~~(c) This section does not abrogate any rights that may vest pursuant to common law.~~

33 **Sec. 38-85. Enforcement.**

34 ~~Any party, any aggrieved or adversely affected person as defined in F.S. § 163.3215(2), or the state land~~
35 ~~planning agency may file an action for injunctive relief in the circuit court of the county to enforce the terms of a~~
36 ~~development agreement or to challenge compliance of the development agreement with the provisions of F.S. §§~~
37 ~~163.3220—163.3243.~~

1 ~~Sec. 38-86. Modification or revocation of agreement to comply with subsequently enacted~~
2 ~~state and federal law.~~

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

6 **Chapter 40 SPECIAL DISTRICTS**

7 **ARTICLE I. IN GENERAL**

8 **Secs. 40-1—40-30. Reserved.**

9 **ARTICLE II. HIDEAWAY BEACH DISTRICT**

10 **Sec. 40-31. Establishment.**

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

14 * * *

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

18 **ARTICLE I. IN GENERAL**

19 **Sec. 42-1. Definitions.**

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

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

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

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

29 *Lot, corner* has the meaning ascribed to it in section 30-10 of this code. ~~means a lot located at the intersection~~
30 ~~of two or more streets. A lot abutting a curved street or streets shall be considered a corner lot if straight lines~~

drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than 135 degrees.

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

Lot of record means:

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

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

Person has the meaning ascribed to it in section 1-2 of this code ~~in individual corporation, governmental agency, business, estate, trust, partnership, firm, joint venture, syndicate, fiduciary, society, organization, or association~~ means two or more persons having a joint or common interest or any other entity, and its designated agents, successors or assigns.

Property means a lot.

Right-of-way has the meaning ascribed to it in section 1-2 of this code means a strip of land, public or private, occupied or intended to be occupied by a street, crosswalk, electrical transmission line, or gas pipeline, storm drainageway, water main, or sanitary or storm sewer main, or for similar special use.

Sidewalk has the meaning ascribed to it in section 1-2 of this code means that portion of a right-of-way or cross-walkway, paved or otherwise surfaced, intended for pedestrian use and also bicycle use, if properly sized.

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

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

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

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

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

* * *

ARTICLE II. SIDEWALKS

1 **Sec. 42-31. Penalties;~~additional remedies~~Reserved.**

2 (a) In addition to the remedies set forth in section 42-39, a violation of this article is punishable according to the
3 penalties and procedures set forth in chapter 14 of this code if any person fails or refuses to obey or comply
4 with or violates any of the provisions of this article, such person, upon conviction of such offense, shall be
5 guilty of a misdemeanor and shall be punished by a fine not to exceed \$500.00 or by imprisonment not to
6 exceed 60 days in the county jail, or both, in the discretion of the court. Each violation or noncompliance
7 shall be considered a separate and distinctive offense. Further, each day of continued violation or
8 noncompliance shall be considered as a separate offense.

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

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

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

19 * * *

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

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

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

25 (a) *Sidewalk plan required.* Prior to issuance of any preliminary subdivision plat approval, final site development
26 plan approval, or building permit to erect a structure on vacant land, an applicant shall submit a sidewalk
27 plan to the building services division. The sidewalk plan shall be in accordance with the minimum
28 specifications and design requirements adopted by the city. The sidewalk required for single-family dwelling
29 units shall be shown on the building permit plot plan.

30 (b) *Plan review.* The sidewalk plan shall be reviewed by the building services division, public works department,
31 or as otherwise designated by the city manager. The plan shall be drawn to a suitable scale and shall
32 delineate the location of the sidewalk within the right-of-way. The sidewalk design shall be compatible with
33 the storm drainage flow from private property or within the public right-of-way.

34 (c) *Installation.* Prior to the issuance of any certificate of occupancy for a use required to provide sidewalks in
35 accordance with this section, all required sidewalks shall be installed and in place as indicated by the plans
36 approved by the building services division, inspected and accepted by the city.

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

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

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

- 2 (a) *Generally.* Excluding property owners within Hideaway and Key Marco PUD's and Olde Marco (north of the
3 centerline of Old Marco Lane), it shall be the duty of every owner of abutting property to construct or
4 reconstruct, maintain and keep in good condition and repair, sidewalks in front of or abutting upon each
5 parcel of the owner's property.

6 * * *

- 7 (2) *Improved lots.* Upon issuance of a notice of violation pursuant to chapter 14 of this from the C-code,
8 enforcement division the property owner of an improved lot shall be required to properly permit and
9 construct a sidewalk within 12 months (or less if so determined by the city's code-enforcement-special
10 magistrate) for residential properties and within 18 months (or less if so determined by the city's code
11 special-enforcement magistrate) for commercial properties. Sidewalks must comply with the city's
12 current construction standards at the time of permitting. Where there is no sidewalk abutting several
13 adjacent improved lots, the city may design and construct the required sidewalk and assess the
14 abutting properties for the associated costs in accordance with section 42-39.

- 15 (b) *Maintenance.* It is unlawful for any property owner, occupant or agent of any property to allow a sidewalk in
16 front of or abutting such property to remain in a condition that renders it unsafe, dangerous or detrimental
17 for the purpose for which it is intended.

18 * * *

- 19 (c) *Damage.* Any sidewalk damage during new construction or renovation is presumed to be caused by the
20 owner or the owner's agent undertaking construction or renovation. It shall be the owner's responsibility to
21 promptly repair or replace any sidewalk damaged during construction or renovation at the owner's expense.

- 22 (d) *Duty to inspect.* AThe property owner is responsible for ensuring the, occupant or agent shall inspection of
23 all sidewalks in front of or abutting upon the owner's property for unsafe conditions. Where a sidewalk is in
24 the public right-of-way, and is in an unsafe condition, the property owner, occupant or agent thereof, or
25 third party shall immediately notify the city of any unsafe condition by written notice. Upon investigation and
26 determination by the city that the condition was not caused by action of the owner, occupant or agent
27 thereof, or third party, the city will not charge the owner, occupant, agent or third party if the city repairs the
28 condition. If it is determined that the owner, occupant or agent thereof, or third party caused the damage,
29 then the property owner person who caused the damage shall be required to repair or replace the damage in
30 the manner provided in this division article for the construction of new sidewalks at said person's the
31 owner's own cost; or pay the city to make such repairs or replacement. If the property owner, occupant or
32 agent thereof fails to notify the city of any unsafe condition caused by a third party, the property owner,
33 occupant or agent cannot raise the defense to a claim of liability that the unsafe condition was caused by a
34 third party. If the owner, occupant, agent or third party does not repair or replace the damage or otherwise
35 pay the city, the city shall assess the owner of the property for costs incurred by the city for repairs or
36 replacement. Such assessment, if not paid within 30 days, shall become a lien against the property or as
37 provided in this Code or state law.

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

43 * * *

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

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

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

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

13 ~~(b) If the invoice is not paid at the expiration of a 20-day period, the city manager may assess such costs against~~
14 ~~such parcel. The assessment shall describe the land and show the cost of engineering, construction,~~
15 ~~maintenance, and administrative expenses, and shall include an additional administrative expense of~~
16 ~~\$200.00 per parcel. Such assessment shall be a legal, valid, and binding obligation which shall run with the~~
17 ~~property until paid. The assessment shall be due and payable 20 days following the mailing of the notice of~~
18 ~~assessment, after which interest shall accrue at the rate of 12 percent per annum on any unpaid portion~~
19 ~~thereof.~~

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

24 * * *

25 ~~(f) After the expiration of one year from the date of recording of the assessment of lien, as provided herein, a~~
26 ~~suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted, conducted, and~~
27 ~~enforced in conformity with the procedures for foreclosure of municipal special liens as set forth in F.S. ch.~~
28 ~~173, which provisions are hereby incorporated herein in their entirety to the same extent as if such~~
29 ~~provisions were set forth herein verbatim.~~

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

33 * * *

34 **Sec. 42-42. Private right of action**

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

Secs. 42-423—42-70. Reserved.

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

Sec. 42-71. 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. These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.:

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

* * *

Sec. 42-72. Penalties; additional remedies.

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

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

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

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

* * *

Sec. 42-76. Permit.

(a) *Required.* It shall be unlawful for any responsible person to dig, excavate, obstruct, or place any construction or other material, place any object, including landscape material, or perform any other work which disturbs the existing structure and/or compaction of soil in any right-of-way provided for public use in the city, including any public right-of-way maintained by the county within the boundaries of the city, without first obtaining a city permit for such work from the city manager, public works department, or designee as specified in this article or in the handbook adopted by this article.

* * *

(e) *Appeals.* If the city denies the issuance of such a permit, the applicant may appeal the denial by filing a written notice of appeal with the construction board of appeals and adjustments, in accordance with the procedure in section 1-16 of the code not later than ten working days after the effective date of the notice of denial. The appellant may appear before the board. The decision of the board shall be final.

* * *

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

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

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

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

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

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

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

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

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

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

Chapter 46 TELECOMMUNICATIONS

ARTICLE I. IN GENERAL

Secs. 46-1—46-30. Reserved.

ARTICLE II. CABLE TELECOMMUNICATIONS SERVICES

Sec. 46-31. Title of article.

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

Sec. 46-32. Definitions.

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

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

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

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

Cable operator means any person who:

- (1) Provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or
- (2) Otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system under a franchise with the city.

Cable service means:

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

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

- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) A facility that serves subscribers without using any public right-of-way;

(3) A common carrier facility which is subject, in whole or in part, to the provisions of 47 USC 201—226, except that such facility shall be considered a cable system (other than for purposes of 47 USC 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers; and

(4) Any facilities of an electric utility used solely for operating its electric utility system.

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

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

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

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

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

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

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

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

FCC means the Federal Communications Commission or any successor agency.

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

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

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

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

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

~~Person has the meaning ascribed to it in section 1-2 of this code means any person, firm, partnership, association, corporation, or organization of any kind.~~

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

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

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

* * *

ARTICLE III. COMMUNICATION TOWERS

* * *

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

- (a) Rooftop towers, rooftop antenna structures and rooftop antennas are permitted in all zoning districts except in the residential single family and RMF-6 zoning districts. Rooftop towers, rooftop antenna structures and rooftop antennas as specified are subject to the following. Height of towers and structures specified herein are inclusive and any antennas affixed thereto and are measured from the required base flood elevation unless otherwise provided.
- (1) Rooftop towers, antenna structures, and antennas are a permitted use up to a height of 20 feet above the maximum roofline (~~established as the vertical distance from the first finished floor elevation or as measured from the required base flood elevation to~~ the highest point of the roof surface of a flat or Bermuda roof, to the deck line of a mansard roof and to the mean height level between eaves and ridge of gable, hip, and gambrel roofs). ~~Any antenna structure, tower or antenna that exceeds its permitted use height as provided herein shall require a variance, wherein the height of the structure, tower, and all antennas shall be determined on a case by case bases. The city council is authorized to grant variances from this provision pursuant to section 30-65 of the land development code.~~ Distance from residential single family and RMF-6 zoning districts shall be a major consideration in determining the maximum height of rooftop towers, antennas and/or structures for variance considerations.
 - (2) Rooftop towers and antenna structures shall be set back from the closest outer edge of the roof a distance not less than ten percent of the rooftop length and width, but not less than five feet, if the antenna can function at the resulting location;
 - (3) Rooftop antenna structures and dish type antennas shall be painted to make them unobtrusive;
 - (4) Except for antennas that cannot be seen from street level, such as architecturally designed panel antennas on parapet walls, antennas shall not extend out beyond the vertical plane of any exterior wall;
 - (5) Where technically feasible dish type antennas shall be constructed of open mesh design;
 - (6) Where feasible, the design elements of the building (i.e., parapet wall, screen enclosures, other mechanical equipment) shall be used to screen the rooftop communications tower, structure, and antennas;
 - (7) The building and roof shall be capable of supporting the roof-mounted antenna, structure and tower.

- (b) Ground mounted, self-supporting, guyed, and monopole communication towers are prohibited in all zoning districts except as follows:
- (1) All ground mounted communication towers may be allowed as a conditional use on sites approved for fire stations, police departments, substations and governmental offices where not permitted by right in the applicable zoning district.
 - (2) In the single family residential and RMF-6 zoning districts all ground mounted communication towers, ground mounted antennas, or antennas shall only be permitted as follows:
 - a. One satellite dish having a diameter of 1.2 meters (approximately 47 inches) or less shall be allowed without a permit if the dish is located in the rear yard and compliant with accessory structure setbacks. Satellite dishes having a diameter of 36 inches or less shall be allowed without a permit if the dish is attached to the side or rear of the principal structure and within allowed protrusion limits.
 - b. New satellite dishes over 1.2 meters in diameter, antennae(s) or other signal receiving or transmitting equipment shall be reviewed in accordance with the conditional use procedures as set forth in section 30-642.7.4 [sic] of the land development code.
 - c. The installation of antennae(s) or other signal receiving/transmitting equipment that creates electrical interference or is deemed to be out of scale or character of the neighborhood is prohibited unless a compelling public purpose can be established by the applicant, and acknowledged by the city.
 - d. The maximum permitted height for an antennae and/or antenna structure attached to a residential structure is 40 feet as measured from the required base flood elevation ~~or first finished floor elevation (whichever is applicable).~~
 - e. The maximum permitted height for an approved freestanding tower inclusive of antennas is 35 feet as measured from the required base flood elevation ~~or first finished floor elevation (whichever is applicable).~~
 - f. Additional height may be requested under the variance provisions contained in section 30-65 of the land development code-LDC.
 - g. All existing satellite dishes located on a single-family lot with a diameter in excess of 1.2 meters (approximately 47 inches) shall be removed by December 31, 2003, provided the satellite dish is inoperable and/or not being utilized.
- (c) All owners of approved towers are jointly and severally liable and responsible for any damage caused to off-site property as a result of a collapse of any tower owned by them.
- (d) No tower shall be artificially lighted except as required by the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC), or other applicable laws, ordinances or regulations.
- (e) Any tower that is voluntarily not used for communications for a period of one year shall be removed at the tower owners expense. If a tower is not removed within three months after one year of such voluntary non-use, the city may obtain authorization to remove the tower and accessory items from a court of competent jurisdiction, and after removal shall place a lien on the subject property for all direct and indirect costs incurred in dismantling and disposal of the tower and accessory items, plus court costs and attorney fees.
- (f) All new metal towers including rooftop towers, shall comply with the standards of the then latest edition published by the Electric Industries Association (currently EIA/TIA 222-E) or the publication's successor functional equivalent unless amended for local application by resolution of the city.
- (g) A building permit and site plan shall be submitted to the city for all new communication towers and antennas except as provided in (b)(2)a. of this section

- (h) No communication tower shall be located on any land or water if such location thereon creates or has the potential to create harm to the site as a source of biological productivity, as indispensable components of various hydrologic regimes, or as irreplaceable and critical habitat for native species of flora or fauna.
- (i) For all towers, a statement from the applicant or an official document that specifies that the tower and its antennas will comply with all applicable regulations of the FCC shall be filed with the city manager or designee.
- (j) All new non-ionizing electromagnetic radiation (NIER) sources shall comply with the then current applicable standards adopted by the federal government. The city shall not be required by this section to enforce such standards.
- (k) As to communications towers and antennas, including rooftop towers, antenna structures and antennas, the height provisions of this section supersede all other height limitations specified in the land development code.
- (l) Subject to general law, provisions in deed restrictions and private restrictive covenants supersede this section to the extent they are more restrictive.
- (m) Willful, knowing failure of any owner to comply with any of the provisions herein shall be a violation of this section and shall be subject to general penalty provisions of this article, and shall be grounds for revocation.
- (n) Notwithstanding anything to the contrary in any city ordinance, any then nonconforming tower that is destroyed by any means to an extent of more than 50 percent of its actual replacement cost at the time of destruction, as determined by a cost estimate submitted to the director of community development ~~director of affairs~~, shall not be reconstructed or repaired without conditional use approval.
- (o) Notwithstanding anything to the contrary in any city ordinance, ~~including any provision of the general provisions ordinance (ex: nonconformities)~~, a nonconforming tower(s) and/or accessory structure(s) may be voluntarily reconstructed in any zoning district at its site subject to the conditional use procedures of the land development code. The extended useful life of the tower and/or accessory structure that will result from reconstruction shall not be construed to be an enlargement, intensification, increase or extension of the nonconforming use.

Sec. 46-93. Definitions.

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

Antenna includes wire and dish type antennas.

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 50 TRAFFIC AND VEHICLES

ARTICLE I. IN GENERAL

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

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

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

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

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

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

7 * * *

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

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

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

11 * * *

12 **Sec. 50-33. Applicability Reserved.**

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

14 **Sec. 50-34. Definitions.**

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

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

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

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

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

29 *Crosswalk* means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~Pedestrian means any person afoot.~~

Person has the meaning ascribed to it in section 1-2 of this code ~~means any natural person, firm, copartnership, association, or corporation.~~

Public parking space means any parking space on city-owned/leased property or on private property which the owner, lessee, or person in control of such property provides for use by members of the public other than employees of such owner, lessee, or person, including, but not limited to, parking spaces at shopping centers, stores, offices, motels, malls, restaurants, and marinas.

Safety zone means the area or space officially set apart within a roadway for the exclusive use of pedestrians and protected or so marked by adequate signs or authorized pavement markings as to be plainly visible at all times while set apart as a safety zone.

Served by rules of civil procedure means when served by certified mail or sheriff's service.

~~Sidewalk has the meaning ascribed to it in section 1-2 of this code means that a portion of a street between the curbline, or the lateral line, or a roadway and the adjacent property lines, intended for use by pedestrians.~~

Standing means the temporary stopping of a passenger vehicle for the purpose of and while actually engaged in picking up and discharging persons.

~~Stop or stopping means when prohibited, means any stopping of a vehicle whether occupied or not, except when necessary to avoid conflict with other traffic, or in compliance with the directions of a law enforcement officer, traffic control sign, or signal.~~

~~Street (including highway) has the meaning ascribed to it in section 1-2 of this code means the entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic.~~

~~Swale has the meaning ascribed to it in section 1-2 of this code means an open drainage feature along a roadway used for stormwater conveyance. The swale area is the area between the edge of the pavement of a roadway, or curb, and the inside edge of sidewalk (or right-of-way boundary if no sidewalk is present.)~~

Trailer means any vehicle designed for carrying persons or property and for being drawn by a motor vehicle.

Traffic means pedestrians, ridden or herded animals, and vehicles, and other conveyances wither singly or together while using any street or highway for purposes of travel.

Vehicle means every device, in, upon, or by which any person or property is or may be transported or drawn upon a roadway, street, or highway, except devices moved by human power.

* * *

Sec. 50-36. Placement of official signs.

The city manager ~~or his designee~~ shall investigate changes concerning parking restrictions to be placed upon streets and highways in the incorporated area of the city. The city manager may make changes which shall be in accordance with the terms of this article in an effort to clearly inform the public and to aid in compliance with the conditions set forth. These changes shall include, but are not limited to:

* * *

Sec. 50-38. ~~Handicapped-Disabled-accessible~~ parking.

- (1) No person shall park any vehicle or bicycle in any public, disabled-accessible parking space located on city owned or leased property or private property ~~within the incorporated areas of the city~~ when ~~such public the~~ parking space has been designated for the use of handicapped-disabled persons, unless such person is a handicapped-person-disabled or unless such person is momentarily parking in such parking ~~place-space~~ for the purpose of unloading or loading a handicapped-disabled person. All parking spaces provided for the physically disabled after August 26, 1991, must be marked by the owner of the parking facility in accordance with state statutes and a sign must be posted stating that there is a \$250.00 fine for illegally parking in the space. However, failure on the owner's part to post the fine for illegally parking in a handicapped space shall not release the violator of their obligation to pay the fine.

* * *

Sec. 50-39. Violations

- (a) Pursuant to F.S. § 318.14, any person cited for a violation of sections 50-37 and 50-38 of this article shall be deemed to be charged with a noncriminal violation and shall be assessed a civil penalty according to the following schedule:

(1) ~~Handicapped parking:~~ A \$250.00 fine for each uncontested violation of section 50-38 of this article or, as determined by the county judge, up to \$250.00 for a contested violation of section 50-38 of this article. Pursuant to F.S. § 318.18(6), the clerk of courts shall dismiss the ~~handicapped~~ parking citation if the following items of proof are presented to the clerk:

- a. Proof that the person committing the violation had a valid ~~handicapped-disabled~~ parking permit or ~~handicapped~~ license plate for the cited vehicle on the issuance date of the citation;
- b. A signed affidavit in accord with F.S. § 318.18(6); and
- c. A \$5.00 dismissal fee.

(2) ~~A \$95.00 fine Ninety-five dollars~~ for a violation of any provision of section 50-37 of this article. Fines and late payment penalty for violations of section 50-37 are to be distributed as follows.

- (b) Each day any violation occurs or continues shall be a separate offense. For parking in excess of the time authorized in a public parking space, each succeeding equal time period beyond that authorized as the maximum time period for said parking place shall constitute a separate offense.
- (c) The amount of any penalty specified in this section shall be increased by an additional 50 percent of the specified amount if payment is not received by the clerk within ten (10) days of the citation issuance~~prior to notice being mailed to the registered owner pursuant to subsection 50-41(3).~~

* * *

Sec. 50-41. Payment of civil penalties and proceedings to enforce payment violations.

* * *

- (b) Pursuant to the provisions of F.S. § 316.1967, an election to request a hearing constitutes a waiver of the right to pay the penalty indicated on the parking citation, and a county judge after said hearing may impose a fine not to exceed \$100.00, plus court costs for each parking violation. However, an election to request a hearing pertaining to a ~~handicap-disabled-accessible~~ parking violation constitutes a waiver of the right to pay the penalty indicated on the parking citation, and a county judge after said hearing may impose a \$250.00 fine, plus court costs per violation.
- (c) Upon receipt of a complete parking citation submitted by a parking enforcement officer, pursuant to sections 50-37 and 50-38, the police department shall notify the registered owner first listed on such citation of its issuance if there has been no response to the citation pursuant to subsection (a)(1) of this section. Such notice shall be sent by regular mail on the ~~fourteenth~~ 14th day after the citation was issued and shall inform said registered owner concerning the nature and location of the parking violation and shall require payment of the fine or attendance at a hearing at a time and place specified in such notice. Pursuant to the provisions of F.S. § 316.1967, a county judge after said hearing should make a determination as to whether a parking violation has been committed and may impose a fine not to exceed \$100.00, plus court costs, except for handicap parking violations, for which a fine of up to \$250.00 may be imposed, plus costs. Any person upon which service is obtained, pursuant to this section who does not appear at a hearing as directed by the notice shall be subject to contempt proceedings or to such other penalties as the court may, in its discretion, impose to require compliance with said notice.

* * *

Sec. 50-45. ~~Amount of parking fees~~Reserved.

~~All municipal parking violation fees shall be \$95.00 if paid within ten days with the exception of handicap fees which will be \$250.00.~~

Chapter 52 UTILITIES

ARTICLE I. IN GENERAL

Secs. 52-1—52-30. Reserved.

ARTICLE II. UTILITY OPERATION AND REGULATIONS

DIVISION 1. GENERALLY

* * *

Sec. 52-39. Current customers.

Prior to acquisition in November 2003, the city provided wastewater services to approximately 1,200 accounts billed on flat monthly rates. Those customers with accounts established prior to the effective date of the acquisition of the water and wastewater systems from Florida Water Services, Inc. shall continue to be billed on that established schedule which is on file in the City Clerk's Office, included as exhibit "A". The city reserves the right to modify the monthly rates that these original customers are charged.

* * *

Sec. 52-41. Definitions.

The following words and phrases as used in this article shall have the following meanings. These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict:

Address means the "house number" (a numeric or alphanumeric designation) that, together with the street name, describes the physical location of a specific property. This includes "rural route" numbers but excludes post office box numbers. If a lot number in a mobile home park or similar community is used by the U.S. Postal Service to determine a delivery location, the lot number shall be the property's address. If a lot number in a mobile home park or similar residential community is not used by the U.S. Postal Service (e.g., the park manager sorts incoming mail delivered to the community's address), then the community's main address shall be the property's address. If a property has no address it shall be considered "even-numbered".

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Celsius, expressed in milligrams per liter (mg/l).

City means the City of Marco Island, a Florida municipality. As used interchangeably, it means the city, the city utility department, and the water, wastewater, and reclaimed water systems owned and operated by the city.

Companion meter means a meter used to record a single-family residential user's non-sewer related usage also known as outdoor usage. It is used to determine the amount of water that is not entering into the sewer system and thus is not subject to the monthly wastewater consumption charge. Connection and meter installation is regulated by the Florida Department of Environmental Protection Code, utilities department manual of standards and specifications (also known as Marco Island Utilities Technical Standards Manual), the Florida Building Code and Marco Island Land Development Code.

1 *Cross connection* means any physical arrangement whereby a public water supply is connected directly or
2 indirectly with any other water supply system, wastewater, drain, conduit, pool, storage reservoir, plumbing
3 fixture, or any other device, facility or system which contains or may contain contaminated water, sewage, waste
4 material, or other material or substance of unknown or potentially unsafe quality which may be capable of
5 imparting contamination to the public water supply as a result of backflow. Bypass arrangements, jumper
6 connections, changeable devices, or other devices through which or because of which backflow could occur are
7 deemed to constitute cross connections.

8 *Customer* means any person, firm, corporation, or government entity, using or receiving water, reclaimed
9 water, or wastewater collection services from the city.

10 *Department* means the ~~city Marco Island Utilities~~ Department of the City of Marco Island.

11 *Director* means the director, ~~or designated representative~~, in charge of the department, who is hereby
12 invested with the authority and responsibility to administer and operate the water, wastewater, and reclaimed
13 water systems of the city, and implement and enforce the provisions of this article.

14 *Discontinuation of service* means the cessation of a service.

15 *Engineering manager* means the individual or firm who approves technical specifications and drawings
16 relating to the installation, construction, and rehabilitation of city utilities.

17 *Equivalency factor* means a factor used to represent the relative relationship between service connections
18 based on water meter size. The equivalency factor is determined by dividing the continuous flow criteria per meter
19 size by the continuous flow criteria of a five-eighths-inch meter as published by the American Water Works
20 Association, and incorporated in F.A.C. 25-30.055.

21 *Existing landscaping* means any landscaping which has been planted and in the ground for more than 90
22 days.

23 *Grease* means a material either liquid or solid, composed primarily of fat or oil from animal or vegetable
24 sources and is synonymous for the intent of this article with the terms fats, oils and grease.

25 *Landscaping* means shrubbery, trees, lawns, sod, grass, groundcovers, plants, vines, ornamental gardens,
26 and such other flora, not intended for resale, which are situated in such diverse locations as residential landscapes,
27 recreation areas, cemeteries, public, commercial, and industrial establishments, public medians, and rights-of-way
28 except athletic play areas as defined in F.A.C. 40E-24.101(2).

29 *Living unit* means any place of abode, which is suitable for permanent or transient family or individual
30 residential use. Each such living unit shall be considered as single and separate.

31 *Lot* means any place, division or parcel of land.

32 *Master control valve* means the manually operated valve, located immediately downstream after the meter,
33 which controls total flow to the customer's property.

34 *Multifamily residence* means all places of dwelling other than single-family residences and duplexes having
35 three or more living units.

36 *New landscaping* means any landscaping which has been planted and in the ground for 90 days or less.

37 *Persons* has the meaning ascribed to it in section 1-2 of this code ~~means any individual, firm, company,~~
38 ~~association, society, partnership, corporation, or group.~~

39 *Public wastewater systems* means a central sanitary sewer collection system owned and operated by the City
40 of Marco Island or owned and operated by a private utility company that has a franchise granted by the Collier
41 County Water and Wastewater Authority to provide and operate a sewer collection and transmission system
42 within the legal boundaries of the City of Marco Island.

43 *Reclaimed water* means water, treated wastewater or wastewater effluent that has been appropriately
44 treated and which, as a result of the treatment of wastes, is suitable and usable for direct beneficial uses or a

controlled use by and for public agricultural, commercial, residential, or industrial developments, projects or purposes including, but not limited to, irrigation purposes in green areas of developments or other appropriate areas; water that has received at least secondary treatment and is reused after flowing out of a wastewater treatment plant.

Residence with guesthouse occupying the same premises means a residence with a guesthouse occupying the same premises shall be considered as a single-family residence if served by a single water connection and meter.

Sanitary sewer is used interchangeably with sewer line and wastewater line. Sanitary sewer means a pipe which carries sewage and to which stormwaters, service waters, and groundwaters are not intentionally admitted.

Service line means that conduit for utility service directly after the meter or delivery box fittings.

Significant industrial user means any individual user of the city's wastewater disposal system who:

- (1) Has a discharge flow of 25,000 gallons or more per average workday; or
- (2) Has a flow greater than five percent of the flow in the city's wastewater treatment system; or
- (3) Has in his wastes toxic pollutants as defined pursuant to federal or state statutes and rules; or
- (4) Is found by the city, the state control agency, or the U.S. Environmental Protection Agency (EPA) to have significant impact, either singly or in combination with other contribution industries, on the wastewater treatment system, the quality of sludge, the system's effluent quality, or air emissions generated by the system.

Single-family residence or single-family dwelling means a building containing only one ~~any single-family~~ dwelling unit [unattached to any other dwelling unit?] and also includes each dwelling unit in a duplex (two-family dwelling); interchangeable with the word household. ~~In the case of a duplex, each unit shall be regarded as a single-family dwelling.~~

System is used interchangeably with utility system. System means all water, wastewater, and reclaimed water mains, transmission lines, storage and pumping facilities, valves, service connections, meters, and treatment facilities.

Urban service area means the geographic area served by the city utilities as defined by Ordinance No. 03-13, as amended.

Utility agreement means a written agreement between the city and a property owner that establishes the terms and conditions pursuant to which the city will provide water, wastewater, and/or reclaimed water service.

Wasteful and unnecessary means allowing water to be dispersed without any practical purpose to the water use; for example, excessive landscape irrigation, leaving an unattended hose on a driveway with water flowing, allowing water to be dispersed in a grossly inefficient manner, regardless of the type of water use; for example, allowing landscape irrigation water to unnecessarily fall onto pavement, sidewalks and other impervious surfaces; allowing water flow through a broken or malfunctioning water delivery or landscape irrigation system.

Wastewater is used interchangeably with sanitary sewage and means a combination of any type of water-carried waste from residences, business buildings, institutions, industrial establishments, and any and all customer facilities together with such ground, surface, and stormwaters as may be present, but does not mean nor include hazardous or toxic waste.

Sec. 52-42. Illegal utility system connections.

* * *

- (b) Any person who is found by the city to have made or caused to have made any connection prohibited by paragraph (a) above shall be required by the city, in addition to any penalties imposed by this [Codecode](#) for violation of the above, to pay the following to the city:

* * *

Sec. 52-45. Utility agreements.

The city manager ~~shall be~~ authorized to negotiate and execute utility agreements for the provision of water, wastewater, and/or reclaimed water. The utility agreement may provide for the allocation of service capacity, responsibilities for the construction and installation of utility systems, a schedule of payments for capacity charges, the obligation to provide easements, the obligation by a developer to install systems at its expense, inspections, transfer of reserved service capacity, payment of service charges, and other provisions as may be required.

* * *

Sec. 52-50. Rates; security deposits.

* * *

- (c) Security deposits. For utility accounts, security deposits are required [in the amounts established by resolution of the city council as follows:](#)

Meter Size	Deposit Amount
5/8" x 3/4"	\$125.00
3/4"	150.00
1"	200.00
1 1/2"	300.00
2"	450.00
3" and larger	As determined by the director

* * *

DIVISION 2. WATER

* * *

Subdivision B. Conservation Landscape Irrigation Regulations

Sec. 52-66. Water conservation and shortages—Definitions.

For purposes of this subdivision, the following terms, phrases, words and their derivations shall have the meanings given herein. ~~These definitions are supplemental to the definitions in sections 52-41 and 1-2 of this code.~~

District means the South Florida Water Management District (SFWMD).

~~*Enforcement officer* means any authorized agent or employee of the city whose duty it is to enforce the city's codes and state statutes.~~

Impervious surfaces means any surfaces that do not allow penetration of water, including, but not limited to, paved or concrete roads, paved or concrete sidewalks, paved or concrete driveways, paved or concrete parking lots, or highly compacted areas including shell or clay.

Irrigation means the application of water by means other than natural precipitation.

1 *Irrigation systems* means equipment and/or devices which deliver water to landscaping being irrigated,
2 including, but not limited to, pumping stations and controls, control structures, ditches, public or private wells,
3 piping, hoses, valves, fittings, and emitters.

4 *Landscape* ~~has the meaning ascribed to it in section 522-41 of this code. means all residential, commercial,~~
5 ~~institutional, industrial, and governmental areas which are considered as lawns or ornamentally planted, including,~~
6 ~~but not limited to, sod, grasses, turf, ground covers, flowers, shrubs, trees, mulch, hedges, and other similar plant~~
7 ~~materials.~~

8 * * *

9 **Sec. 52-69. Declaration of water shortage; water shortage emergency.**

10 (a) The declaration of a water shortage or water shortage emergency within all or any part of the city by the city
11 manager or the executive director of the South Florida Water Management District shall invoke the
12 provisions of this section. The district shall determine the appropriate phase of water shortage or water
13 shortage emergency and the duration of the water shortage or water shortage emergency. Upon such
14 declaration, all water use restrictions or other measures contained in F.A.C. ch. 40E-21, which chapter
15 constitutes the water shortage plan, shall be subject to enforcement action pursuant to the enforcement and
16 penalties set forth in this subdivision ~~article~~. Any violation of the provisions of F.A.C. ch. 40E-21, ~~as may be~~
17 ~~amended from time to time~~, or any order issued pursuant thereto, shall be a violation of this section.

18 * * *

19 **Sec. 52-70. Mechanical failure; inadequate facilities.**

20 * * *

21 (b) The city manager will evaluate each incident of mechanical failure or inadequate facilities to determine the
22 specific restrictions to be implemented. To assure equitable distribution of available water resources among
23 all city water customers during the affected period F.A.C. ch 40E-21, pt. V, will be used as a guideline to
24 establish specific restrictions. Upon such declaration, all water use restrictions or other measures shall be
25 subject to enforcement action pursuant to ~~[this] article~~ subdivision.

26 **Sec. 52-71. Year-round landscape irrigation restrictions.**

27 * * *

28 (c) *Exemptions; variances.*

29 * * *

30 (2) A variance from specific day or days identified in subsection (b)(1) may be granted if strict application
31 of the restrictions would lead to unreasonable or unfair result in particular instances, provided that the
32 applicant demonstrates with particularity that compliance with the schedule will result in substantial
33 economic, health, or other hardship on the applicant requiring a variance or those served by the
34 applicant. Where a contiguous property is divided into different zones a variance may be granted
35 hereunder so that each zone may be irrigated on days different than other zones of the property.
36 However, no single zone may be irrigated more than three days per week.

37 a. The city manager, ~~or designee~~, shall be the only individual(s) authorized to grant or deny
38 variances pursuant to this subsection. A decision to grant or deny the variance should be made
39 within ten days after actual receipt of a complete application for the variance.

40 b. Any individual or entity aggrieved by the denial of a variance from this section shall have the right
41 of appeal to the city council in accordance with section 1-15 of this code. ~~Such appeal shall be~~
42 ~~taken by filing with the city manager, within 14 days after notice of the denial of the variance has~~
43 ~~been delivered to such person or entity's last known address, a written statement setting forth~~

1 fully the grounds for the appeal. The city manager shall set a hearing on such appeal for the next
2 available city council meeting. Notice of such hearing shall be given to the appellant at least ten
3 days before the date of said hearing. The decision and order of the city council on such appeal
4 shall be final.

5 c. An application for variance and/or the granting of a variance shall operate prospectively and shall
6 not affect any then pending enforcement action pursuant to this section-subdivision or
7 otherwise.

8 d. The city hereby recognizes any and all variances issued by the South Florida Water Management
9 District to those users who operate and maintain smart irrigation systems which meet the
10 requirements of F.S. § 373.62(7).

11 (d) Penalties. Violation of this article is punishable according to the penalties and procedures set forth in chapter
12 14 of this code. Violators of the landscape irrigation requirements of this section, including requirements as
13 authorized under subsection (b)(1), shall be issued a verbal or written warning, or a "notice of violation" with
14 a special period to correct violation. Persons who violate this section after receiving a warning or notice, or
15 refuse to comply with such warning or notice, shall be issued a citation and fine of \$75.00. Persons who
16 commit repeat violations may also be punished pursuant to F.S. § 162.21, as a civil infraction with a
17 maximum civil penalty not to exceed \$500.00. Any person who violates any provision of this section shall also
18 be subject to the city's remedies as authorized the city's Code of Ordinances, or as otherwise then allowed by
19 law. The applicable penalties shall be determined by the forum selected to enforce the violation.

20 Each day, or part thereof commencing at noon of the respective day, that a violation of this section occurs by the
21 same individual or entity may be deemed by the finder of fact to constitute a separate violation.

22 * * *

23 *DIVISION 3. WASTEWATER*

24 * * *

25 **Sec. 52-94. Violations.**

26 (a) Violation of this division is punishable according to the penalties and procedures set forth in chapter 14 of
27 this code in addition to the other actions authorized in this section . these regulations shall be a
28 misdemeanor punishable under the laws of the state.

29 * * *

30 (e) ~~Whenever the department finds that any user has violated or is violating these regulations, wastewater~~
31 ~~contribution permit, or any prohibition, limitation or requirements contained herein, the department may~~
32 ~~serve upon such person a written notice stating the nature of the violation. Within 30 days of the date of the~~
33 ~~notice, a plan for satisfactory correction thereof shall be submitted to the department by the user.~~

34 (f) ~~In the event of violation of these regulations, the authorized employees may verbally instruct the owner as~~
35 ~~to the necessary corrective action. If the owner fails to carry out verbal instructions in a timely manner or if a~~
36 ~~serious violation or hazard to public health exists, the director may issue to the owner a written order stating~~
37 ~~the nature of the violation, the corrective action, and the time limit for completing the corrective action. This~~
38 ~~time limit will be not less than 24 hours nor more than 120 days depending upon the type and severity of the~~
39 ~~violation. The offender shall, within the period of time stated in such notice, permanently cease all violations.~~
40 ~~The record of the mailing of said notice or order shall be prima facie evidence thereof and failure of said~~
41 ~~owner or owners to receive same shall in no way affect the validity of any proceedings conducted pursuant~~
42 ~~to these regulations.~~

43 (g) ~~If any person discharges sewage, industrial wastes or other wastes into the city's wastewater disposal system~~
44 ~~contrary to the provisions of these regulations, federal or state pretreatment requirements, or any order of~~

the city, the city's attorney may commence an action for appropriate legal and/or equitable relief in the appropriate court.

- (e) A person violating any provisions of this section authorizing the aforementioned action by the designated employee shall be charged the normal and usual charges for discontinuance and disconnection of said water and wastewater services and the usual charges for recommencing said water and wastewater services.

* * *

DIVISION 5. GREASE DAMAGE PREVENTION REGULATIONS

Sec. 52-122. Definitions.

When used in this division, the following terms shall have the following meanings, unless the context clearly indicates otherwise. These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.

* * *

Sec. 52-124. Grease traps and interceptors.

* * *

- (c) *Grease traps.* Grease traps shall be installed in accordance with the Florida Building Code, PDI-G101 procedures, Fla. Admin. Code R. 64E-6, and Marco Island Utilities Manual of Standards.

* * *

- (2) If a FSF determines that the supplemental interceptor pumping frequency is unnecessary to remain in compliance, the facility may submit a written request for an interim inspection at a fee set by resolution of the city council ~~of \$75.00~~ to verify that all conditions of this division are in compliance.

* * *

- (d) *Grease interceptors.* Grease interceptors shall be designed and installed in accordance with the Fla. Admin. Code R. 64E-6 and the City of Marco Island Utilities Department Manual of Standards.

* * *

- (2) *Required interceptor pumping frequency.* Each FSF shall have its grease interceptor(s) pumped a minimum of four times per year during the months as outlined below:

1. February/March.
2. May/June.
3. August/September.
4. November/December.

If a FSF determines that the required interceptor pumping frequency is unnecessary in order to remain in compliance with the criteria in subsection (2) above, the facility may submit a written request for an interim inspection at a fee set by resolution of the city council ~~of \$75.00~~ to verify that all conditions of this division are in compliance.

- (3) *Supplemental interceptor pumping frequency.* In addition to required quarterly pumping, each FSF with 100 or more total seats shall pump monthly in January, February, March and April during season. Those facilities may choose to opt out; however, if the FSF is inspected during this time period and is found to be in violation, an automatic fee set by resolution of the city council ~~of \$250.00~~ will be assessed. Immediate cleaning/pumping of the grease interceptor is also required and a follow up inspection will

occur within three days. If the violation(s) are not corrected additional fees will be assessed for noncompliance. Each additional fee will be doubled with each failed inspection. Additional grease interceptor pumping is required according to the following criteria:

* * *

- e. If a FSF determines that the supplemental interceptor pumping frequency is unnecessary in order to remain in compliance with the criteria in subsection (3) above, the facility as an option may submit a written request for an interim inspection at a fee set by resolution of the city council of ~~\$75.00~~ to verify that all conditions of this division are in compliance.

* * *

Sec. 52-126. Grease hauler regulation program.

* * *

- (b) *Application form.* To obtain a GHR, a grease hauler shall submit a completed GHR application form together with a ~~\$25.00~~ fee established by resolution of the city council. The grease hauler shall be issued with a GHR within 30 working days of the city's receipt of the completed application form and appropriate fees. The grease hauler shall obtain the GHR prior to providing grease hauling services within the city's wastewater collection system service area.

Each application shall include the following information:

* * *

- (4) Financial assurance in ~~the an~~ amount ~~of \$10,000.00~~ set by resolution of the city council in a form acceptable to the city. Such assurance shall remain in effect for the life of the permit. This assurance shall be used to guarantee disposal costs, fines and the costs of any damages that may result from a grease hauler discharging in violation of this division.

* * *

Sec. ~~525~~-127. Fees.

- (a) *Fees and billing.* The city council shall establish fees provided for in this for the following, by resolution ~~division are separate and distinct from all other fees chargeable by the city.~~ All fees shall become immediately due and owing to the city upon receipt of invoice(s) for rendition of services or expenditure by the city and shall become delinquent if not fully paid within 30 days after receipt. Any delinquent amount shall be subject to a late charge of 15 percent.

- (b) Fees applicable to this division are as follows:

- (1) *Pre-permit inspection fees.* ~~There is no charge for the initial pre-permit inspection and the second inspection if in compliance. A fee of \$250.00 shall be charged to a FSF if a third pre-permit inspection is required due to the FSF's failure to correct deficiencies. If a fourth or more inspections are required, a fee of \$500.00 per inspection shall be charged to the FSF for noncompliance.~~ Fees will be added to the customer's water and sewer billing account. Such fee shall be in addition to any enforcement actions.
- (2) *Inspection and noncompliance fees.* ~~There shall be no charge for periodic inspections conducted by GMP officials on FSFs with current GDPs. If a grease interceptor or trap has to be reinspected because of deficiencies found during the previous inspection by the GMP official, and all of the deficiencies have been corrected, there shall be no charge for the reinspection. If all of the deficiencies have not been corrected, a first noncompliance fee of \$150.00 shall be charged to the FSF. If a second reinspection is required a second noncompliance fee of \$250.00 shall be charged to the FSF if all of the deficiencies have not been corrected. If a third or more reinspection is required a noncompliance fee of \$500.00 for each successive reinspection shall be charged.~~ All noncompliant fees shall be added to the FSF's water

and sewer billing account. Other enforcement actions shall be pursued if all of the deficiencies have not been corrected.

(3) *Demand monitoring fees.* Fees for any demand monitoring, sampling, and analysis of wastewater discharges deemed necessary for the protection of the RWPF shall be charged to the FSF at current Florida state registered laboratory fees and city administrative fees. All fees will be added to the water and sewer billing account.

(4) *Grease hauler registration fee.* ~~Each GHR application filed pursuant to this division shall be accompanied by an application fee of \$25.00.~~

(5) Fees, if any, for the GDP ~~may be established by resolution.~~

Sec. 52-128. Appeal of permit denial or revocation.

Any permit denial or revocation of a permit pursuant to this division may be appealed in accordance with section 1-15 of this code ~~to the special magistrate of the city. The permit applicant or FSF owner shall have 30 days from the date of notification of the permit denial or revocation to submit a written request for a hearing.~~ Failure to file an appeal constitutes acceptance of the decision to approve or deny the permit and any conditions thereof. ~~The magistrate shall conduct a public hearing and decide within 60 days from the receipt of the appeal, whether or not to grant the permit. The decision of the magistrate shall be final. The magistrate shall follow the same guidelines as established in this Code with respect to permit issuance, and may impose reasonable conditions on any order granting the permit. In conducting a public hearing, the magistrate may receive new evidence and shall not be bound by the technical rules of evidence.~~

Sec. 52-129. Legal proceedings.

(a) *Search warrant.* The CMD, through the city attorney, may seek to obtain a search warrant from the appropriate authority to gain access to a FSF for the purposes of inspection and monitoring if such lawful entry under section 52-125(f) of this division has previously been denied by the FSF.

~~(b) *Citation to County Court.* Notwithstanding any of the above, the city manager or designee may cite any user with a notice to appear in county court for violation of any provision of this division under F.S. ch. 162, part II. A violation of any condition or requirement of a FSF or grease hauler permit, or failure to obtain such a permit shall be deemed to be a violation of this division.~~

~~(c) *Injunctive and other relief.* The city council, through the city attorney, may file a petition in the name of the city in the circuit court of the county or such other courts as may have jurisdiction seeking the issuance of an injunction, damages, or other appropriate relief to enforce the provisions of this division or other applicable law or regulation. Suit may be brought to recover any and all damages suffered by the city as a result of any action or inaction of any person who causes or suffers damage to occur to the city's wastewater collection system, or for any other expense, loss or damage of any kind or nature suffered by the city.~~

~~(b)~~ *Criminal mischief.* No person shall maliciously, willfully or deliberately break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the city sewer system or water and sewer department. Any person violating this provision shall be subject to arrest under charge of destruction of public property in accordance with F.S. § 806.13.

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

Sec. 52-130. Violations and Penalties.

(a) *Violations.* Violation of any provision in this division is punishable according to the penalties and procedures set forth in chapter 14 of this code and as otherwise provided in this section. ~~Any person who is found to~~

1 have violated any provision of this division or any condition of a permit issued pursuant to this division, shall
2 be, upon conviction, subject to a penalty in an amount not to exceed \$500.00 or by imprisonment for not
3 more than 60 days, or by both, for each offense as provided for in F.S. § 162.22. Each separate violation shall
4 constitute a separate offense, and upon conviction of a specified ordinance violation, each day of violation
5 shall constitute a separate violation. In addition to the penalties provided herein, the city may recover
6 reasonable attorney's fees, court costs, court reporter's fees and other expenses of litigation by appropriate
7 suit at law against the person found to have violated this division or the orders, rules, regulations and
8 permits issued hereunder.

- 9 (b) *Falsifying information.* ~~It is a violation of this division for any~~Any person ~~who to~~ knowingly makes any false
10 statements, representation or certification in any application, record, report, plan or other document filed or
11 required to be maintained pursuant to this division, or ~~who to falsifies/falsify~~, tampers with or knowingly
12 renders inaccurate any monitoring device or method required under this division, ~~shall, upon conviction, be~~
13 ~~subject to a penalty in an amount not to exceed \$500.00 or by imprisonment for not more than 60 days, or~~
14 ~~by both. Each day on which a violation shall occur or continue shall be deemed a separate and distinct~~
15 ~~offense.~~

16 **~~Sec. 52-131. Administrative enforcement and abatement.~~**

- 17 (ca) *FSF enforcement.* Enforcement actions against FSFs in violation of this division shall be as follows:

- 18 (1) *Notice of noncompliance.* A notice of noncompliance shall be issued to a FSF for any one or more of the
19 following reasons~~The following are violations of this division:~~

20 * * *

- 21 (2) *Notice of noncompliance response.* Any FSF issued an notice of noncompliance shall respond to the city
22 in writing within ten calendar days of receipt of the notice of noncompliance describing how the
23 noncompliance will be corrected and what steps will be taken to prevent the reoccurrence of the
24 noncompliance. Escalating enforcement procedures, demand monitoring and other penalties will be
25 applied~~In addition to the penalties in this section~~, when continuing noncompliance is detected,
26 including, but not limited to, revocation of the GDP, citation or notice to appear in county court or
27 before the special magistrate for violations of this division. If a FSF violates or continues to violate the
28 provisions set forth in this division or fails to initiate/complete corrective action in response to a notice
29 of noncompliance, ~~then~~ the city may pursue one or more of the following options:

- 30 a. Contract with a permitted grease hauler to pump the grease interceptor and bill the appropriate
31 charge plus administrative fees to the FSF concerned.
32 b. Enter into an administrative order.
33 c. Revoke the GDP.
34 ~~d. Citation or notice to appear in county court.~~
35 ~~e. Special magistrate hearing.~~
36 df. Termination of water and/or sewer service.

- 37 (3) *Permit revocation.* Any GDP issued under the provisions of this division is subject to be modified,
38 suspended or revoked in whole or in part during its term for cause shown including, but not limited to,
39 any one of the following:

40 * * *

- 41 f. When necessary to protect the public health, safety and welfare in accordance with the terms set
42 forth in chapter 1 of this ~~Code~~code.

- 43 (db) *Grease hauler enforcement.* Failure of any grease hauler to comply with the requirements of this division or
44 with the provisions of any permit or approval granted or authorized under this division shall constitute a

violation of this division. ~~In addition to the penalties in this section, violations of the provisions~~ violation of this division shall be subject to, ~~but not limited to, the permit revocation, as follows~~ following procedures:

~~(1) Citation or notice to appear in county court. A citation or notice to appear in county court will be issued to any grease hauler which is found to be in noncompliance with the regulations and requirements of this division.~~

~~(12) Permit revocation.~~ Any GHR or notice of permission issued pursuant to the provisions of this program may be modified, suspended or revoked in whole or in part during its term for cause shown including, but not limited to, any one of the following:

* * *

~~(2e) Recovery of costs.~~ When a discharge of waste causes an obstruction, damage or any other impairment to the city facilities, or any expense of whatever character or nature to the city, the CMD shall assess the expenses incurred by the city to clear the obstruction, repair damage to the facility, and any other expenses or damage of any kind or nature suffered by the city. The CMD shall file a claim with the user or any other person or entity causing such damages seeking reimbursement for any and all expenses or damages suffered by the city. If the claim is ignored or denied, the CMD shall notify the city attorney to take such measures as shall be appropriate to recover any expense or to correct other damages suffered by the city.

~~(d) Remedies nonexclusive. The remedies provided for in this division are not exclusive. The city may take any, all, or any combination of these actions against a person violating this division. Enforcement of violations will generally be in accordance with section 52-129 of this division; however, the city may take other action against any person when the circumstances warrant. Further, the city is empowered to take more than one enforcement action against any person in violation of this division.~~

Sec. 52-~~131~~ -132. Reserved.

DIVISION 6. IMPACT FEES

* * *

Sec. 52-136. General definitions.

When used in this division, the following terms shall have the following meanings, unless the context clearly indicates otherwise. ~~These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict with section 1-2. Terms contained in the rate schedules supersede these general definitions to the extent of any conflict(s).~~

Accessory building or structure means a detached, subordinate structure, the use of which is clearly indicated and related to the use of the principal building or use of the land and which is located on the same lot as the principal building. Plumbing in the accessory building or structure may render same to be subject to water and wastewater impact fees.

Alteration means any change in size, shape, occupancy, character, or use of a building or structure.

Alternative impact fee means any modification in impact fee approved by the city council pursuant to section 52-~~64~~141.

Applicant means the person who applies for a building permit, development order, development permit, or other approval, permission or authorization for development.

Appraisal means a real estate appraisal prepared in accordance with the "Uniform Standards of Professional Appraisal Practice" (published by the Appraisal Standards Board of The Appraisal Foundation) by an MAI-certified appraiser authorized to practice in the State of Florida.

1 *Bedroom* means any room in a single-family residence, which is other than a kitchen, bathroom, living room,
2 or great room (Florida room) which may be used for sleeping quarters.

3 *Building* means any tangible thing, with or without walls, constructed on the site, installed on the site, or
4 placed on the site, to support, shelter or enclose persons and/or support, shelter or enclose tangible property, and
5 the use of the "building" is deemed to create demand upon, or increase demand upon, one or more of the water
6 and wastewater facilities. "Building" includes parking lots and other foundations, permanent and semi permanent
7 tents, sheds, trailers, mobile homes, and vehicles that shall in any way function as a building. "Building" includes
8 additions to a building, such as adding a new room, or enlargement of a then existing room. "Building" excludes
9 tents erected for less than approximately 60 days for the temporary selling of seasonal items.

10 *Building permit* means an official document issued by the city or county which authorizes placing a building
11 on the site, including, but not limited to, by construction or installation occurring on the site and including, but not
12 limited to, an item that is complete or substantially complete prior to its being placed on the site, such as a
13 manufactured home or a communications tower that was substantially constructed elsewhere. For purposes of
14 this division, "building permit" shall include tie-down permits for buildings, such as for a mobile home, or other
15 approvals that do not require any other type of permit before the respective item may lawfully be occupied, used,
16 or operated. "Building permit" when used in the context of the use of land (or water) and in situations where a
17 typical, conventional permit is not issued by the city or county for the respective improvement or use means
18 whatever is the last written approval or permission issued by the city or county to authorize the respective
19 improvement.

20 *Capital recovery fee or impact fee* means the fee imposed by the city pursuant to section 52-137 or, if
21 applicable, the alternative impact fee.

22 ~~*City* means the City of Marco Island, a political subdivision of the State of Florida, and shall include the Marco~~
23 ~~Island city Utilities Department of the City, the utilities department director, and the city manager.~~

24 ~~*City attorney* means the individual appointed by the city council to serve as its counsel, or the designee of~~
25 ~~such attorney.~~

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

28 *Commercial development* means a development where commercial activity occurs. A commercial
29 development may include one or more "building"(s) and may or may not include any "residential" units.

30 ~~*Comprehensive plan* means the comprehensive plan of the city adopted and amended pursuant to the Local~~
31 ~~Government Comprehensive Planning and Land Development Act as contained in F.S. ch. 163, pt. II, or its~~
32 ~~successor in function.~~

33 ~~*Condominium* means a single family or time sharing ownership unit that has at least one other similar unit~~
34 ~~within the same building structure. The term condominium includes all fee simple or title multiunit structures,~~
35 ~~including townhouses and duplexes.~~

36 *Contribution* means the actual construction, installation, or improvement of a water or wastewater facility or
37 portion thereof or addition thereto for the benefit of the city.

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

39 ~~*County* means Collier County, a political subdivision of the State of Florida.~~

40 *Date of value* means, for purposes of determining a developer contribution credit, the market value of the
41 contribution as of the date of the contribution; date of commencement of construction; date of land dedication;
42 or, for dedications, the day before the development order approval (zoning amendment, site plan approval, PUD
43 approval, or other development order approval) wherein the contribution, construction or land dedication was
44 proffered or required; whichever occurs first.

45 *Dedication* means the conveyance or donation of an interest in land or water and wastewater facilities to the
46 city.

1 *Development* means any installation, siting, construction, use of land, or other activity or improvement, or
2 any additional square footage (area) of a then existing building or use, or any net increase in the size or use of a
3 then existing building or land, in a manner that is deemed to increase the demand for, or impact upon, any water
4 and wastewater facility.

5 *Dwelling unit* ~~has the meaning ascribed to in in section 30-10 of this code means a building or portion of a~~
6 ~~building designated for or whose primary purpose is for residential occupancy, and which consists of one or more~~
7 ~~rooms which are arranged, designed or used as living quarters for one or more persons. A dwelling unit must~~
8 ~~contain, as an integral part therein, sleeping quarters, toilet/bathing facilities, and a primary kitchen.~~

9 *Equivalent residential connection* or *ERC* generally represents the equivalent usage requirements of a single-
10 family residential customer. The term "equivalent residential unit" or "ERU", often used instead of ERC, and has
11 the same definition as an ERC. One ERC is deemed to be equal to a flow of 440 gallons per day (GPD) for water;
12 and one ERC is deemed to be equal to a flow of 220 gallons per day (GPD) for wastewater. The assumed ERC
13 gallonage has been based on statistical data establishing an average residential use, and it is recognized that the
14 uses for some types of residential units may be greater or smaller than the average assumed for this calculation.

15 *Equivalent residential unit* or *ERU* generally represents the equivalent usage requirements of a single-family
16 residential customer. For the purpose of this division, an ERU will have an assigned value of 1.0. One ERU is
17 deemed to be equal to a flow of 440 gallons per day (GPD) for water; and one ERU is deemed to be equal to a flow
18 of 220 gallons per day (GPD) for wastewater. The assumed ERU gallonage has been based on statistical data
19 establishing an average residential use, and it is recognized that the uses for some types of residential units may be
20 greater or smaller than the average assumed for this calculation.

21 *Guesthouse* or *cottage* ~~has the meaning ascribed to it in section 30-10 of this code means a dwelling unit as~~
22 ~~defined in the city's land development code.~~ For the purpose of assessing water and wastewater impact fees,
23 guesthouses or cottages shall be considered as additional square footage to the primary residential building.

24 *Impact fee* or *capital recovery fee* means the fee imposed by the city pursuant to section 52-137 or, if
25 applicable, the alternative impact fee.

26 *Impact fee rate* means the formula or calculation that when applied to the respective development
27 determines the applicable impact fee that results because of the impacts deemed by this division to be applicable
28 to the respective water and wastewater facility caused by particular development.

29 *Impact fee study* means a report of the findings of research and analysis conducted to develop fees assessed
30 on new development that represent the fair share cost of the expansion of the water and wastewater facility
31 infrastructure made necessary by that new development. The report describes the methodology used to develop
32 the fees and presents the formulas, variables, and data used as the basis of the fees.

33 *Living area* means actual square footage, which could be air-conditioned or heated spaces contained under
34 roof, or areas under roof, except garages, that are normally protected against exterior elements. When calculating
35 the required impact fee on a square foot criteria, the calculation shall be based on the living area.

36 ~~*Local Government Comprehensive Planning and Land Development Regulation Act* means the provisions of~~
37 ~~F.S. ch. 163, pt. II, as amended or supplemented, or its successor in function.~~

38 *Market value* means the most probable price for which a given property would sell, given adequate exposure
39 in an open and competitive market, where both buyer and seller were knowledgeable, prudent and acting in their
40 own self-interests, with neither party being under undue stimulus to act, nor having an affiliation with one
41 another, where payment is made in terms of cash in United States dollars (or in terms of financial arrangements
42 comparable thereto), and where the price is unaffected by special or creative financing or sales concessions
43 granted by any party associated with the sale.

44 ~~*Marco Island Utilities* means the city department responsible for the management and operation of the~~
45 ~~Marco Island water and wastewater and reuse water utility system.~~

1 *Marco Island utilities director or utilities director* means the individual appointed by the city manager to
2 manage and operate the Marco Island utility system, including the systems within the urban service area, which
3 now or in the future assess any water and wastewater impact fee.

4 *Meter size* means the water meter size as determined pursuant to any city ordinance, resolution, or policy.

5 *Mixed use development* means a development in which more than one impact fee land use category is
6 contemplated with each category constituting a separate and identifiable enterprise not subordinate to, or
7 dependent on, other enterprises within the development.

8 *Mobile home* means a detached dwelling unit with all of the following characteristics:

- 9 (1) Designed for occupancy and containing sleeping accommodations, a flush toilet, a tub or shower and
10 kitchen facilities with plumbing and electrical connections provided for attachment to outside systems;
- 11 (2) Designed for transportation after fabrication on streets or highways on its own wheels; and
- 12 (3) Arriving at the site where it is to be occupied as a dwelling complete, including major appliances and
13 furniture, and ready for occupancy except for minor and incidental unpacking and assembly
14 operations, location on jacks or other temporary or permanent foundations, connection to utilities and
15 the like.

16 Although a travel trailer, recreational vehicle, or park model is not generally considered a mobile home, the
17 applicable impact fee in some instances may be the same as for a mobile home. For the purposes of computing the
18 impact fee, a mobile home on a single-family lot (i.e., not located in a mobile home or similar park) shall be
19 considered a single-family detached house.

20 *Multiple-family dwelling units* means a group of two or more dwelling units within a single conventional
21 building, attached side by side or one above the other, or both, and wherein each dwelling unit may be individually
22 owned or leased mutually on land which is under common or single ownership. For purposes of determining
23 whether a lot is in multiple-family uses, the following considerations shall apply:

- 24 (1) Multiple-family dwelling uses may involve dwelling units intended to be rented and maintained under
25 central ownership and management, or cooperative apartments. It may include the fee ownership of
26 land beneath each dwelling unit following development from a common base of ownership.
- 27 (2) Any multiple-family dwelling in which dwelling units are available for rental for periods of less than one
28 week shall be considered a tourist home, a motel, motor hotel, or hotel, as the case may be.

29 *Off-site improvements* means improvements located outside of the boundaries of a development, except for
30 those water and wastewater facilities that are located within the boundaries of the development that are owned
31 and maintained by the city, which may be required by the city.

32 *Owner* ~~has the meaning ascribed to it in sec. 1-2 of this code. means the person(s) who, or that, owns legal~~
33 ~~title to the real property upon which development is proposed to occur. Owner includes every co-owner; such as~~
34 ~~property owned in tenancy by the entireties, joint tenancy, tenants in common, or by more than one trustee.~~

35 *Professional engineer* means one who is licensed by the State of Florida as a professional engineer.

36 *Reuse system* means the reuse or reclaimed water system directly connected to treatment facilities operated
37 by the city.

38 *Residential* means ~~any dwelling unit~~apartments, condominiums, duplex dwellings, garden apartment
39 dwellings, modular home dwellings, multiple-family dwellings, townhouse dwellings, mobile homes, single family
40 attached houses, single family detached houses, including adult congregate living facilities (ACLF), ~~or and~~ assisted
41 living facilities (ALF) as that term is defined in F.S. § 400.402, ~~unless treated otherwise by the adopted rate~~
42 ~~schedules.~~

43 *Single-family detached house* means a ~~home~~dwelling unit located on an individual its own exclusive lot or
44 parcel of land that is not attached to any other dwelling unit. ~~intended, designed, used and/or occupied by no~~
45 ~~more than one family.~~

1 *Square footage* means the gross area measured in feet from the exterior faces or exterior walls or other
2 exterior boundaries of the building. For the calculation of the impact fees, square footage shall be the square foot
3 measurement of the "living area" and excludes areas within the interior of the building which are utilized for
4 parking.

5 *Urban service area* ~~has the meaning ascribed to it in section 52-41~~ means the boundaries of the area lying
6 within the city and certain areas lying in unincorporated Collier County for which water and/or wastewater
7 services are provided by the city, pursuant to Ordinance No. 2003-13, as amended by ordinance or interlocal
8 agreement.

9 *Wastewater or sewer systems* means the wastewater or sewer and reuse (reclaimed) utility system, including
10 collection, treatment, and distribution facilities directly connected to treatment facilities operated by the city.

11 *Water system* means the potable water utility system directly connected to treatment facilities operated by
12 the city.

13 **Sec. 52-137. Imposition of impact fees.**

14 (a) *General requirements.* All development within the city and the urban service area shall pay all assessed
15 impact fees unless such impact fees, in whole or in part, have been exempted, waived, or deferred pursuant
16 to this division. The impact fee shall be assessed based on a calculation of the impact of the proposed
17 development on the water and wastewater facilities.

18 (b) *Impact fee rates.* The city council hereby adopts the impact fee rates as set forth in appendix A ~~to Ordinance~~
19 ~~No. 04-06, appended hereto~~, which shall be imposed upon all development occurring within the city and the
20 urban service area. These rates may be changed from time-to-time by resolution of the city council.

21 (c) *Change of size or use.* Impact fees shall be imposed and calculated for net increase, alteration, expansion, or
22 replacement of a use or a commercial development, or a building, or part of a building (including dwelling
23 unit), and each accessory or non-accessory building, provided such net increase, alteration, expansion, or
24 replacement of the use, building, or part thereof or therein, by applying this ~~chapter~~ division, results in: a net
25 increase in the number of dwelling units; a net increase in the size or square footage of a commercial
26 development or building; a net increase in the size of the use; or intensification of the use so as to constitute
27 an expansion of the same use category or result in a change to a higher impact fee land use category; or
28 otherwise create additional demand or additional impacts on the water and wastewater facilities. The impact
29 fee imposed under the applicable impact fee rate shall be calculated as follows:

30 * * *

32 **Sec. 52-141. Alternative fee calculation.**

33 (a) The impact fee may be determined by an alternative fee calculation of the fiscal impact of the development
34 on the water and wastewater facilities if:

35 (1) Any person commencing a development which increases demand on the water and wastewater facility
36 chooses to have the impact fee determined by the alternative fee calculation; pays to the city in full the
37 impact fee calculated pursuant to the applicable impact fee rate schedule; pays a nonrefundable, initial
38 alternative fee calculation review fee of \$2,500.00 initially established by resolution of the City Council,
39 and the actual cost upon completed review if in excess of \$2,500.00 the initial review fee; or any other
40 review fee amount then established by the city council by ordinance or resolution; and

41 * * *

42 **Sec. 52-142. Developer contribution credit.**

43 * * *

- (e) Upon approval of a plan for the dedication or contribution, a developer contribution agreement shall be entered into between the city and the owner. A nonrefundable processing, review and audit fee in an amount set by resolution of the city council of \$2,500.00 shall be due once the voluntary plan has been approved and prior to the preparation of a contribution agreement by the city.

* * *

Chapter 54 WATERWAYS AND BEACHES

* * *

ARTICLE II. BEACH MANAGEMENT AND VESSEL CONTROL

* * *

Sec. 54-32. Definitions.

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

- (a) *Aircraft* means any motor vehicle or contrivance now known or hereinafter invented, which is used or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. The term "aircraft" shall include ultra-light aircraft and seaplanes.
- (b) *Bather* means any person who is in the same water as a vessel, whether said person is swimming, wading or engaged in any other activity in the water.
- (c) *Bathing area* means any area of the waters adjoining the beach in which bathers are located or may be located, whether or not designated by signs or other form of notification.
- (d) *Beach* has the meaning ascribed to it in sec. 1-2 of this code. ~~means the sand portion of land lying seaward of a seawall or line of permanent vegetation and landward of the mean high water line.~~
- (e) *Beach permit* means a vendor permit required by the city to comply with this article.
- (f) *Blood baiting* means the use of blood or bloody fish parts to attract sharks.
- (g) *Camping* means the erection of shelter or similar structures for the purpose of sleeping overnight or lying upon the beach.
- (h) *Chumming* means the throwing of bait or fish parts into the water to attract fish.
- (i) *Decibel (dB)* means a unit for measuring the volume of sound; it is a logarithmic (dimensionless) unit of measure used in describing the amplitude of sound. Decibel is denoted as dB.
- (j) *Dune* means the mounds or mound of sand piled up by wind or other natural events or created by a legally permitted activity such as a beach renourishment project, sources on the backshore of the beach, landward of the high tide line.
- (k) *Dune vegetation* means the coastal plants that help to hold the sand in dunes. Examples of plants, but not limited to this list include: Sea oats, beach morning-glory, railroad vine, evening primrose, Indian paintbrush, and coastal sand bur.
- (l) *Gulf* means the Gulf of Mexico from Caxambas Pass to Capri Pass Inlet.
- (m) *Idle speed* means the lowest speed at which a vessel or sailcraft can operate and maintain steering control; the vessel shall not create a bow or stern wake.

- (n) *License or licensed* means a valid business receipts tax recognized by the city.
- (o) *Operate* means to be in charge of or in command of or in actual physical control of a vessel or aircraft, or to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway, or to control or steer a vessel being towed by another vessel within the city's incorporated limits.
- (p) *Personal watercraft* means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motor power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.
- (q) *Rafts, floats, and flotation devices* means any device, whether of canvas, vinyl, rubber, Styrofoam, or other substance, intended or capable of assisting in the flotation of a person on or within the city. The term shall not include vessels or sailcraft, but shall include body boards unless the context clearly indicates otherwise.
- (r) *Sailcraft* means a wind-propelled vehicle used or capable of being used as a means of transportation on or in the water, including sailboats, sailboards and wind-surfboards.
- (s) *Seaplane* means any aircraft as defined herein that is capable of landing and/or lifting off from a water surface.
- (t) *Skier, water skier, water skiing* means anyone being towed with a line or rope behind a vessel and using water skis, a ski board, inflatable device or aqua plane.
- (u) *Slow speed/minimum wake* means the speed at which a vessel is neither planning nor moving with an elevated bow. A vessel that is operating on a plane or is in the process of coming off plane and settling into the water is not considered operating at a slow speed/minimum wake.
- (v) *Solicit or canvass* means any act, delivery, or exchange not initiated by the prospective customer or which directs attention to any business, mercantile or commercial establishment, or any other commercial activity, for the purpose of directly or indirectly promoting commercial interests through sales, rentals, or any exchange of value.
- (w) *Surfing* means the riding or paddling of a surfboard within city waters adjacent to the beach.
- (x) *Ultra-light aircraft or ultra-light* means any heavier-than-air, motorized aircraft that meets the criteria for maximum weight, fuel capacity or airspeed established for such aircraft by the Federal Aviation Administration under Part 103 of the Federal Aviation Regulations.
- (y) *Vessel* means any human, motor, wind, non-powered or motor propelled or artificially propelled water conveyance and every other description of boat, watercraft, barge, and airboat other than a seaplane on the water, used or capable of being used as a means of transportation on or in the water.
- (z) *Wildlife* means any living animal species, including mammal, bird, fish, reptile, amphibian, invertebrate and/or plant species, especially living in a natural, undomesticated state.

Sec. 54-33. Penalties; Suspension or Revocation of Beach Permit.

- ~~(a) Pursuant to chapter 162.22, Florida Statutes, a person found to be in violation of this section may be charged a fine, not to exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days.~~
- ~~(ab) Violations of this article are punishable according to the penalties and procedures in chapter 14 of this section may also be prosecuted before a code enforcement board established by the City of Marco Island.~~
- ~~(be) In addition, as a supplemental means of obtaining compliance with local this codes, the code enforcement board special magistrate may suspend a beach permit for violations of this section article, or for violations of other sections of the this Code of Ordinances, including but not limited to chapter 30 (Land Development Code) and section 38-1 (comprehensive plan) for a period no greater than 12 months. The hearing before the code enforcement board shall not be required to follow the same procedures as a trial before a court, but~~

~~fundamental due process will be observed and govern the proceedings.~~ For purposes of this section, the term "permittee" includes the entity as well as the officers and principals of the entity. Accordingly, if an entity has its beach permit suspended, an officer or principal of the entity shall not be permitted to be an officer or principal in an entity which obtains a beach permit for a period of no greater than 12 months.

Sec. 54-34. Intent and Purpose of Article.

It is the intent and purpose of this ~~section-article~~ to protect and promote the health, safety and welfare of the public at large, including residents and visitors to the ~~City of Marco Island~~, by providing reasonable regulation of the public's use and conduct on the beach and adjoining waters of the ~~City of Marco Island~~, including the designation of specific areas where concession sales, equipment rentals and other permitted activities and the operation of aircraft, vessels, and personal water craft may be regulated or prohibited. It is further intended that this ~~section-article~~ shall be liberally construed to effect such intent and purpose consistent with the intent and purpose of other ~~sections-articles of the this code~~ ~~City of Marco Island Code of Ordinances~~, including but not limited to chapter 30, ~~containing its Land Development Code~~, and section 38-1, adopting by reference the City of Marco Island Comprehensive Plan.

* * *

Sec. 54-36. Regulation of Use and Conduct on the Beach

Unless otherwise prohibited, the public shall be entitled to engage in activities and use of beach areas. A beach permit is required prior to engaging in certain activities occurring on the beach such as concession sales, rental activities, etc.

* * *

(g) *Fishing.* ~~Fishing it shall be unlawful for any person~~ while on the beach or within 1,000 feet from shore to fish for sharks or to fish by those methods commonly known as chumming or blood baiting ~~shall be regulated by state law~~. Nothing herein shall be construed to create a duty of any sort on the part of any law enforcement officer or city employee to prevent fishing or to warn of the presence or sharks in the Gulf of Mexico.

* * *

(k) *Removal of Beach sand.* No person shall remove sand from the ~~B~~beach.

(l) *Litter.* It shall be unlawful for any person to discard or otherwise dispose of or abandon any trash, garbage, bottles, containers, cans, dead fish or part thereof, charcoal briquettes or ashes, or any other litter, except in containers designated for the purpose. It is further unlawful to dispose of any household garbage on the beach.

(m) ~~Compliance.~~ Beach permittees shall comply with all applicable ~~requirements of this code~~ ~~City of Marco Island ordinances~~.

(n) *Dune protection.* It shall be unlawful for any person to impact the dune by walking, sitting, storing equipment, throwing litter, trash, or any other article into the dune. It is further unlawful to trim and/or remove any vegetation of otherwise alter existing ground elevations or conditions of any dune without prior obtaining a permit from the ~~city~~ ~~City of Marco Island~~ and/or the Florida Department of Environmental Protection, or other state or federal governmental agency.

(o) *No live shelling.* It shall be unlawful to collect, take, or possess any live shell on the ~~Marco Island~~ ~~B~~beach without proper permit issued from the Florida Fish and Wildlife Conservation Commission or other state or federal governmental agency. Only shells that do not contain a live organism may be collected or removed from the beach.

- (p) Wildlife protection. The disturbance, destruction, or removal of wildlife is prohibited. Fishing from the beach is a permitted activity and includes the legal gathering of bait fish. Crustaceans may not be collected from their natural beach habitat.

Sec. 54-36.1. Beach PermitsReserved.

~~A beach permit shall be required prior to engaging in commercial concession operations, equipment rental and other activities as provided in section 54-38 on the beach and shall be subject to all conditions, requirements and regulations provided in this article and including but not limited to chapter 30 containing the Land Development Code, section 38-1, incorporating by reference the City of Marco Island Comprehensive Plan, building and licensing codes and in any other applicable section the City of Marco Island Code of Ordinances.~~

Sec. 54-37. Vessel Regulation—Speed Limits and Exemptions

* * *

- (b) *Vessel corridors.* Areas of the Gulf adjacent to the beach and closer than 750 feet from the shore may be designated by resolution of the ~~Marco City Council~~ as being used exclusively for vessel use between dawn and dusk.

* * *

Sec. 54-38. Beach Permits; Concession Operations, Equipment Rentals and Vendors on the Beach and Adjoining Waters.

All beach permittees shall comply with ~~the this article~~City of Marco Island Waterway and boating safety ordinance. The safety and welfare of the persons that reside nearby the city's beach areas and of the public that recreate on the beach and adjoining waters makes necessary and appropriate the following regulations:

- (a) *Beach permit requirement.* Any person or business enterprise of any type or kind engaged in the commercial sale of goods, services, rental, leasing, bailment or which otherwise provides recreational equipment for remuneration, including vessel(s) for the use by the public on the beach or adjoining waters of Marco Island, ~~shall be is~~ required to obtain a city "beach permit" from the City of Marco Island. A beach permit shall be issued and maintained upon the applicant paying such application fee established by the city by resolution and the applicant meeting the following requirements:

* * *

- (2) The applicant shall have a written lease or other written agreement executed by all owners of the beachfront property affected at the time application is made for a beach permit, and such agreement shall remain in full force and effect as a condition of the beach permit. The agreement or lease shall include a term requiring compliance with all City of Marco Island Code provisions of this code, including but not limited to zoning regulations, ~~comprehensive planning regulation,~~ building codes and licensing.
- (3) The applicant must have and maintain a communications system including a telephone, either land lined or cellular and marine radio at its operation office with the functional capacity to be always alert to the whereabouts of the rental craft equipment, goods and other personal property belonging to the applicant and those that are rented to the customers.
- (4) If the applicant is engaged in the rental of motorized or windblown equipment, or other vessel rentals the applicant must have a motorized rescue vessel with operational marine radio or cellular phone in good working condition that satisfies U.S. Coast Guard safety requirements, kept at the vessel rental site during all hours of applicant's rental operations. Rescue vessel(s) shall pass inspection by either the U.S. Coast Guard Auxiliary or the city~~City of Marco Island~~

Police Department 30 days prior to issuance of a City of Marco Island Beach vendor permit.
A copy of the inspection shall be submitted with the permit application to the city.

* * *

- (8) The applicant shall provide ~~the community development director or designee~~ an equipment removal plan to remove all equipment located along the beachfront in the event of a Category 1 or greater storm event, or if a tropical storm warning is declared. The applicant(s) removal plan shall be reviewed annually as part of the beach permit, and the information provided shall indicate which beach access will be necessary to remove equipment, an estimate of the time needed to remove equipment, and where equipment will be stored and/or secured prior to and during the storm event.

(b) *Boater safety.*

* * *

safety equipment required under this section and chapter 327.50, Florida Statutes.

- (2) When the vessel is equipped with a motor of ten horsepower or greater, the livery, beach permit holder or marina shall provide a comprehensive pre-operation instruction briefing to all operators of rental vessels regardless of age and prior maritime training internal and external to a livery or marina that include, but need not be limited to, all the topics included on the list provided to each livery or marina by the ~~city Marco Island Police Department~~.

a. The pre-operation instruction briefing shall be documented on a form approved by the ~~Marco Island Police Department~~ prior to use;

b. Any such form shall be retained for a period of six months;

c. Any such form shall be provided to the ~~Marco Island Police Department~~ or any city staff, or other law enforcement agency, upon request.

- (3) All renters, users, and passengers of any vessel described in this section shall initial and sign a form attesting that they have completed, understood, and will comply with all conditions set forth in the form. The livery or marina operator(s) who gave the pre-operation safety briefing are also required to co-sign the form attesting that they have provided all operators with the required pre-operation safety briefing.

- (4) Any person delivering the pre-operational safety briefing on behalf of the livery or marina shall have:

a. Successfully completed a boater safety course approved by the National Association for State Boating Law Administrators (NASBLA) and this state.

b. A copy of the documentation attesting to the completion of this course must be maintained by the livery or marina during the person's employment, and for six months thereafter.

c. All liveries, beach permit holders and marinas shall provide any requested documentation relating to an employee's competency to instruct the pre-operational safety briefing to the ~~Marco Island Police Department~~, city staff, or any other law enforcement agency upon request.

- (5) The livery, beach permit holder or marina shall display boating safety information in a place visible to the renting public. The commission prescribes by rule pursuant to chapter 120, Florida Statutes, the contents and size of the boating safety information to be displayed.

- (6) If a rental vessel is involved in a boating incident or accident, which involves personal injury or significant property damage within the city, the livery or marina shall immediately notify the ~~Marco Island Police Department~~ upon notice of the accident.

(c) The vendor shall provide all renters, users, and passengers of any vessel described in this section shall have on board an approved and operational personal flotation device (PFD) for each occupant while using or having such vessel in the water. It is a violation of this ~~s~~Section for any such person using such ~~v~~vessel not to have a life vest onboard.

* * *

(g) All personal watercraft must be operated in a reasonable and prudent manner at all times. Maneuvers which unreasonably or unnecessarily endanger life, safety, or property are prohibited, including, but not limited to:

- (1) Weaving through congested vessel traffic;
- (2) Jumping wake of another vessel unreasonably or unnecessarily close to such vessel;
- (3) Operating when visibility around such other vessel is obstructed;
- (4) Operating in a manner that requires intentional swerving at the last moment to avoid collision, ~~constitute reckless operation and are in violation of this section and this section.~~

Sec. 54-39. Prohibition on use or service of plastic straws.

(a) No business, restaurant, including, but not limited to, cafeteria, including school cafeterias, cafe, bar or other establishment at which food or drink is served or purchased, and which is located directly adjacent to city beaches as defined and as depicted in the figure below, shall use, serve, or distribute plastic drinking straws on or after the effective date of the ordinance from which this section is derived. For purposes of this section, ~~the following definitions shall apply:~~

~~(1) Beach has the meaning ascribed to it in section 1-2 of this code is the sand portion of land lying seaward of a seawall or line of permanent vegetation and landward of the mean high water line; and~~

~~(2) A straw is defined to mean a tube for transferring a beverage or liquid from a container to the mouth of a drinker by suction or other means.~~

* * *

ARTICLE III. VEHICLES ON BEACH

DIVISION 1. GENERALLY

* * *

Sec. 54-62. Penalties.

~~(a) Pursuant to F.S. § 162.22, a person found to be in violation of this article may be charged a fine, not to exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days.~~

~~(b) Violations of this article is punishable according to the penalties and procedures in chapter 14 of this code may also be prosecuted before the code enforcement board.~~

* * *

Sec. 54-64. Applicability of article Reserved.

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

Sec. 54-65. Driving on sand dunes or beach; disturbing sand dunes.

It shall be unlawful to:

- (1) Operate or cause to be operated a hand-, animal- or engine-driven wheeled, tracked or other vehicle on, over or across any part of the sand dunes, hill or ridge nearest the gulf, or the vegetation growing thereon or seaward thereof, or to operate or drive such a vehicle without a permit or authorized exemption, on the ~~area commonly referred to as the "beach" as defined in section 54-32~~ within the city.
- (2) Alter or cause to be altered any sand dune or the vegetation growing thereon or seaward, make any excavation, remove any material, trees, grass or other vegetation or otherwise alter existing ground elevations or conditions of such dune without first securing a permit.

Secs. 54-66—54-80. Reserved.

DIVISION 2. PERMIT FOR USE OF VEHICLES ON THE BEACH

* * *

Sec. 54-82. Vehicles requiring permit; display.

Owners or operators of vehicles used on the beach in connection with environmental operations, conservation operations, lawfully permitted beach vendor operations, construction, or property maintenance operations must obtain a permit. ~~The from the community development director or his designee, and the~~ permit shall be prominently displayed on the windshield or attached to such vehicle and kept with the vehicle and available for inspection.

Sec. 54-83. Application; issuance; fee.

For all vehicles requiring a permit under this article, ~~such the~~ permit shall be obtained by application to the ~~community development director city on the requisite forms, including a written justification of necessity in writing stating the reason why it is necessary for such the~~ vehicle to be operated on the beach, and whether ~~such the~~ vehicle needs to be operated during sea turtle nesting season. If so, the application should suggest minimum hours of operation during that period. The ~~community development director city~~ shall issue a permit for such vehicle ~~if it determines if the director is satisfied~~ that a lawful and necessary purpose will be served and all conditions are met. A schedule of permit fees will be established by the city council by resolution, and may be changed or amended by subsequent resolutions.

* * *

Sec. 54-85. Temporary permit.

Vehicles which must travel on the beach in conjunction with a special event must first obtain a city temporary use permit ~~from the community development department.~~

* * *

Sec. 54-87. Restrictions during sea turtle nesting season.

During sea turtle nesting season, May 1 through October 31 of each year, vehicles which must travel on the beach in connection with environmental operations, conservation operations, lawfully permitted beach vendor operations, construction, and property maintenance operations shall not operate on the beach until (i) after a daily sea turtle monitoring has been conducted by a state-certified sea turtle permit holder, or (ii) 8.00 a.m., whichever occurs first. Operators should additionally consult their permit for other restrictions on normal operations that

may apply during sea turtle nesting season. Vendors on the beach will be required to maintain a minimum 25 feet of prudent distance between any marked sea turtle nest and their merchandise and vehicles.

Secs. 54-88—54-99. Reserved.

ARTICLE IV. BOAT DOCKING FACILITIES

DIVISION 1. GENERALLY

* * *

Sec. 54-101. Definitions.

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

Associated infrastructure means seawalls, revetments, caps, support piles, whalers, riprap, and like physical improvements which supports a boat dock facility in conjunction with the upland host property.

Boat dock canopy and boat lift canopy means a permanent aluminum, PVC, galvanized or similar structure which is attached to a dock or boat lift and which structure is covered with canvas, vinyl, or similar soft membrane materials and utilized for protecting a vessel over or contiguous to navigable water. A canopy shall not be considered or qualify as a boathouse and shall not be installed, repaired or reconstructed. A covering, commonly referred to as a mooring cover, which is fixed to the vessel for the purpose of protecting the vessel shall not be considered a boat canopy.

Boat docking facility means any structure, whether fixed in position or floating, constructed on or over a waterway for the primary purpose of mooring a boat and that provides access to a vessel from the adjacent upland property. This includes docks, walkways, piers, boatlifts, personal watercraft lifts, davits, mooring piles, dolphins, boathouses, nautical garages and associated cut-in boat slips/boat basins from any water body in single-family residential zoning district properties. A walkway immediately adjacent to or as part of a nautical garage in the rear yard setback across the cut-in boat slip/boat basin associated with the nautical garage is permitted as an encroachment into the rear yard setback provided no part of the walkway exceeds 30 inches above grade of the land within the rear yard setback.

Boat dock v-area means the cut-out area within the dock for mooring the boat.

Boathouse means a structure with a roof which is constructed of palm fronds, cedar shakes, or the same material and color of the principal structure on the property, accessory use to a residential structure over or contiguous to navigable water, open on all sides and providing covered protection to a boat and accessories customary thereto.

Boatlift means any mechanical structure, including a davit, capable of lifting or raising a vessel clear of the water.

Director means the director of the city department having authority over the implementation and administration of the land development code as determined and appointed from time to time by the city manager.

Live-aboard vessel shall have the same meaning as used in F.S. § 327.02, ~~as may be subsequently modified or amended from time to time.~~

Marginal dock means a dock which protrudes five feet or less into the waterway.

Moored vessel, for the purposes of this article, shall refer to the overall length of the vessel, including the pulpit, motor, and any other accessories attached to the vessel.

1 *Mooring cover* means a tailored canvas covering which is affixed to the vessel for the purpose of protecting
2 the vessel.

3 *Mooring cover assist system* means a system that supports the full weight of a tailored mooring cover as it is
4 removed or installed on a vessel. The mooring cover assist system's mooring cover is attached directly to the vessel
5 when in the covered position and does not act as a boat canopy when not attached to the vessel.

6 *Multifamily residential zoning district* means any real property located within the following residential
7 multiple family zoning districts: 6 (RMF-6,) zoning district as described in section 30-101 et seq. of this Ccode, the
8 residential multiple family 12 (RMF-12,) zoning district as described in section 30-121 et seq., the residential
9 multiple family 16 (RMF-16,) zoning district as described in section 30-141 et seq., the residential tourist (R-T)
10 zoning district as described in section 30-161 et seq., or the any portion of the a planned unit development zoning
11 district set forth in section 30-381 et seq., devoted to multiple-family dwellings as defined in section 30-10 of this
12 code residential development.

13 *Nautical garage* is defined in section 30-10 of this Ccode.

14 *Newspaper of general circulation* is defined in section 30-10 of this Ccode.

15 *Permanent structure* means a structure erected for 180 days or more.

16 *Personal watercraft (PWC)* means a vessel less than 16 feet in length which uses an inboard motor powering
17 a water jet pump as its primary source of power and which is designed to be operated by a person sitting, standing
18 or kneeling on, rather than the conventional manner of sitting or standing inside the vessel.

19 *Personal watercraft (PWC) lift* means any mechanical structure capable of lifting or raising a PWC clear of the
20 water.

21 *Rendered and -See "Rendition-" have the meaning ascribed to them in section 1-2 of this code.*

22 *Rendition* means the issuance of a written order, including approval, approval with conditions, or denial of a
23 determination by the city council, planning board, director, or other administrative official, effective upon the date
24 of signing by the authorized city official of such order or final letter of determination and its filing in the records of
25 the city council or planning board, or said director or other administrative official.

26 *Riparian line* means an imaginary line beginning at the point at which property lines intersect the mean high
27 water line of a waterway and continuing into the waterway indefinitely. The purpose of the riparian line, as
28 employed by this article, is to provide a point of reference from which to measure setbacks for docking facilities.
29 Riparian lines shall be established according to the following unless contradicted or approved by the state board of
30 trustees of the internal improvement trust fund:

- 31 (1) Lots at the end or side end of a waterway with a regular shoreline are established by a line extending
32 from the corner of an end lot and side end lot into the waterway bisecting equidistantly the angle
33 created by the two intersecting lots.
- 34 (2) Riparian lines for all other lots should be established by generally accepted methods, taking into
35 consideration the configuration of the shoreline, and allowing for the equitable apportionment of
36 riparian rights. Included, but not limited to, are lines drawn perpendicular to the shoreline for regular
37 (linear) shorelines, or lines drawn perpendicular to the centerline (thread) of the waterway, or
38 perpendicular to the line of deep water (line of navigability or edge of navigable channel) as
39 appropriate for irregular shorelines. No boat docking facility shall be constructed so as to encroach
40 upon the riparian rights of other property owners.

41 *Riparian rights* shall have the same meaning as used in F.S. § 253.141, as may be subsequently modified or
42 amended from time to time. This term is currently defined as follows: Riparian rights are those incidental to land
43 bordering upon navigable waters. They are rights of ingress, egress, boating, bathing, and fishing and such others
44 as may be or have been defined by law. Such rights are not of a proprietary nature. They are rights inuring to the
45 owner of the riparian land but are not owned by him or her. They are appurtenant to and are inseparable from the
46 riparian land. The land to which the owner holds title must extend to the ordinary high watermark of the navigable

~~water in order that riparian rights may attach. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the upland.~~

Seawall support pilings means pilings which are installed against the waterward side of a seawall for the purpose of providing additional support to the seawall and/or providing protection to the seawall from vessels.

~~*Setback* shall have the meaning provided in section 30-10 of this code means a line marking the minimum open space distance between a property line, right-of-way line, bulkhead line, shoreline, seawall, mean high water mark, access easement line, or other defined location, whichever is most restrictive, and the beginning point of a required yard or the buildable area.~~

~~*Single-family residential zoning district* means the zoning district devoted primarily to single family dwelling housing in the RSF 2, RSF 3, and RSF 4 zoning districts, all as set forth in sections 30-81 through 30-89 of this Code, or and the any portion of the a planned unit development zoning district set forth in section 30-381 et seq. devoted to detached single-family residential dwellings development.~~

~~*Sovereign submerged lands* shall have the same meaning as used in F.A.C. § 18-21.003, as may be subsequently modified or amended from time to time.~~

~~*Sovereign submerged land lease* shall have the same meaning as used in F.A.C. § 18-21.003, as may be subsequently modified or amended for time to time.~~

Swivel PWC lift means any mechanical structure capable of lifting or raising a PWC clear of the water and which swivels so that the vessel is stored on the property or on top of a boat docking facility.

Secs. 54-102—54-109. Reserved.

DIVISION 2. REGULATIONS

* * *

Sec. 54-111. Dimensional standards.

(a) *Protrusion limitations for boat docking facilities.*

- (1) On waterfront lots located on waterways which are 100 feet or greater in width, the combination of a boat docking facility and moored vessel(s) shall not protrude more than 30 feet into the waterway, provided the combination of a boat docking facility and moored vessel(s) does not protrude more than 25 percent of the platted width of the waterway, in order to ensure reasonable width for navigation. The protrusion of boat docking facilities, which are located at the intersection of two waterways or in areas where the waterway widens, may ~~in cases~~ exceed 25 ~~feet~~ percent but not more than 30 feet into the waterway. Boat docking facilities located at the end of a canal shall not protrude more than 25 percent of the platted width of the waterway. See Exhibits One and Three. In the event of a conflict between the text of this section and Exhibits One or Three below, the exhibits shall prevail.

* * *

- (2) On waterfront lots located on waterways which are less than 100 feet in width, the combination of a boat docking facility and moored vessel(s) shall not protrude more than 20 percent of the platted width of the waterway, except that on waterfront lots with a marginal dock as defined in section 54-101, the combination of the dock and moored vessel(s) shall not exceed 25 percent of the platted width of the waterway or 25 feet, whichever is more restrictive. The protrusion of boat docking facilities, which are located at the intersection of two waterways or in areas where the waterway widens, may ~~in cases~~ exceed 20 ~~feet~~ percent but not more than 30 feet into the waterway. Boat docking facilities located at the end of a canal shall not protrude more than 20 percent of the platted width of the waterway. See Exhibits Two (below) and Three (above). In the event of a conflict between the text of this section and Exhibits Two or Three, the exhibits shall prevail.

* * *

Sec. 54-112. Additional requirements.

* * *

- (g) Any outside lighting on a boat docking facility shall comply with the lighting regulations set forth in chapter 6, article V of this ~~c~~Code. Further, the use of red or green lights or lights that emit red or green light due to a lens or other method are prohibited.

* * *

- (j) Seagrass bed protection:

- (1) Where new boat docking facilities or boat dock extensions are proposed, the location and presence of seagrass or seagrass beds within 200 feet of any proposed dock facility shall be identified on an aerial photograph having a scale of one inch = 200 feet when available, or a scale of one inch = 400 feet when such photographs are not available. The location of seagrass beds shall be verified by a site visit by the ~~community development~~ director ~~or his designee~~ prior to the approval of any boat dock extension or the issuance of any building permit.

* * *

Sec. 54-113. Permit and construction requirements.

- (a) A city building permit must be obtained prior to the construction, installation, modification or replacement of a boat docking facility.
- (b) Applications for a building permit must include the following:
- (1) Drawing of currently existing conditions at the proposed site including the property lines, length of the seawall, waterway width, location of seagrasses within 200 feet of the subject site (if applicable) mangrove prop root line (if applicable), and location of navigation channels (if applicable).
- (2) Plans showing the height, width, length and distance from the property lines of all existing and proposed structures to include pilings, boatlifts, decking, detail and construction specifications and all other information deemed necessary by the ~~community development~~ director ~~or his designee~~.
- (3) The ~~community development~~ director ~~or his designee~~ may require this information to be furnished on a certified survey if information is conflicting.
- (4) If state or federal permission is required for the construction, installation, modification or replacement of any boat docking facility, such permission shall be presented in writing to the ~~community development~~ director ~~or his designee~~ prior to the issuance of any building permit for a boat docking facility.

* * *

Sec. 54-114. Minor after-the-fact encroachments.

- (a) Minor after-the-fact encroachments may be approved administratively by the ~~community development~~ director ~~or his designee~~. Encroachments of up to 0.5 feet into the required setback for a boat docking facility for which a certificate of occupancy has not been issued, and encroachments of up to 1.0 feet into the required setback for a boat docking facility for which a certificate of occupancy has been issued may be granted administratively.
- (b) In order to apply for an administrative variance for a boat docking facility, the property owner or ~~his~~ agent shall submit the following to the ~~community development~~ director ~~or his designee~~:

* * *

1 **Sec. 54-115. Boat dock extensions, protrusion or encroachment into the riparian setback.**

- 2 (a) Property owners may request a boat dock extension, protrusion or encroachment into the riparian setback
3 ("request" or "application") to provide for additional length or protrusion beyond the respective distances
4 specified in section 54-111 by following the procedures in this section.
- 5 (b) General requirements.
- 6 (1) Petitioner must demonstrate justification for the request extension, protrusion or encroachment into
7 the riparian setback requested and/or special conditions relative to the subject property, in addition to
8 compliance with applicable review criteria in subsection (f), below.
- 9 (2) Notice of public hearing(s) shall be provided to all property owners within 300 feet of the subject
10 petition. In the case of residential, commercial, PUD and/or DRI extension requests, the petitioner shall
11 be responsible for, and bear such costs for, all public notification requirements, including newspaper
12 advertisements in a newspaper of general circulation and mailing by first class U.S. mail of public
13 notices to all property owners within 300 feet. Proof of advertising and mailing shall be presented to
14 city staff prior to placing the subject boat dock extension on the planning board and city council
15 agendas.
- 16 (3) Required public hearing(s) will not be scheduled until the boat dock extension, protrusion or
17 encroachment into the riparian setback application package has been deemed by staff to be complete.
18 The following items, additional to any other items that may be listed on the application checklist, must
19 be included with the application boat dock extension, protrusion or encroachment into the riparian
20 setback petition submittal:
- 21 * * *
- 22 (c) An Approval of an an application boat dock encroachment into the riparian setback, protrusion, or extension,
23 shall be issued in the form of a resolution. In the event a resolution approving a boat dock extension
24 incorporates a site plan, said site plan shall be binding upon the property. Any deviation from the approved
25 site plan shall require a petitioner to submit a new application under this section make application for a boat
26 dock encroachment into the riparian setback, protrusion, or extension.
- 27 (d) Additional length, protrusion, or encroachment into the riparian setback, beyond the respective distances
28 specified in section 54-111 Applications for boat docking facilities located in any single-family district shall
29 require public notice and a hearing by the planning board, after which the planning board shall render a final
30 decision.
- 31 (e) Additional length, protrusion, or encroachment into the riparian setback beyond the respective distances
32 specified in section 54-111 Applications for boat docking facilities in any multifamily or, commercial district,
33 PUD, or development of regional impact district shall require public notice and a hearing by the planning
34 board and the city council. The planning board shall consider the application and make a recommendation to
35 the city council for approval, approval with conditions, or denial based upon the criteria set forth herein. The
36 city council shall consider the application and recommendation from the planning board and shall make a
37 final decision for approval, approval with conditions, or denial based on the criteria set forth herein.
- 38 * * *
- 39 (g) The planning board and city council may impose conditions upon the approval of an extension,
40 protrusion, or encroachment request application which it deems necessary to accomplish the purposes
41 of this article and to protect the safety and welfare of the public. Such conditions may include, but are
42 not limited to, requiring greater side yard setback(s), additional reflectors, reflectors larger than four
43 inches, or prohibiting or restricting the amount of decking on the boat docking facility.
- 44 (h) As to any boat dock extension, protrusion, or encroachment into the riparian setback, petition upon which
45 the planning board takes action, any An affected property owner may appeal such a final action by the
46 planning board in accordance with the procedure in section 1-15 of this code to the city council. The city

~~council may affirm, affirm with conditions, reverse or reverse with conditions the action of the planning board. Such appeal shall be filed with the city manager within 14 days of the rendition of the planning board's final decision and said appeal shall be noticed for public hearing with the city council pursuant to the procedures and applicable fees set forth in the land development code. Any appeal to a decision made by the city council shall be quasi-judicial in nature and shall be a de novo application.~~

- (i) Changes and/or amendments to existing boat dock extension approvals only may be approved administratively if the proposed changes do not increase the protrusion into the waterway beyond provisions set forth in subsection 54-111(a), and/or increase the encroachment into the side yard setback beyond the provisions set forth in subsection 54-111(b).
- (j) All boat dock extension, protrusion, or riparian setback encroachment, approvals shall be consistent with all regulations contained in chapter 30 ~~of the land development code and the City of Marco Island comprehensive plan.~~
- (k) In the event of a conflict between chapter 30 ~~of the land development code or comprehensive plan and chapter 54~~this article, the regulations and standards ~~contained in chapter 30 of the land development code~~ shall prevail.
- (l) ~~In the event of a conflict between the comprehensive plan and chapter 54, the regulations and standards contained in comprehensive plan shall prevail.~~

Sec. 54-116. Boathouse and boat dock canopy and boat lift canopy.

- (a) The city shall not permit the construction of new boathouses, and gazebos extending over navigable waterways in any zoning district. The city may approve through the conditional use process, where authorized in chapter 30, nautical garages with cut-in boat slips.
- (b) Boathouses which were existing prior to September 21, 1998, may be repaired or rebuilt subject to the following:
 - (1) Approval of the ~~community development~~ director ~~or his designee will be~~is required prior to the issuance of a building permit to repair or rebuild within the existing footprint including the overhang of a structure that was lawfully permitted and for which a certificate of completion was issued.
* * *
 - (4) ~~The repaired or rebuilt boathouse community development director, planning board and city council acting as the board of zoning appeals shall base its decision for approval, approval with conditions, or denial, on~~shall comply with the following ~~criteria~~requirements:
* * *

Sec. 54-117. Manatee protection.

- * * *
- (d) *Allowable wet slip densities.*
* * *
- (6) *Exemption.* Existing facilities and facilities which had state or federal permits prior to adoption of the county manatee protection plan shall be exempt from these provisions, but will be subject to all other requirements of chapter 30 of this code~~the LDC~~.

Sec. 54-118. Penalties for violation.

- ~~(a) Pursuant to F.S. § 162.22, a person found to be in violation of this article may be charged with a fine, not to exceed \$500.00, and may be sentenced to a definite term of imprisonment not to exceed 60 days. Each~~

~~violation or noncompliance shall be considered a separate and distinct offense. Further, each day of continued violation or noncompliance shall be considered as a separate offense.~~

~~(b) Violations of this article is punishable according to the penalties and procedures set forth in chapter 14 of this code. may also be prosecuted before the city code enforcement board.~~

Secs. 54-119—54-140. Reserved.

ARTICLE V. SEA TURTLE PROTECTION

* * *

Sec. 54-143. Definitions.

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

Artificial light means the light emanating from any human-made device.

Beach has the meaning ascribed to it in section 1-2 of this code~~means the sand portion of land lying seaward of a seawall or line of permanent vegetation and landward of the mean high water line.~~

* * *

~~*Person* means any individual, firm, association, joint venture, partnership, estate, trust, syndicate, fiduciary, corporation, group, or unit or federal, state, county, or municipal government.~~

* * *

Sec. 54-154. ViolationsReserved.

~~Violation of the provisions of this article or failure to comply with any of its requirements shall constitute a code violation. Any person or firm who violates this article or fails to comply with any of its requirements shall upon conviction thereof be fined, or imprisoned, or both, as provide by law. After an appropriate period to correct the violation, each day such violation continues shall be considered a separate offense. Additionally, each sea turtle or eggs that are killed injured, or molested shall constitute a separate violation. Any other person, who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.~~

~~The city, in addition to the sanctions contained herein, may take any other appropriate legal action, including but not limited to, injunctive action, to enforce the provisions of this article.~~

Sec. 54-155. Jurisdiction and enforcement.

This article is enforceable by any duly authorized law enforcement officer, City of Marco Island code enforcement officer ~~or designee~~, the Marco Island Police Department, the Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers, the Collier County Sheriff's Office, and any other state or federally authorized law enforcement agency.

* * *

(3) Every two weeks, lighting compliance inspections shall be conducted by the a code enforcement official~~City of Marco Island Code Enforcement or city designee~~ during sea turtle nesting season to ensure compliance with this ordinance.

1 **Sec. 54-156. Penalties.**

2 Violation of this article is punishable according to the penalties and procedures set forth in chapter 14 of this code
3 and a schedule of penalties adopted by resolution of the city council.

4 ~~(a) After one warning in a calendar year excluding an irreparable event, in addition to and as a supplement to~~
5 ~~any civil and criminal penalties provided by state and federal statutes, and the City's Code of Ordinances, the~~
6 ~~following shall apply:~~

7 ~~(1) Any person who is found to have violated any provision of this article, shall be, upon conviction, subject~~
8 ~~to the following penalties:~~

9 ~~a. First offense—Minimum of \$150.00, not to exceed \$500.00 for each offense as provided for in~~
10 ~~F.S. § 162.22; and~~

11 ~~b. Second offense—Minimum of \$500.00, not to exceed \$1,500.00, as provided for in F.S. § 162.09;~~
12 ~~and~~

13 ~~c. Third offense—Minimum of \$1,500.00, not to exceed \$2,000.00, as provided for in F.S. § 162.09;~~
14 ~~and~~

15 ~~d. Irreparable event—Up to the maximum possible as provided for in F.S. § 162.09.~~

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

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

22 ~~(4) If a state of emergency is declared by the Governor of the State of Florida or there is a significant~~
23 ~~weather event, the City of Marco Island Code Enforcement may issue more than one warning for~~
24 ~~noncompliance with this article.~~

25 **Secs. 54-157—54-160. Reserved.**

26 **ARTICLE VI. WATERWAYS AND BOATING SAFETY**

27 * * *

28 **Sec. 54-164. Definitions.**

29 WhenAs used in this chapter and in this article, the terms below shall have the following meanings unless the
30 context clearly requires a different meaning, the term. These definitions are supplemental to the definitions in
31 section 1-2 of this code. The definitions in this section shall prevail in case of conflict.:

32 *Abandoned vessel* means any vessel whose ownership cannot be determined due to failure to register said
33 vessel or failure to document said vessel; failure to properly mark or identify said vessel as required in the
34 registration or documentation process; any unattended vessel which is adrift; any unattended vessel that is found
35 in a badly deteriorated condition, or is taking on water, or is sinking or partially sunk, or sunk; any unattended
36 vessel that is causing damage to private or public property; any unattended vessel that is releasing contaminants
37 or chemicals into water; any unattended vessel that is or was on fire; or any unattended vessel that is a menace to
38 navigation; any vessel that is unattended for a period greater than 72 hours.

39 *Anchorage* means a designated area within the bays and waterways of Marco Island in which vessels may
40 remain at anchor for the period of time permitted by the ordinance.

1 *Anchoring* means to secure a vessel by use of ground tackle.

2 *Bays and waterways* mean any natural or manmade body of water, creek, bay, inlet or canal within the
3 boundaries of the city.

4 *Beach* ~~has the meaning ascribed to it in section 1-2 of this code. means the soft sand portion of land lying~~
5 ~~seaward of a seawall or rocky shore or line of permanent vegetation and landward of the mean high water line.~~

6 *Boating accident* means a collision, accident, or casualty involving a vessel in or upon, or entering into or
7 exiting from, the water, including but not limited to capsizing, collision with another vessel or object, sinking,
8 personal injury, death, disappearance of any person from on board under circumstances which indicate the
9 possibility of death or injury, or property damage (in excess of \$2,000.00) to any vessel or dock, or other property.

10 *Commercial vessel* means any vessel primarily engaged in the taking or landing of saltwater fish or saltwater
11 products or freshwater fish or freshwater products, or any vessel licensed pursuant to F.S. § 370.06, from which
12 commercial quantities of saltwater products are harvested, from within and without the waters of this state for
13 sale either to the consumer, retail dealer, or wholesale dealer; or any vessel engaged in any activity wherein a fee
14 is paid by the user, either directly or indirectly, to the owner, operator or custodian of the vessel; or any vessel
15 engaged in commercial enterprise; or any vessel designed to support commercial operations; or any other vessel,
16 except a recreational vessel as defined herein.

17 *Commission* means the division of law enforcement of the fish and wildlife conservation commission.

18 *Discharge* means the intentional or unintentional release of pollution or sewage.

19 *Ground tackle* means a mechanical device that prevents a vessel from moving, including but not limited to
20 anchors, anchor chains, anchor lines and/or fittings, etc. for anchoring or mooring a vessel.

21 *License or licensed* means a valid occupational license recognized by the city.

22 *Length* means the measurement from end to end over the deck parallel to the centerline excluding sheer.

23 *Live-aboard vessel* shall have the same meaning as used in F.S. § 327.02, ~~as may be subsequently modified or~~
24 ~~amended from time to time.~~

25 *Livery vessel* means any vessel leased, rented, or chartered to another person or entity for consideration.

26 *Marina* means a boating facility, chiefly for recreational boating, located on navigable water frontage, and
27 providing all or any combination of the following: boat slips or dockage, dry boat storage, small boat hauling or
28 launching facilities, marine fuel and lubricants, marine supplies, bait and fishing equipment, restaurants, boat and
29 boat motor sales, and rentals. Minor boat, rigging and motor repair which is incidental to the principal marina use
30 is generally allowed as an accessory use. However, no dredge, barge or other work-dockage or service is permitted,
31 and no boat construction or reconstruction is permitted. A boat sales lot is not a marina.

32 *Marine sanitation device* means any equipment on board a vessel, which is designed to receive, retain, treat,
33 or discharge sewage, and any process to treat such sewage.

34 *Marker* means any aid to navigation, including channel marker, information or regulatory mark, isolated
35 danger mark, safe water mark, special mark, inland waters obstruction mark, or mooring buoy in, on, or over the
36 waters or the shores thereof, and includes, but is not limited to, a sign, beacon, buoy, or light.

37 *Moor* means to tie off a vessel to any submerged fixed object; or to tie or secure a vessel to a piling, dock,
38 wharf, seawall, dolphin, mooring buoy, or other object or thing located or attached to real property in or adjacent
39 to real property.

40 *Navigation rules* means the International Navigational Rules Act of 1977, 33 U.S.C. appendix following s.
41 1602, as amended, including the annexes thereto, for vessels on waters outside of established navigational lines of
42 demarcation as specified in 33 C.F.R. part 80 or the Inland Navigational Rules Act of 1980, 33 U.S.C. S. 2001 et seq.,
43 as amended, including the annexes thereto, for vessels on all waters not outside of such lines of demarcation.

1 *Operate* means to be in charge of or in command of or in actual physical control of a vessel or aircraft, or to
2 exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway, or to
3 control or steer a vessel being towed by another vessel upon the waters of the city.

4 *Owner* means a person who holds the legal title of a vessel, or, if a vessel is the subject of an agreement for
5 the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the
6 agreement and with an immediate right of possession as vested in the conditional vendee, or lessee, or mortgagor,
7 such person shall be deemed the owner.

8 *Parasail* means a parachute or paraglide device tethered to a vessel enabling recreational gliding in the air
9 while being towed by the vessel.

10 *Permit* means a vendor's permit, building permit, or other permit required by the city to comply with this or
11 any other city ordinance.

12 *Person* has the meaning ascribed to it in section 1-2 of this code.~~means an individual, partnership, firm,~~
13 ~~corporation, association, or other legal entity.~~

14 *Personal watercraft* has the meaning ascribed to it in section 54-32 of this code.~~means a vessel less than 16~~
15 ~~feet in length which uses an inboard motor powering a water jet pump, as its primary source of motive power and~~
16 ~~which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the~~
17 ~~conventional manner of sitting or standing inside the vessel.~~

18 *Police department* means City of Marco Island Police Department.

19 *Prohibited activity* means such activity as will impede or disturb navigation or creates a safety hazard, or any
20 act specifically prohibited by this article.

21 *Recreational vessel* means any vessel manufactured and used primarily for noncommercial purposes, or
22 leased rented or chartered to a person for the person's noncommercial use.

23 *Registration* means a state-operating license on a vessel, which is issued with an identifying number, an
24 annual certificate of registration, and a decal designating the year for which a registration fee is paid.

25 *Restricted area* means any area denoted by regulatory marker, any area or vessel (moving or stationary)
26 designated as restricted by a government entity denoted with markers, or by written, radio, or verbal notice to
27 mariners. These restrictions may be made by a governmental entity on the basis of safety to the public, vessel
28 speeds, vessel traffic, boating accidents, visibility, hazardous conditions, currents, water depth, or other navigation
29 hazard.

30 *Safety equipment* means that equipment designed to be life saving or distress conveying appliances required
31 by the United States Coast Guard (as specified in the Code of Federal Regulations) by the State of Florida, and the
32 city.

33 *Seaplane* has the meaning ascribed to it in section 54-32 of this code.~~means any aircraft that is capable of~~
34 ~~landing and/or lifting off from a water surface.~~

35 *Unattended vessel* is any vessel that has no person on board.

36 *Vessel* has the meaning ascribed to it in section 54-32 of this code.~~for the purpose of this article means any~~
37 ~~human, motor, wind, non-powered or artificially propelled water conveyance and every other description of boat,~~
38 ~~watercraft, barge, and airboat, seaplane on the water, used or capable of being used as a means of transportation~~
39 ~~or in the water.~~

40 *Water-skiing* has the meaning ascribed to it in section 54-32~~means a person or persons being towed in the~~
41 ~~water by a vessel and using water skis, a ski board, inflatable device or aqua plane.~~

42 * * *

1 **Sec. 54-167. Anchoring and mooring.**

2 It shall be unlawful:

3 * * *

4 (2) To moor a vessel at a dock, mooring, piling or seawall of a property owner without the consent of the
5 owner or person in control of the premises, except in an emergency. Failure to provide written
6 evidence of such permission shall be considered as prima fascia evidence of lack of permission. Any
7 such mooring must comply with all applicable regulations of ~~the City~~ this cCode.

8 * * *

9 **Sec. 54-168. Damage of markers or buoys.**

10 No person shall willfully damage, alter, or move a lawfully placed aid-to-navigation marker or buoy,
11 regulatory marker or buoy, or area boundary marker or buoy. Any person who damages, alters, or moves a lawfully
12 placed aid-to-navigation marker or buoy, regulatory marker or buoy, or area boundary marker or buoy located
13 within the city shall immediately notify the ~~Marco Island P~~olice ~~d~~Department.

14 **Sec. 54-169. Abandoned vessels.**

15 Any vessel that is deemed abandoned in or on a city waterway, bay, canal, open water, or beach or
16 abandoned in violation of this article may be removed and impounded by the police department. All costs for
17 removal, towing and storage will be assessed to the owner on a rate scale established by the city manager. If the
18 vessel is unclaimed is shall be disposed as provided in state statutes and may be retained by the city for official use
19 or sold with the proceeds paying for the charges incurred, with the remainder of the funds to be used solely by the
20 ~~Marco Island P~~olice ~~d~~Department for the education and enforcement of marine related laws. (Ref. F.S. ch 327.22)
21 Failure to act on the part of the owner waives all liability of the city from damages as a result from towing and
22 storage.

23 **Sec. 54-170. Liveries; safety regulations.**

24 * * *

25 (b) When the vessel is equipped with a motor of ten horsepower or greater, the livery or marina shall provide a
26 comprehensive pre-operation instruction briefing to all operators of rental vessels regardless of age and
27 prior maritime training internal and external to a livery or marina that includes, but need not be limited to,
28 all of the topics included on the list provided to each livery or marina by the ~~Marco Island P~~olice
29 ~~d~~Department.

30 (1) The pre-operation instruction briefing must be documented on a form approved by the ~~Marco Island~~
31 ~~p~~Police ~~d~~Department prior to use.

32 (2) Any such form must be retained for a period of six months.

33 (3) Any such form shall be provided to the ~~Marco Island P~~olice ~~d~~Department, or any other law
34 enforcement agency, upon request.

35 * * *

36 (d) Any person delivering the pre-operational safety briefing on behalf of the livery or marina shall have:

37 * * *

- (3) All liveries and marinas shall provide any requested documentation relating to an employee's competency to instruct the pre-operational safety briefing to the ~~Marco Island Police~~ dDepartment, or any other law enforcement agency, upon request.
- (e) The livery or marina shall display boating safety information in a place visible to the renting public. The commission prescribes by rule pursuant to F.S. ch. 120, the contents and size of the boating safety information to be displayed.
- (f) If a rental vessel is involved in a boating accident within the city, the livery or marina shall immediately notify the ~~Marco Island Police~~ dDepartment upon learning of the boating accident.
- (g) No person under the age of 14 may operate a powered rental boat, except in an emergency. No person may allow a person under the age of 14 to operate a powered rental boat, except in an emergency.

* * *

Sec. 54-174. Jurisdiction and enforcement.

- (a) This article is enforceable by the ~~Marco Island Police~~ dDepartment, the Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers, the Collier County Sheriff's Office, and any other state or federally authorized law enforcement agency, all of whom may order the removal of vessels deemed to be an interference or a hazard to public safety, enforce the provisions of this article, or cause any inspections to be made of all vessels in accordance with this article and the Florida Statutes.

* * *

Sec. 54-175. Penalties.

- ~~(a) — Violation of this article is punishable according to the penalties and procedures set forth in chapter 14 of this code. Any person or persons, firm or corporation, or any agent thereof, who violates any of the provisions of any article of this chapter shall be punished by a fine not exceeding \$500.00, or imprisonment not exceeding 60 days, or by both such fine and imprisonment. Each day any violation of any provision of any article of this chapter shall continue shall constitute a separate offense.~~
- ~~(b) — In addition to the penalties provided in paragraph (a) of this section, any condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be abated by the city as provided by law, and each day that such condition continues shall be regarded as a new and separate offense.~~