Chapter 1 GENERAL PROVISIONS

Sec. 1-1. Designation and citation of 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~~C~~ode, 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~~C~~harter" 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~~C~~ode" 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 "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.

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

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

Or, and. The word "or" may be read "and," and "and" may be read "or," if the sense requires it.

Owner. The term "owner," applied to a building or land, includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of such building or land.

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

Personal property. The term "personal property" includes every ~~species~~ type of property except real property.

Preceding, following. The terms "preceding" and "following" mean next before and next after, respectively.

Property. The term "property" includes real and personal property.

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

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

Real property. The term "real property" includes lands, tenements and hereditaments.

Render; rendition. The term, "render" or "rendition" means the issuance of a written order, including approval, approval with conditions, or denial of a determination by the city council, planning board other board with jurisdiction, or 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, board, or administrative official.

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

Shall, may. The word "shall" is mandatory; the word "may" is permissive.

Sidewalk. The term "sidewalk" means any portion of a street between the edge of pavement of a roadway, or curb~~line,~~ and the adjacent property line, intended for the use of pedestrians, excluding ~~parkways~~swales.

Signature, subscription. The term "signature" or "subscription" includes a mark when the person cannot write.

State. The term "state" means the State of Florida.

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

Swale, roadway . The term "swale" or "roadway swale" means a pervious, depressed strip of land used to retain and/or convey surface water runoff, generally located between the edge of the pavement of a roadway, and 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-day 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 Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and are not the titles of such sections, or any part of the section, nor, unless expressly 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 one section of this Code references another section of this Code, the reference shall extend and apply to the referenced section 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 Code, unless otherwise specified.

Sec. 1-5. History notes.

The history notes appearing in parentheses after sections of this Code 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 Code.

Nothing in this Code or the ordinance adopting this Code 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 Code.

(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 Code.

(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 Code.

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 Code or the ordinance adopting this Code 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 Code.

(b) The adoption of this Code 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 Code.

Sec. 1-11. Amendments to Code; effect of new ordinances; amendatory language.

(a) All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion in the Code. In the case of repealed chapters, sections and subsections, or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code 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 Code 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 Code may be made by amending such provisions by specific reference to the section number of this Code 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 Code 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 Code 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 Code, and shall also include all amendments to the Charter during the period. If necessary, t~~T~~he pages of a supplement shall be so numbered that they will fit properly into the Code 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 Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, 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 Code 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 Code 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 Code which embody the substantive sections of the ordinance incorporated into the Code; and

(5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code, 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 Code.

Sec. 1-13. Severability of parts of Code.

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code 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 Code.

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

(a) Whenever in this Code any act is prohibited or is made or declared to be unlawful or an offense, or whenever in this cCode the doing of any act is required or the failure to do any act is declared to be unlawful or an offense, where no specific penalty is provided therefor, the violation of any such provision of this cCode shall be punished by a fine not exceeding $500.00 or imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment in the discretion of the court. Each day any violation of any provision of this Code shall continue shall constitute a separate offense.

(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 cCode 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.

(c) The penalties in this section are in addition to any other remedy provided by law, which may include without limitation, an equitable action for injunctive relief or an action at law for damages.

Sec. 1-15. Appeals.

(a) Any person affected by a decision or determination of a city administrative ,official or of a city board or committee established pursuant to Sec. 2-201, relating to a provision of this code of ordinances not excluded in subsection (b), may appeal the decision according to the procedure established within this section, if the affected person believes the decision was rendered in error.

(b) This section does not authorize an appeal from any provision in chapter 30, land development code, or any other article or chapter that provides for a separate appeal procedure.

(1) *Filing.* The party filing the appeal (appellant) shall submit written notification of the appeal to the city clerk. The appeal must be received within thirty (30) days after the decision was rendered, and shall include at least the following information: name, address, phone number and email address of the appellant, the decision being appealed and how the appellant is affected by the decision, the name of the administrative official or board that rendered the decision, the date the decision was rendered, a copy of the decision, and the reason the appellant believes the decision was issued in error together with any pertinent information, exhibits and other backup information in support of the appeal. The appellant shall pay a fee for the processing of the appeal as may be established by the city council from time to time.

(2) *Processing.* Upon receipt of a timely notice of appeal, the appeal shall be assigned to the city council serving in an appellate capacity at one of the next two regularly scheduled meetings unless an extension of time is requested or agreed to by the appellant.

(3) *Hearing.* The city council shall conduct a de novo review of the appeal at a quasi-judicial public hearing noticed in a newspaper of general circulation at least seven days prior to the hearing. The city council shall make a final determination based on the following criteria:

a. There exists an error or ambiguity that must be corrected;
b. Whether competent substantial evidence exists to support the decision being appealed;
c. The general intent of the section of this code of ordinances that is the subject of the appeal;
d. The impact of any finding on the surrounding community;
e. The testimony and submittals of any appellants, their counsel, agents, representatives, or witnesses;

f. The testimony and submittals of city administrative officials, their counsel, representatives, or witnesses;

g. Applicable statutes; and,

h. Established case law.

(4) *Administrative resolution of appeal.* In the event that the department or division that issued the decision determines it erred after the appeal has been filed, nothing in this section precludes the department or division from correcting the error and reversing or modifying its decision.

(5) *Council authority.* The city council shall have the authority to reverse or affirm, wholly or in part, or modify any administrative or board order, requirement, decision, or determination made in the administration, interpretation or enforcement of any provision of this code of ordinances. The council shall have all the powers of the official or board from whose decision the appeal is taken, and its decision shall become effective immediately. The city council's decision shall be reflected in a written order prepared by the city attorney and filed with the city clerk.

(6) *Appeal of council decision.* Appeal of the council's decision shall by petition for writ of certiorari to the appropriate state court located in Collier County within thirty (30) days from the date of the rendering of the decision.

(7) A violation of any order entered with respect to an appeal processed pursuant to this section shall be considered a violation of the code section that was the subject of the appeal and shall be subject to enforcement procedures of this code of ordinances.

Chapter 2 ADMINISTRATION

ARTICLE I. IN GENERAL

Sec. 2-1. City seal.

(a) There is hereby designated an official seal of the city.

(b) The ~~city manager/~~city clerk shall be the custodian of the city seal.

(c) The manufacture, use, display, or employment of any facsimile or reproduction of the city seal, except by municipal officials or employees in the performance of their duties, without express approval of the city council is prohibited.

(d) ~~Nothing in this section shall be construed to prohibit the~~ The ~~city manager/~~city clerk is authorized ~~from~~to ~~using~~ use a corporate seal, which reflects the name of the city and the state of incorporation, for certification of official documents.

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

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

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 election~~s~~ 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.~~

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

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

Sec. 2-33. Special meetings.

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

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

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

Sec. 2-35. Recessed meetings.

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

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

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

Secs. 2-37—2-60. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES

DIVISION 1. GENERALLY

Secs. 2-61—2-80. Reserved.

DIVISION 2. CITY MANAGER

Sec. 2-81. Office established; qualifications.

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

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

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

(a) The council shall appoint a city manager by a vote of five of the seven councilmembers. The city manager shall serve at the will of the council and shall not be given a fixed term by resolution, ordinance, contract, or otherwise.

(b) The city manager shall serve at the will of the city council. The council may remove the city manager by the affirmative vote of at least four members of the council.

(1) Upon request by the city manager, 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.

(2) After such hearing, the council by affirmative vote of at least four councilmembers shall decide whether to reconsider its previous action.

(c) The manager need not be a resident of the city or state at the time of the manager's appointment, but may reside outside the city while in office only with the approval of the council.

(d) The compensation of the city manager shall be fixed by the council.

Sec. 2-83. Powers and duties.

The city manager shall:

(1) Appoint and, when deemed necessary for the good of the city, suspend or remove any city employees and appointive administrative officers provided for by or under the Charter, except as otherwise provided by law or personnel rules adopted by council resolution. The city manager may authorize any administrative officer who is subject to the direction and supervision of the city manager to exercise these powers with respect to subordinates in that officer's department.

(2) Direct and supervise the administration of all departments, officers, and agencies of the city, except as otherwise provided by the Charter or by law.

(a) Appoint an officer to administer each such department, office, and agency. Such officers shall be under the direction and supervision of the city manager, provided that, with the consent of the council, the city 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.

(3) Attend all council meetings and shall have the right to take part in discussion, but may not vote.

(4) See that all laws, provisions of the Charter, and acts of the council subject to enforcement by the city manager or by officers subject to the city manager's direction and supervision are faithfully executed.

(5) Prepare and submit the annual budget, budget message, and capital program to the council in a form provided by ordinance.

(6) Submit to the council, and make available to the public, a complete report on the finances and administrative activities of the city as of the end of each fiscal year.

(7) 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.

(8~~7~~) Make such other reports as the council may require concerning the operations of city departments, offices, and agencies subject to the manager's direction and supervision.

(9~~8~~) Keep the council fully advised as to the financial condition and future needs of the city and make such recommendations to the council concerning the affairs of the city as manager deems desirable.

(10~~9~~) Perform such other duties as are specified in the Charter or as may be required by the council.

(11~~10~~) 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~~ returns or the city manager's disability ~~shall~~ ceases.

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. 2-8~~6~~7—2-100. Reserved.

DIVISION 3. CITY ATTORNEY

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

(a) The~~re~~ 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~~shal~~l 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.

Secs. 2-122—2-140. Reserved.

DIVISION 5. DEPARTMENT OF FINANCE

Sec. 2-141. Established; director.

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

Sec. 2-142. Duties.

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

(1) Maintain a general accounting system for the city government and each of its departments, offices, and agencies.

(2) Keep the books for, and exercise financial budgetary control over, each office, department, and agency.

(3) Direct the data processing function for the city government.

(4) Collect revenues due the city, including ~~occupational~~ business taxes~~license fees~~.

(5) Upon the approval of the city manager, open and maintain checking and savings accounts in the name of the city; designate persons to sign checks, drafts, notes, bills of exchange, acceptance or other orders for the payment or withdrawal of money from such accounts; endorse checks, notes, bills, certificates of deposit or other instruments owned or held by the city for deposit in such accounts or for collection or discount by depository banks; accept drafts, acceptances and other instruments payable at city depositories; and waive presentment, demand, protests, and notices of protest, or dishonor of any check, note, bill, draft, or other instrument made, drawn, or endorsed by the city.

(6) Establish a "returned check" service charge to be assessed against any person who presents ~~issues or delivers to this city any~~ a check, draft, or other written order on any bank or depository for ~~the~~ payment ~~of money~~to the city~~, when, upon presentation of such check, the payment is~~ that is not paid for any reason.

(7) Invest funds of the city as provided by state statutes.

(8) Perform other duties and functions as may be prescribed by the city manager.

(9) Be responsible for establishing and maintaining accounting procedures and a system of internal controls.

(10) Produce monthly and yearly financial reports and the annual financial statements.

(11) Coordinate and establish the budget approval process and TRIM regulations.

Secs. 2-143—2-160. Reserved.

DIVISION 6. TRAVEL POLICIES AND PROCEDURES

Sec. 2-161. Purpose of division.

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

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

Sec. 2-162. Definitions.

The following words, terms and phrases, when used in this division, 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.~~:~~

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

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

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

Sec. 2-163. Authority to incur travel and business expenses.

(a) If a member of the city council or the city manager finds it necessary to incur travel and business expenses, and when the expenses are within the intent of the adopted budget, the expenditures are authorized. All travel and business expenses by public employees must be authorized by the city manager.

(b) Traveling expenses shall be limited to those expenses necessarily incurred by the traveler in the performance of duties related to the functions and responsibilities of the city.

(c) Traveling expenses of prospective employees for the sole purpose of taking merit system or other job placement examinations, interviews, etc., may be authorized by the city council or the city manager.

(d) Business expenses shall apply to those expenditures which are incurred in the performance of a public purpose, including meetings with governmental officials, seminars and training programs, pickup and delivery of parts and equipment, recruitment of personnel, community promotion, and any other related activities.

Sec. 2-164. Funding; travel advances.

(a) All travel must have prior written authorization, in accordance with the city's administrative procedures established pursuant with section 2-165, showing the itinerary, the source of funding and whether or not a travel advance is needed.

(b) Travel advances may be issued to authorized persons or individuals prior to departure on an authorized trip. The cash amount will be based on a schedule commensurate with the known expenses as stated in the travel authorization. If common carrier tickets are necessary, issuance of such tickets shall be made only upon receipt of a travel authorization. The authorized traveler receiving a travel advance must keep a record of all travel expenses and report the expenses. If an authorized travel advance is less than the approved actual expenses, the difference will be reimbursed to the authorized traveler. If the travel advance is greater than the actual or allowed travel expenses, then the difference shall be reimbursed to the city within 30 days after return of the traveler.

Sec. 2-165. Expense administrative procedures.

The city manager shall establish procedures for travel requests, expenses and reimbursements, and mileage allowances, where applicable, and prescribe such regulations as are reasonable and necessary to effectuate the purpose of this division. The finance director, or designee, shall verify requests for travel expenses and reimbursements before payment is made.

Sec. 2-166. Eligibility for receiving meal and accommodations allowances.

For the purpose of reimbursements under this division, the allowance for meals will be based on the following schedule, where each period covered must be of three hours' duration or longer to be valid:

(1) Breakfast allowance will be made when travel begins before 6:00 a.m. and extends beyond 8:00 a.m.

(2) Lunch allowance will be made when travel begins before 12:00 noon and extends beyond 2:00 p.m.

(3) Dinner allowance will be made when travel begins before 6:00 p.m. and extends beyond 7:00 p.m., or when travel occurs during nighttime hours due to special assignment.

(4) Hotel or accommodations allowances will be made when travel extends overnight and requires lodging not within the county at the single occupancy rate. An employee taking a guest will pay any cost differences for double occupancy. Room service expenses will not be reimbursed by the city.

(5) No expenses incurred by employees in the county shall be reimbursed unless approved by the city manager.

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

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

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

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

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

Sec. 2-168. Reimbursement for transportation expenses.

(a) All travel must be on a convenient and mainly traveled route. Air travel shall be at the coach fare. If a person travels by an indirect route for his or her convenience, any extra costs shall be borne by the traveler. Reimbursement for expenses shall be made accordingly upon the presentation of receipts.

(b) If a privately owned vehicle is used for travel, the vehicle owner shall be entitled to a mileage reimbursement at a cents per mile rate equal to the Internal Revenue Service allowable rate then in effect.

(c) Transportation by a common carrier which has not been prepaid and for which the authorized traveler seeks reimbursement must be substantiated by an official receipt from the common carrier.

(d) Transportation by charter vehicles may be authorized when it is determined to be the most economical method of travel when considering the nature of the business, the number of people making the trip and the

most efficient and economical means of travel (considering the time of the traveler, cost of transportation and subsistence required).

Sec. 2-169. Use of private vehicles.

(a) Authorized travelers shall not be allowed either mileage or transportation expenses when they are transported gratuitously by another person or when they are transported by another authorized traveler who is entitled to mileage or transportation expense.

(b) Reimbursement for expenditures related to the operation, maintenance, depreciation and ownership of a vehicle shall not be allowed when a privately owned vehicle is used on public business or a mileage allowance is paid.

Sec. 2-170. Reimbursable incidental expenses.

An authorized traveler may be reimbursed for incidental travel expenses incurred during the course of travel. These incidental travel expenses include but are not limited to the following:

(1) Common carrier fares.

(2) Bridge, road and tunnel tolls.

(3) Storage and parking fees.

(4) Communication expenses relating to city business.

(5) Registration fees associated with conventions, conferences, seminars, or training.

Sec. 2-171. Fraudulent request.

By submitting requests pursuant to this division the authorized traveler declares that the request is true and correct as to every material matter. Any individual who makes or aids in the making of a false or fraudulent request shall be guilty of a violation against the city, and upon conviction thereof shall be punished as provided in the city's personnel rules and regulations. In addition, any person who receives a travel allowance, advance or reimbursement by means of a false request shall be civilly liable for the repayment of the amount into the public fund from which the request was paid.

Secs. 2-172—2-200. Reserved.

ARTICLE IV. BOARDS AND COMMISSION

Sec. 2-201. Procedure for establishment.

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

Sec. 2-202. Qualifications of members.

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

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

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

(1) The city council may direct the city manager to advertise a vacancy and seek resumes from interested members of the public willing to accept appointment.

(2) The composition of each board~~, committee, or commission~~ shall consist of seven members. Each council member shall reserve the right to ~~recommend the appointment~~ appoint ~~of~~ one member. The city council may accept or reject ~~the~~an ~~recommendation~~ appointment~~offered by the council member~~.

(3) If a vacancy occurs on the board~~, committee, or commission~~ during the term of the appointing council member, such councilmember ~~shall have the right to~~ may ~~recommend~~ appoint a replacement to fill the vacancy to complete the unexpired term. The city council may accept or reject the ~~recommendation~~appointment.

(4) The city council may delegate the appointment of advisory board members ~~committees~~ to the city manager.

Sec. 2-204. Terms of members.

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

(1) The members appointed to all boards~~, committees, or commissions~~ shall serve staggered terms that run concurrently with the terms of office of the appointing city council member.

a. ~~Such~~ Sstaggered terms shall commence for appointed members as follows:

1. June 1 following the election of the appointing city council member for the audit advisory committee~~ and the code compliance board~~.

2. February 1 following the election of the appointing city council member for all other boards~~, committees, or commissions~~.

b. ~~Such~~ Sstaggered terms shall end for appointed members at the earliest of any of the following:

1. May 31 following the election for which the appointing city council member did qualify, or would have been qualified, to seek re-election, or was term-limited, in the case of appointments to the audit advisory committee~~ and the code compliance board~~; or

2. January 31 following the election for which the appointing city council member did qualify, or would have been qualified, to seek re-election, or was term-limited, in the case of appointments to all other boards~~, committees, or commissions~~; or

3. Upon replacement by a person appointed by the procedure described in section 2-203 of this article; or

4. Upon removal by majority vote of city council.

c. No~~ members appointed to any boards, committees or commissions~~ person may serve more than a total of eight continuous years on any single board~~, committee or commission~~.

~~Members~~ A person who ~~have~~has served eight years on one board~~, committee, or commission are~~ is eligible immediately for appointment to a different board~~, committee or commission~~.

d. If reappointment or replacement is not made prior to or at the expiration of a term of office, ~~the~~ a board member shall continue to serve until a re-appointment or replacement is made.

Sec. 2-205. Removal of members.

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

Sec. 2-206. Meetings; attendance requirements.

(a) *Regular meetings.* Meetings shall be scheduled in accordance with the ordinance or resolution authorizing the establishment of the board~~, committee, or commission~~. Public notice of the meeting shall be provided in accordance with procedures adopted for city council meetings. Meetings may be called by the ~~committee~~ board ~~chairman~~ chairperson or by the city manager~~ or his designee~~.

(b) *Quorum.* A majority of all members appointed to the board~~, committee, or commission~~ shall constitute a quorum for the transaction of business unless otherwise provided~~required by the ordinance or resolution authorizing the establishment of a particular board, committee, or commission~~.

(c) *Minutes.* A written record of the proceedings of the board~~, committee, or commission~~ shall be kept, showing its action on each question considered. Such record shall be filed with the city clerk and shall be open to public inspection.

(d) *Attendance.* Unless otherwise provided~~, by state statute, ordinance, resolution, or motion,~~ absence from 30 percent of the meetings held by a board~~, committee, or commission~~ within any 12-month period~~, which period shall be considered to be the 12-month period, immediately prior to and~~ including the day of the last absence, shall automatically operate to vacate the seat of a member.

Sec. 2-207. Rules of procedure.

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

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

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

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 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 2-253. ~~Purchasing authority~~Authority of the city manager.

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

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

(2) Establish procurements.

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

(~~4~~2) Require bid bonds, performance, and payment bonds before entering into a contract, in such form and amount as found reasonably necessary to protect the best interest of the city, procure supplies, material, equipment, contractual services, and construction services required by the city.

(5~~3~~) Require chemical and physical tests of samples submitted with quotations, bids, or proposals to determine their quality and conformance with specifications.

(6~~4~~) Declare city-owned items as surplus.

(a) Transfer surplus ~~stock~~ items to ~~other~~ another city~~offices,~~ department~~s, 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 manager~~Reserved.

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

~~(1) The city manager may establish~~ Eprocurement ~~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.

(g~~9~~) *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:

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

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

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

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

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

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

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

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

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

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

(8) The city reserves the right to:

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

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

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

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

(9) In the event of a tie, the project manager and the purchasing/contracts manager shall consider the following factors including: delivery lead time, documented quality, warranty, availability of local service, cost of repair parts, contractor reputation, 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

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

Sec. 2-260. Rejecting bids; negotiation.

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

(1) They are nonresponsive;

(2) They are materially higher than expected;

(3) Errors in specifications may have caused confusion;

(4) Sufficient funds are not available;

(5) The item or service is no longer needed;

(6) There is a lack of competition;

(7) The item or service can be provided in-house;

(8) The bidder does not quality under state or federal law;

(9) The bidder is not in compliance with city ordinances. This requirement may be waived if the city finds that the noncompliance is inadvertent, minor, and curable as a condition of the award;

(10) The bidder does not appear to have the expertise, financial capability or other ability to meet the requirements of the contract to be awarded, or is otherwise shown not to be responsible.

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

Sec. 2-261. Bidder suspension and debarment procedure.

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

(1) *Causes for debarment or suspension.* Causes for debarment or suspension include the following: Bidders, contractors, and other proposing parties may be debarred from doing business with the city for any of the following reasons:

a. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

b. Conviction under state or federal statutes of embezzlement, theft, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty.

c. Conviction under state or federal anti-trust statutes arising out of the submission of bids or proposals.

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~~is~~ 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.

(3) The formal written protest shall contain the following:

a. Bid/proposal (RFB, RFP, or RFQ) identification number and title.

b. Name and address of the affected party and the title or position of the person submitting the protest.

c. A statement of all claimed disputed issues of material fact. If there are no disputed material facts, the formal written protest must so indicate.

d. A concise statement of the facts alleged and the rules, regulations, statutes or constitutional provisions which entitle the affected party to relief.

e. All information, documents, other materials, calculations and any statutory or case law authority in support of the ground for the protest.

f. A statement indicating the relief sought by the affected (protesting) party.

g. Any other relevant information that the affected party deems to be material to the protest.

(4) Upon receipt of a timely filed notice of protest, the purchasing/contracts manager will abate the award of the formal bid/proposal as appropriate until the protest is heard pursuant to the informal hearing process as further outlined below, except and unless the city manager ~~shall find and set forth~~ makes a written finding that~~in writing~~ particular facts and circumstances ~~that~~ would require an immediate award of the formal bid/proposal for the purpose of avoiding a danger to the public health, safety or welfare. Upon such written finding ~~by the city manager~~, the city manager may authorize an expedited protest hearing and may void the requirement for a formal written protest and bond.

(5) A dispute committee, comprised of the city manager ~~or designee~~, finance director ~~or designee~~, public works director ~~or designee~~ and, as deemed appropriate, the city attorney to provide legal counsel, but not as a voting member, will convene a meeting within seven working days from receipt of the formal written protest with the protesting firm to attempt to resolve the protest. The hearing is to (1) review the basis of the protest; (2) to evaluate the facts and merits of the protest; and (3) to make a determination whether to accept or reject the protest. If at all possible, the parties will resolve the protest at this first meeting.

(6) If a resolution to the satisfaction of the dispute committee and the protesting firm cannot be accomplished during the meeting(s), the dispute committee, with respect to the merits of the protest, shall place the protest on the city council agenda with the staff recommendation and relevant background information.

(7) City council shall conduct a hearing on the matter at the regularly scheduled city council meeting. Following presentations by the affected parties, the council shall render its decision on the merits of the protest.

(8) If the council's decision upholds the recommendation ~~by~~ of the dispute committee in denial of the protest regarding the award and further finds that the protest was either frivolous and/or lacked merit, the council, at its discretion, may assess costs, charges or damages associated with any delay of the award and any costs incurred with regard to the protest. The bond posted by the party filing the protest may be applied by city council at its discretion to pay in whole or in part said costs, charges, or damages.

(9) If the council's decision upholds the position of the party filing the protest, the purchasing/contracts manager will cancel any prior award and award the contract to the party filing the protest in the amount of that party's original bid/proposal.

Sec. 2-263. Professional services.

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

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

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

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

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

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

Sec. 2-266. Purchasing agent.

(a) One or more purchasing agents may be staffed by the city. An appropriate use of a purchasing agent is to conduct buying activity on behalf of a utility wherein there exists a steady and repetitive need to purchase materials, chemicals, and supplies; and to regularly rebid utility supplies in order to obtain the best terms and prices.

(b) The purchasing agent's authority is exhibited in the form of a warrant which specifies the purchasing agent's scope of authority and the time frame of the warrant. All warrants will be issued by the city manager and reviewed no less than annually.

(c) The purchasing agent is responsible to adhere to all purchasing rules and regulations, and to maintain records of all buying transactions.

(d) The purchasing agent has no authority to approve invoices or authorize the payment of monies to contractors/suppliers. Invoice approval must come from operations or administration personnel responsible for receiving supplies and services.

Secs. 2-267—2-280. Reserved.

DIVISION 3. CAPITAL IMPROVEMENTS

Subdivision I. In General

Sec. 2-281. Definitions.

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

~~(b)~~ The following words, terms and phrases, when used in this division, 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.~~:~~

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

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

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

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

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

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

Capital cost 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 interfund or intrafund loan for such purposes.

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

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

~~*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.~~

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

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

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

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

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

Sec. 2-301. Creation.

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

Sec. 2-302. Landowner petitions.

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

Secs. 2-303—2-320. Reserved.

Subdivision III. Imposition and Payment of Assessments

Sec. 2-321. Authority to impose assessments.

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

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

(a) The initial proceeding for imposition of an assessment shall be the council's adoption of an initial assessment resolution pursuant to F.S. 170.03, which shall include specific legislative findings that recognize the equity provided by the apportionment methodology. ~~The initial assessment resolution shall:~~

~~(1) Describe the local improvement proposed for funding from proceeds of the assessments;~~

~~(2) Estimate the capital cost;~~

~~(3) Describe~~ Specify ~~with particularity the proposed method of apportioning the capital cost among the parcels of property located within the assessment area, such that the owner of any parcel of property can objectively determine the amount of the assessment, based upon its value, use or physical characteristics; and~~

~~(4) Include specific legislative findings that recognize the equity provided by the apportionment methodology.~~

~~Sec. 2-323. Preliminary assessment roll.~~

(b~~a~~) The ~~assessment coordinator~~ city manager shall prepare a preliminary assessment roll pursuant to F.S. 170.06 that includes the number of assessment units attributable to each parcel and the estimated maximum annual assessment to become due in any fiscal year for each assessment unit and parcel~~contains the following information:~~

~~(1) A summary description of each parcel of property (conforming to the description contained in the tax roll) subject to the assessment;~~

~~(2) The name of the owner of record of each parcel, as shown on the tax roll;~~

~~(3) The number of assessment units attributable to each parcel;~~

~~(4) The estimated maximum annual assessment to become due in any fiscal year for each assessment unit; and~~

~~(5) The estimated maximum annual assessment to become due in any fiscal year for each parcel~~.

(c~~b~~) ~~Copies~~ The ~~of the~~ initial assessment resolution and the preliminary assessment roll shall be ~~on file in the office of the assessment coordinator and open to~~ available on digital media for public inspection in city hall and on the city's website at least 20 days prior to the public hearing for establishing the special assessment. ~~This subsection shall not be construed to require that the assessment roll be in printed form if the amount of the assessment for each parcel of property can be determined by use of a computer terminal~~.

~~Sec. 2-324. Publication of notice and hearing.~~

(d) The city ~~After filing the assessment roll in the office of the assessment coordinator, as required by section 2-323(b), the assessment coordinator~~ shall ~~publish once in a newspaper of general circulation within the city a notice stating that at a meeting of the council on a certain day and hour, not earlier than20 calendar days from such publication, which meeting shall be a regular, adjourned or special meeting, the council will hear objections of all interested persons to the final assessment resolution and approve the preliminary assessment roll. The published~~ shall hold a duly noticed public hearing to consider the proposed assessment ~~notice~~ in ~~shall~~ conformance with to the publiciation and mailed notice requirements set forth in the Uniform Assessment Collection Act. After the hearing, the council may adopt the final assessment resolution, which shall:

(1) Confirm, modify or repeal the initial assessment resolution with such amendments, if any, as may be deemed appropriate by the council;

(2) Establish the maximum amount of the assessment for each assessment unit;

(3) Approve the assessment roll, with such amendments as it deems just and right; and

(4) Determine the method of collection.

~~Sec. 2-325. Mailing of notice.~~

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

~~Sec. 2-326. Final assessment resolution.~~

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

~~(1) Confirm, modify or repeal the initial assessment resolution with such amendments, if any, as may be deemed appropriate by the council;~~

~~(2) Establish the maximum amount of the assessment for each assessment unit;~~

~~(3) Approve the assessment roll, with such amendments as it deems just and right; and~~

~~(4) Determine the method of collection.~~

Sec. 2-3237. Annual assessment resolution.

The council shall adopt an annual assessment resolution during its budget adoption process for each fiscal year in which assessments will be imposed to approve the assessment roll for such fiscal year. The final assessment resolution shall constitute the annual assessment resolution for the initial fiscal year. The assessment roll shall be prepared in accordance with the initial assessment resolution, as confirmed or amended by the final assessment resolution. If the proposed assessment for any parcel of property exceeds the maximum amount established in the notice provided pursuant to section 2-3222(d)5 or if an assessment is imposed against property not previously subject thereto, the council shall provide notice to the owner of such property in accordance with sections 2-3222(d)4 and 2-325 and conduct a public hearing prior to adoption of the annual assessment resolution.

Sec. 2-3248. Effect of assessment resolutions.

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

Sec. 2-3259. Prepayment of assessments.

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

(1) Prior to the issuance of obligations to finance the capital cost of such local improvement, the assessment coordinator shall provide first class mailed notice to the owner of each parcel of property subject to the assessment of the council's intent to issue such obligations. On or prior to the date specified in such notice (which shall not be earlier than the 30th day following the date on which the notice is delivered to the possession of the U.S. Postal Service), or such later date as the council may allow in its sole discretion, the owner of each parcel of property subject to the assessment shall be entitled to prepay the total assessment obligation upon payment of such parcel's share of the capital cost.

(2) Following the date specified in the notice provided pursuant to subsection (1) of this section, or such later date as the council may allow in its sole discretion, the owner of each parcel of property subject to the assessment shall be entitled to prepay the total remaining assessment obligation upon payment of an amount equal to the sum of (i) such parcel's share of the principal amount of obligations then outstanding, (ii) the premium associated with redemption of such parcel's share of the principal amount of obligations then outstanding, and (iii) interest on such parcel's share of the principal amount of obligations then outstanding, from the most recent date to which interest has been paid to the next date following such prepayment on which the city can redeem obligations after providing all notices required by the ordinance or resolution authorizing issuance of such obligations; provided, however, that during any period commencing on the date the annual assessment roll is certified for collection pursuant to the Uniform Assessment Collection Act and ending on the next date on which unpaid ad valorem taxes become delinquent, the city may reduce the amount required to prepay the assessments imposed against any parcel of property by the amount of the assessment certified for collection with respect to such parcel.

(3) At the city's election, the assessment imposed against any parcel of property may be subject to acceleration and mandatory prepayment if at any time a tax certificate has been issued and remains 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~~31~~. 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. 2-2343~~33~~. 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. 2-2353~~34~~—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. A brief explanation of the assessment;

b. A description of the assessment units used to determine the amount of the assessment;

c. The number of assessment units attributable to the parcel;

d. The total amount of the parcel's assessment for the appropriate period;

e. The location at which payment will be accepted;

f. 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~~hereafte~~r 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.

Sec. 2-353. Responsibility for enforcement.

The city and its agent, if any, shall maintain the duty to enforce the prompt collection of assessments by the means provided in this division. The duties related to collection of assessments may be enforced at the suit of any holder of obligations in a court of competent jurisdiction by mandamus or other appropriate proceedings or actions.

Sec. 2-354. Assessments imposed on government property.

(a) If assessments are imposed against government property, the city shall provide assessment bills by first class mail to the owner of each affected parcel of government property. The bill or accompanying explanatory material shall include:

(1) A brief explanation of the assessment;

(2) A description of the assessment units used to determine the amount of the assessment;

(3) The number of assessment units attributable to the parcel;

(4) The total amount of the parcel's assessment for the appropriate period;

(5) The location at which payment will be accepted; and

(6) The date on which the assessment is due.

(b) Assessments imposed against governmental property shall be due on the same date as assessments against other property within the assessment area and, if applicable, shall be subject to the same discounts for early payment.

(c) An assessment shall become delinquent if it is not paid within 30 days from the due date. The city shall notify the owner of any governmental property that is delinquent in payment of its assessment within 60 days from the date such assessment was due. Such notice shall state in effect that the city will initiate a mandamus or other appropriate judicial action to compel payment.

(d) All costs, fees and expenses, including reasonable attorneys' fees and title search expenses, related to any mandamus or other action as described in this section shall be included in any judgment or decree rendered therein. All delinquent owners of government property against which a mandamus or other appropriate action is filed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the city, 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.

(e) As an alternative to subsections (a) through (d) of this section, an assessment imposed against government property may be collected on the bill for any utility service provided to such governmental property. The council may contract for such billing services with any utility not owned by the city.

Secs. 2-355—2-370. Reserved.

Subdivision V. Issuance of Obligations

Sec. 2-371. Generally.

(a) Upon adoption of the final assessment resolution imposing assessments to fund a local improvement or at any time thereafter, the council shall have the power and is hereby authorized to provide by ordinance or resolution, at one time or from time to time in series, for the issuance of obligations to fund the capital cost thereof and any amounts to be paid or accrued in connection with issuance of such obligations, including but not limited to capitalized interest, transaction costs and reserve account deposits.

(b) The principal of and interest on each series of obligations shall be payable from pledged revenue. At the option of the council, the city may agree, by ordinance or resolution, to budget and appropriate funds to make up any deficiency in the reserve account established for the obligations, or in the payment of the obligations, from other non-ad-valorem revenue sources. The council may also provide, by ordinance or resolution, for a pledge of or lien upon proceeds of such non-ad-valorem revenue sources for the benefit of the holders of the obligations. Any such ordinance or resolution shall determine the nature and extent of any pledge of or lien upon proceeds of such non-ad-valorem revenue sources.

Sec. 2-372. Terms of obligations.

The obligations shall be dated, shall bear interest at such rate, and shall mature at such times as may be determined by ordinance or resolution of the council, and may be made redeemable before maturity, at the option of the city, at such price and under such terms and conditions as may be fixed by the council. The obligations shall mature not later than 40 years after their issuance. The council shall determine by ordinance or resolution the form of the obligations, and the manner of executing such obligations, and shall fix the denominations of such obligations, the place of payment of the principal and interest, which may be at any bank or trust company within or outside of the state, and such other terms and provisions of the obligations as it deems appropriate. The obligations may be sold at public or private sale for such price as the council shall determine by ordinance or resolution. The obligations may be delivered to any contractor to pay for his work in constructing the local improvements or may be sold in such

manner and for such price as the council may determine by ordinance or resolution to be for the best interests of the city.

Sec. 2-373. Variable rate obligations.

At the option of the council, obligations may bear interest at a variable rate.

Sec. 2-374. Temporary obligations.

Prior to the preparation of definitive obligations of any series, the council may, under like restrictions, issue interim receipts, interim certificates, or temporary obligations, exchangeable for definitive obligations when such obligations have been executed and are available for delivery. The council may also provide for the replacement of any obligations which shall become mutilated, destroyed or lost. Obligations may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this division.

Sec. 2-375. Anticipation notes.

In anticipation of the sale of obligations, the council may, by ordinance or resolution, issue notes, and may renew the notes from time to time. Such notes may be paid from the proceeds of the obligations, the proceeds of the assessments, the proceeds of the notes and such other legally available moneys as the council deems appropriate by ordinance or resolution. The notes shall mature within five years of their issuance and shall bear interest at a rate not exceeding the maximum rate provided by law. The council may issue obligations or renewal notes to repay the notes. The notes shall be issued in the same manner as the obligations.

Sec. 2-376. Taxing power not pledged.

Obligations issued under the provisions of this division shall not be deemed to constitute a general obligation or pledge of the full faith and credit of the city within the meaning of the state constitution, but such obligations shall be payable only from pledged revenue and, if applicable, proceeds of the assessments, in the manner provided in this division and by the ordinance or resolution authorizing the obligations. The issuance of obligations under the provisions of this division shall not directly or indirectly obligate the city to levy or to pledge any form of ad valorem taxation whatever therefor. No holder of any such obligations shall ever have the right to compel any exercise of the ad valorem taxing power on the part of the city to pay any such obligations or the interest thereon or to enforce payment of such obligations or the interest thereon against any property of the city, nor shall such obligations constitute a charge, lien or encumbrance, legal or equitable, upon any property of the city, except the pledged revenue.

Sec. 2-377. Trust funds.

The pledged revenue received pursuant to the authority of this division shall be deemed to be trust funds, to be held and applied solely as provided in this division and in the ordinance or resolution authorizing issuance of the obligations. Such pledged revenue may be invested by the city, or its designee, in the manner provided by the ordinance or resolution authorizing issuance of the obligations. The pledged revenue, upon receipt thereof by the city, shall be subject to the lien and pledge of the holders of any obligations or any entity other than the city providing credit enhancement on the obligations.

Sec. 2-378. Remedies of holders.

Any holder of obligations, except to the extent the rights given in this division may be restricted by the ordinance or resolution authorizing issuance of the obligations, may, whether at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the state or granted under

this division or under such ordinance or resolution, and may enforce and compel the performance of all duties required by this division, or by such ordinance or resolution, to be performed by the city.

Sec. 2-379. Refunding obligations.

The city may, by ordinance or resolution of the council, issue obligations to refund any obligations issued pursuant to this division, or any other obligations of the city theretofore issued to finance the capital cost of a local improvement, and provide for the rights of the holders thereof. Such refunding obligations may be issued in an amount sufficient to provide for the payment of the principal of, redemption premium, if any, and interest on the outstanding obligations to be refunded. If the issuance of such refunding obligations results in an annual assessment that exceeds the estimated maximum annual assessments set forth in the notice provided pursuant to section 2-325, the council shall provide notice to the affected property owners and conduct a public hearing in the manner required by subdivision III of this division.

Secs. 2-380—2-388. Reserved.

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.~~

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

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

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

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

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

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

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

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

(1) Mandated by applicable regulation or existing bond covenants;

(2) Funded through enterprise funds, including without limitation, water/sewer utility improvement or maintenance projects;

(3) Funded through grant funds;

(4) Funded through discretionary tax funds;

(5) Funded with proceeds of obligations which shall be secured by and/or payable from grant funds, enterprise funds or discretionary tax funds; or

(6) Occasioned by an emergency and is accompanied by an official declaration of emergency issued by the council chair and city manager, including without limitation a hurricane or other natural disaster.

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

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

~~Sec. 2-392. Applicability~~.

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

Secs. 2-392~~3~~—2-400. Reserved.

ARTICLE VI. INVESTMENT POLICY

Sec. 2-401. Introduction.

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

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

(b) *Scope.* This investment policy of the city shall include those funds in excess of those required to meet short-term expenses and any new funds created. This investment policy shall also include those funds which may be

created by bond ordinances to include, but not limited to, the revenue fund, the sinking fund, reserve accounts and the bond amortization fund. These accounts will be called "bond trust accounts" for the remainder of this document. It will not pertain to pension or trust funds where there are other existing policies or indentures in effect.

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

Sec. 2-402. Responsibility.

(a) *Purpose.* The purpose of this section is to establish an investment officer for the city and define the authority of the investment officer.

(b) *Responsibility and designation.* The director of finance is the city's investment officer and is responsible for the city's comprehensive cash management program, including the administration of these investment policies. The investment officer shall maintain timely, accurate and systematic records of all securities, maturities and earnings. The investment officer must annually complete eight hours of continuing education in subjects and courses of study related to investment practices and products.

The investment officer shall be responsible for establishing written procedures for cash management and for the development and updating on the periodic basis of a cash forecast for the city. This cash forecast will provide information essential to properly structure investment maturities to meet required disbursement of funds. The investment officer is also responsible for developing and maintaining expertise in the areas of market evaluation and economic forecasting. Professional training and outside experts will be used as appropriate to meet the overall policy goal of maximizing interest earnings within the constraints of portfolio safety and liquidity.

Responsibility and authority for investment transactions resides with the investment officer. The investment officer is fully authorized to buy and sell investments in accordance with the goals and objectives of the city's investment strategy. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officers shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees and officers shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of their entity.

Certain signatory responsibilities are shared by bonded officials for the purpose of providing continuity of the city's investment program in the absence of the investment officer. Positions authorized, including the investment officer, are:

(1) City manager.

(2) Finance director.

(3) Deputy city clerk.

(c) *Bonding requirements.* Each of the above authorized positions designated to serve as the investment officer or designee in the absence of the city's investment officer shall be bonded employees. All participants in the investment process shall act responsibly as custodians of the public trust and the investments should be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived from the investment.

Sec. 2-403. Statutory guidelines.

F.S. § 218.415
Local Government Investment Policies
Attached to Ordinance No. 02-19 as Appendix A.

Sec. 2-404. Investment objectives.

All investments are required to satisfy the investment objectives of safety of capital, liquidity of funds, and investment income, in that order of importance. The objective will be to mitigate credit risk and interest rate risk. The investments purchased under the provisions of this investment policy shall be managed to maintain liquidity for meeting the city's needs for cash and to limit potential market risks in periods of rising interest rates which depress the market value of securities. Investments will be made in accordance with known/anticipated cash needs and cash-flow requirements enabling The city to meet day to day liquidity demands in addition to debt service payments and sinking fund deposits on the bond trust accounts.

As a general guideline, the city cash management portfolio shall be designed with the objective of meeting, over the course of full market cycles, the average return of three-month U.S. treasury bill, or the average rate of federal funds, whichever is higher. These indices are considered benchmarks for riskless investment transactions and therefore comprise a standard for the portfolio's rate of return. The investment program shall seek to augment rates of return above this level. In a diversified portfolio, measured losses are inevitable and must be considered within the context of the overall portfolio.

The investment performance of the city bond trust accounts portfolio shall have the objective of meeting or exceeding the average return of governments, U.S. treasury, intermediate-term bonds or the average return of governments, federal agencies, intermediate term bonds or a combination of both. The bond trust accounts are limited by law on the earnings allowed by arbitrage regulations. These regulations will take precedence over the indices when making a portfolio comparison.

Active portfolio management includes the practice of selling securities prior to maturity, using the proceeds to purchase other securities. Such transactions are called "swaps" and are performed for a variety of valid reasons. One reason such a "swap" is performed is to take advantage of the difference in relative yield between different types of securities and varying maturities. "Swap analysis" is the responsibility of the city investment officer and the decision to execute the "swap rests with him/her.

Sec. 2-405. Safekeeping and custody.

(a) *Authorized financial dealer and institution.* The city will authorize broker/dealers to provide investment services to the city only after the following information has been provided:

(1) Proof of state registration.

(2) Proof of National Association of Securities Dealers (NASD) certification or, if a dealer bank, certification from the office of comptroller of currency.

(3) Certification of having read the city's investment policy, with specific understanding of portfolio risk constraints and investment trading requirements.

(4) References from other municipal investment officers.

(b) *Eligible investments.* All securities shall be purchased on a delivery-vs-payment basis through a third-party safekeeping account. The city shall authorize the release of its funds only after it has received notification from the safekeeping bank that a purchased security has been received in the city's safekeeping account. This notification may be oral, but shall be followed up in writing with the original safekeeping receipt within 24

hours. All securities will be required to have a favorable volatility rating from a nationally recognized rating agency prior to purchase. The following are a list of permitted investments:

(1) Direct obligations of the U.S. treasury: Treasury bills, notes and bonds.

Portfolio allocation: Up to 100 percent of the total cash investments of the portfolio may be invested in this class of investment.

(2) Securities backed by the full faith and credit of the United States government: Government National Mortgage Association (GNMA), GNMA ARMs, GNMA PCs, Small Business Administration (SBA) loans or pools.

Portfolio allocation: Up to 35 percent of the total cash and investment of the portfolio may be invested in GNMA securities; up to ten percent of the total cash and investments of the portfolio may be invested in SBA loans or pools.

(3) Securities backed by federal agencies: Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), Federal Home Loan Institutions (FHLB), Student Loan Marketing Association (SLMA), Federal Farm Credit Institutions (FFCB), Federal Housing Administration (FHA), step-ups, short-term floating rate notes and other similar instruments issued by above agencies.

Portfolio allocation: Up to 75 percent of the total cash investments of the portfolio may be invested in this class of investment; however, no more than 50 percent of the portfolio may be invested with any one agency.

(4) Agency-issued mortgage-backed securities: FNMA, FNMA ARMs, FHLMC, FHLMC ARMs, FNMA or FHLMC Collateralized Mortgage Obligations (CMOs) or Private Issue CMOs backed by Agency MBS. All CMOs must qualify at purchase as appropriate non "high risk" investments under proposed or enacted regulatory guidelines and must meet the Federal Financial Institution Examination Council (FFIEC) test.

Portfolio allocation: Up to 35 percent of the total cash and investments of the portfolio may be invested in this class of securities.

(5) Repurchase agreements made in compliance with Florida State Statutes. A master repurchase agreement will be executed with each counterparty detailing the requirements of all authorized institutions/dealers involved in repurchase agreement transactions on behalf of the city. Repurchase collateral shall be perfected and delivered to an unaffiliated third-party safekeeping account. Repurchase agreements shall be collateralized at a minimum of 101 percent of the purchase price of the repurchase agreement. Collateral shall be marked-to-market at least weekly by the investment officer or designee. Counterparty to the repurchase agreement will be required to immediately provide additional collateral to cure any deficiency. Collateral must be securities which this policy would allow for direct purchase by the city.

Portfolio allocation: Up to 50 percent of the total cash and investments of the portfolio may be invested in this class of securities.

(6) Non-negotiable interest-bearing time certificates of deposit in state or federal banks or state or federal savings and loan associations as permitted and/or prescribed by state or federal law. Collateral are required by state law shall be held through an agreement with an independent, third-party custodian and any CDs held shall be federally insured.

Portfolio allocation: Up to 35 percent of the total cash and investments of the portfolio may be invested in this class of securities.

(7) Negotiable interest-bearing time certificates of deposit issued by institutions whose long-term debt is rated at time of purchase at least "A" or equivalent by Standard & Poor's or Moody's Rating Service or who are approved as a certified public depository by the State of Florida. Collateral as required by state law shall be held through an agreement with an independent, third-party custodian and any CDs held shall be federally insured.

Portfolio allocation: Up to 35 percent of the total cash and investments of the portfolio may be invested in this class of securities.

(8) Bankers acceptances which are issued by domestic institutions whose long-term debt is rated at time of purchase at least "A" or equivalent by Standard & Poor's or Moody's Rating Service.

Portfolio allocation: Up to 25 percent of the total cash and investments of the portfolio may be invested in this class of securities; however, no more than $1,000,000.00 in principal may be invested with any individual institution.

(9) Prime commercial paper, which is commercial paper which has received a Standard & Poor's rating at time of purchase of at least "A-1" and/or Moody's rating at time of purchase of "Prime-1".

Portfolio allocation: Up to 25 percent of the total cash and investments of the portfolio may be invested in this class of securities; however, no more than $1,000,000.00 may be invested with any individual corporation.

(10) State and/or local government taxable and tax-exempt debt, general obligation and/or revenue bonds rated at time of purchase at least "A" by Standard & Poor's or Moody's. Portfolio allocation: Up to 25 percent of the total cash and investments of the portfolio may be invested in this class of securities.

(11) Dollar denominated money market mutual funds registered with the United States Securities and Exchange Commission. The city will be required to receive a mutual fund prospectus prior to purchasing mutual fund shares. Only mutual funds investing exclusively in short-and intermediate-term instruments are permitted.

Portfolio allocation: Up to 25 percent of the total cash and investments of the portfolio may be invested in this class of securities.

(12) Fixed-income mutual funds comprised of only those securities which would be eligible for direct purchase under provisions of this policy; and, where the average weighted maturity of the portfolio of such fund is no greater than five years. Such funds must be registered with the Securities and Exchange Commission. The city will be required to receive a mutual fund prospectus prior to purchasing shares.

Portfolio allocation: Up to 25 percent of the total cash and investments of the portfolio may be invested in this class of securities.

(13) Local Government Surplus Funds Trust Fund or any intergovernmental investment pool authorized pursuant to the Florida Interlocal Cooperation Act as provided in F.S. §§ 163.01.

Portfolio allocation: Up to 100 percent of the total cash and investments of the portfolio may be invested in this class of securities.

Sec. 2-406. Allocation of assets.

Diversification of investments as to investment type and term to maturity serve to reduce both market risk and interest rate uncertainty. The city shall maintain prudent diversification of investments as to both issuer and term as outlined in this policy in the previous section. In the cash management portfolio the city should limit their maximum final stated maturities to five years. The bond trust accounts investment maturities should not exceed the stated final maturity of the bond issue as stated in the bond indentures. Deviation from the maturity restrictions are allowed only when specific circumstances warrant. To the extent possible, the city will attempt to match its investments with anticipated cash flow requirements.

Sec. 2-407. Highest yield requirements.

The city's funds shall be invested in instruments or accounts that yield the highest possible rate of return while providing the desired maturity schedule, level of liquidity, and necessary protection of principal as required by these policies and state law.

Sec. 2-408. Bidding requirements.

As prescribed by state statutes, the city shall solicit bids prior to the purchase or sale of any investment instrument. For each such investment transaction, a minimum of three phone bids will be obtained, with bid documentation maintained on file. It is the investment officer's responsibility to determine prudent maturity and liquidity, and to assess the potential for market gains or losses caused by fluctuating interest rates during the term of the investment.

Sec. 2-409. Pooling of assets.

To maximize the effective investment of assets, all general cash management funds needed for general obligations of the city should be pooled onto one account for investment purposes. All bond trust accounts will be kept separate from general cash management funds and are pooled according to type of account and fund. The income derived from these accounts will be distributed to the various funds based on their average balances on a periodic basis.

Sec. 2-410. Reporting.

The investment officer shall submit annually to the city council and city manager, an investment report outlining the city's investment transactions for the preceding year and describing the investment position of the city as of the date of the report. Market values will be obtained from a reputable and independent source and disclosed to the city council and city manager at least monthly in a written report. This report will include the market value, book value and unrealized gain or loss of the securities in the portfolio. Earnings on investments shall be compared to benchmark indicators to indicate relative portfolio performance.

Sec. 2-411. Internal controls.

The investment officer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the city are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived; and (2) the valuation of costs and benefits requires estimates and judgments by management. State and local laws require an annual audit of the financial records of the city. That audit will include a review of all investment activity for the year to review compliance with these investment procedures. Included in the audit review will also be a review of internal controls as pertains to investment of the city funds and appropriate investment documentation. Annual audit procedures will also include verification of collateral held by the city for both bank deposits in excess of F.D.I.C. insurance and repurchase agreement transactions.

Sec. 2-412. Indemnity.

The investment officer and employees involved in the investment process shall not be liable for any error in judgment or any act or omission performed or omitted to be performed in good faith and without negligence so long as the investments are made in full compliance with these policies.

Chapter 4 ALCOHOLIC BEVERAGES

ARTICLE I. IN GENERAL

Sec. 4-1. Purpose and intent.

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

Sec. 4-2. 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, 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.~~:~~

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

Bottle club is any business premises in which ~~no intoxicating liquors are sold but where~~ patrons may bring alcoholic beverages for their own use, and where food, soft drinks and mixes are often- sold, and suitable places and premises are provided for consumption of ~~such liquors~~ alcoholic beverages ~~as individual club members or their guests bring upon premises for their own use~~. A bottle club may or may not sell alcoholic beverages on premises. This chapter shall apply to bottle clubs and all of their duly authorized agents. The consumption of alcoholic 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 beverage~~s~~ 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 beverage~~s~~ 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~~ alcoholic beverages, so long as intoxicating beverages are not being served or consumed on the premises during prohibited hours.

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

Sec. 4-6. Sale to ~~certain~~ intoxicated persons prohibited.

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

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

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

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

It shall be unlawful for any person to loiter in and about the business premises licensed under the state beverage law during prohibited hours of operation. It shall be unlawful for ~~the~~ a vendor ~~operator~~ of such premises to permit and knowingly allow any person to loiter thereon during prohibited hours of operation. ~~In and about the business premises includes, but is not limited to, the interior of the establishment, the exterior grounds and parking areas.~~ When applied to a vendor that is permitted to engage in other business activity, it is the intent of this section to apply only to that area or part of such vendor's business 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.

Sec. 4-9. Public consumption or possession.

(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.~~:~~

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

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

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

(b) *Violation.* It shall be a violation for any person to sell or consume any alcoholic beverage, or to possess an~~y~~ open~~ed or unsealed~~ container ~~containing an alcoholic beverage,~~ on or in any publicly owned building, any 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 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, ~~church~~place 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, ~~church~~place 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, ~~church~~place 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.

~~(Ord. No. 02-12, § 3, 3-4-2002)~~

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 on 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, ~~church~~place 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. 6-1~~2~~—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.~~

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

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

(1) It is the intent and purpose of this article to promote, protect and improve the health, safety and welfare of the citizens of the city, and to provide a forum for aggrieved parties, by authorizing the creation of a construction board of adjustment and appeals ("~~construction~~ board"), with authority to hear appeals of decisions and interpretations of the building official and consider variances ~~of~~from the technical codes ~~and chapter 26, article II (floodplain management~~).

(2) The purpose and function of ~~such~~ the ~~construction~~ board ~~of adjustment and appeals~~ is to provide an equitable, expeditious, effective and inexpensive method for deciding such ~~to~~ appeals ~~the decisions and interpretation of the building official~~ and ~~to consider~~ variances ~~of the technical codes and chapter 26, article II (floodplain management)~~.

(3) It is in the best interest of the citizens of the city to create ~~such a~~the ~~construction~~ board ~~of adjustment and appeals~~.

Sec. 6-35. Reserved~~Applicability of article~~.

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

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

~~(a) The council shall appoint one seven-member~~ sit as the construction board. ~~All members of the construction board shall be permanent residents and electors of the city and shall serve without compensation. Members may be reimbursed for such travel, mileage and per diem expenses as may be authorized, in advance, by council.~~

~~(b) The procedures to solicit and appoint members to the construction board shall be consistent with procedures found in section 2-203.~~

~~(c) The appointment of members to the construction board shall be made on the basis of knowledge and experience in the technical codes, and should include, whenever possible, an architect, an engineer, two general contractors, two subcontractors, and a businessperson.~~

~~(d) The initial terms of appointment for members shall be as follows:~~

~~(1) Two members appointed for a term of one year.~~

~~(2) Two members appointed for a term of two years.~~

~~(3) Two members appointed for a term of three years.~~

~~(4) One member appointed for a term of four years.~~

~~(e) If any member's term expires during the pendency of any appeal or variance petition which has not reached conclusion by a final vote, such member's expired term shall be extended for the limited time and limited purpose of presiding over such particular appeal or variance petition until conclusion and final vote.~~

~~(f) After initial appointments, all appointments shall be made for a term of four years. Reappointment to the construction board, attendance requirements, and vacancies shall be addressed in a manner consistent with procedures established by chapter 2, article IV.~~

~~(g) Notwithstanding the provisions outlined in subsections (a)—(f) above, city council may, by resolution, designate itself as a body to serve as the city's construction board of adjustment and appeals, consistent with the powers and duties contained in this article.~~

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

~~(a) *Officers.* At the first meeting of the construction board, the members shall elect a chairman and vice-chairman, who shall be voting members, from among the members of the construction board. The terms of the chairman and vice-chairman shall be one year.~~

~~(b) *Voting.* A simple majority of the construction board shall constitute a quorum. In varying any provision of those construction-related codes adopted by the city through article III of this chapter (the technical codes) or chapter 26, article II (floodplain management), the affirmative vote of the majority present, but not less than three affirmative votes, shall be required. In modifying a decision of the building official, not less than four affirmative votes of the construction board shall be required.~~

~~(c) *Rules of procedure.* The construction board shall establish rules and regulations for its own procedures, as it deems necessary to carry out the its duties of the construction board in accordance with the provisions and intent of this article. The construction board shall consult chapter 2, article IV for guidance in developing rules of procedure.~~

~~(d) *Staff support.* The council shall provide such clerical and administrative personnel and legal services as may be reasonably required for the proper performance of the duties of the board.~~

(e) ~~*Reports.* The construction board secretary (building official) shall provide to the council written quarterly reports of the activities of the construction board, which report shall delineate the name of the~~

~~appeal/interpretation heard for the quarter, the date of hearing, and the resolution of the appeal/interpretation. This paragraph shall not apply if the council serves as the construction board.~~

Sec. 6-38. Composition and p~~P~~owers.

(a) *Generally.* The city council shall serve as the ~~construction~~ board, ~~of adjustment and appeals~~ which ~~shall~~ have the power to hear appeals of decisions and interpretations of the building official and consider variances of ~~construction-related~~ from technical codes, as defined in section 6-32 ~~adopted by the city through article III of this chapter (technical codes) and chapter 26, article II (floodplain management)~~.

(b) *Appeal of decisions of the building official.* The owner of a building, structure or service system~~, or his duly authorized agent,~~ may appeal a decision of the building official to the ~~construction~~ board whenever any one of the following conditions is claimed to exist:

(1) The building official rejected or refused to approve the proposed mode or manner of construction ~~proposed to be followed~~ or materials to be used in the installation or alteration of a building, structure or service system.

(2) The provisions of the technical codes ~~or chapter 26, article II (floodplain management)~~ do not apply to a specific case.

(3) An equally good or more desirable form of installation can be employed in a~~ny~~ specific case.

(4) The true intent and meaning of the technical codes~~, chapter 26, article II (floodplain management), or any of the regulations thereunder~~ have been misconstrued or incorrectly interpreted.

(c) *Variances.*

(1) *Granting.* The ~~construction~~ board~~, when so appealed to and after a hearing,~~ may approve a petition requesting ~~vary~~a variance from the application of any provision of those construction-related codes ~~adopted by the city through~~ in article III of this chapter (technical codes) or chapter 26, article II (floodplain management), to a~~ny~~ particular ~~case~~property, when~~, in its opinion,~~ following the conclusion of a quasi-judicial public hearing, noticed in accordance with section 1-15 of this code, the board finds that the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of the provision from which the variance is sought~~article III of this chapter or chapter 26, article 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 formin 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. 6-4~~2~~3—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.~~

Exposed height. The distance measured from the top of the toe-berm to the top of the seawall cap.

Failed seawall or revetment. A seawall or revetment that has failed structurally for purposes of this division is one that has collapsed or no longer functions to stabilize the shoreline.

Filter fabric. A geosynthetic fabric manufactured specifically as a filter to inhibit soil movement through the fabric while allowing water to move through it. The fabric shall comply with Florida Department of Transportation specification for woven fabric specifically used for shore protection and filter applications.

French drain. Stone wrapped with filter fabric to direct water to seawall weep holes to reduce hydrostatic pressure on the seawall.

Minor repairs. Those repairs that do not include work on existing reinforcing steel or tiebacks, epoxy injection of concrete cracks, or replacement of seawall components. Examples of minor repairs include exterior coatings and repair of concrete spalling that does not have exposed reinforcing steel.

N.A.V.D. North American Vertical Datum of 1988.

Pre-construction depth. The depth profile of the waterway in front of and to either side of the seawall requiring repairs prior to initiation of construction. Impact from soil migration into the waterway from the seawall property does not affect pre-construction depth.

Return wall. The portion of a seawall that is parallel to and abutting the adjacent property line. The wall provides anchorage and stability to the seawall and provides soil containment.

Revetment. A sloping structure that serves to separate real property and/or improvements thereon from any natural or manmade body of water.

Riprap. Stone placed on filter fabric to aid in stabilizing soil.

Seawall. Any solid vertical structure, which serves to separate landward real property and/or any improvements thereon from any natural or manmade body of water.

Sheet pile. Preformed structural element providing vertical stability and separation of soil from an adjacent waterway.

Tieback system. The structural system installed to laterally support the seawall. This system typically consists of a steel rod with one end embedded into the cap and a buried concrete anchor attached to the other end of the rod. However, it could be another assembly performing the same function such as a screw anchor.

T-pile seawall. Seawall consisting of specially formed support piles that support sheet piles horizontally with a concrete cap and tieback at each pile.

Technical Specification. Construction regulations for seawalls and revetments adopted by resolution by the city council.

Tieback rod. The rod connecting the cap to the anchor; part of the tieback system.

Toe berm. Soil on waterward side of seawall, typically underwater.

Turbidity barrier. A floating geotextile barrier that confines turbid water to the immediate construction area in accordance with state law.

Waler/wale. A horizontal structural element laterally supporting sheet piles. A concrete cap typically performs this function, but a wale can be positioned vertically anywhere along the height of the sheet piles.

Waterward face. For purposes of subsection 6-85(5)b., the measurement shall be from the seaward face of the existing seawall panel to the seaward face of the restored seawall panel; for purposes of measurements related to dock protrusion and to required yards, if a wall in front of an existing wall is used, the waterward face shall be synonymous with the wet face, and shall be measured from the face of the existing (encapsulated) face.

Weep hole. A hole through a sheet pile to allow water from behind the sheet pile to drain though the wall without allowing loss of soil.

(Ord. No. 06-18, § 3, 12-4-2006; Ord. No. 10-02, § 2, 3-15-2010; Ord. No. 11-06, § 2, 6-20-2011; Ord. No. 14-09 , § 2, 9-22-2014)

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 that $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 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.

****[poor qulity seawall diagrams deleted. Insert Resolution]****

FIGURE 1

FIGURE 2

FIGURE 2A

FIGURE 3

FIGURE 4

Sec. 6-86. Other restrictions.

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

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

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

Secs. 6-88—6-110. Reserved.

Exhibit 1

EXHIBIT 2
WOOD CONSTRUCTION SHEAR WALL REQUIREMENTS

Wind bracing (shear walls) shall be provided when frame construction (type VI) is used. The following standards may be used provided the structure is limited to a one-story building, has a roof pitch 6:12 or less and the ceiling

height, at the perimeter of the wall, is ten feet or less. If the structure exceeds these limits, the construction documents shall be certified by an architect or a structural engineer.

SHEAR WALL DEFINITION

A shear wall shall:

(a) Be no less than 4'0" wide and shall extend from floor to ceiling.

(b) Be constructed of 2" × 4", 16" o.c. and bolted to thickened slab or foundation wall with ½" round bolts 48" o.c. or minimum two bolts.

(c) Consist of 15/32" 4-ply CDX plywood or 15/32" OSB sheathing on one face of the shear wall and nailed in accordance with section 1705.1. Solid 2' × 4' backing at all edges is required.

(d) Be firmly anchored to floor system, roof system and the intersecting side walls.

(e) Be provided and analyzed for wind loads in all directions using the following formula.

(f) The sum total lengths of shear walls in all directions shall be equal to or greater than the length of the perpendicular side length of the structure.

If the structure exceeds any of these limitations, the shear walls, roof diaphragm, and all associated connection details shall be designed and certified by an architect or an engineer.

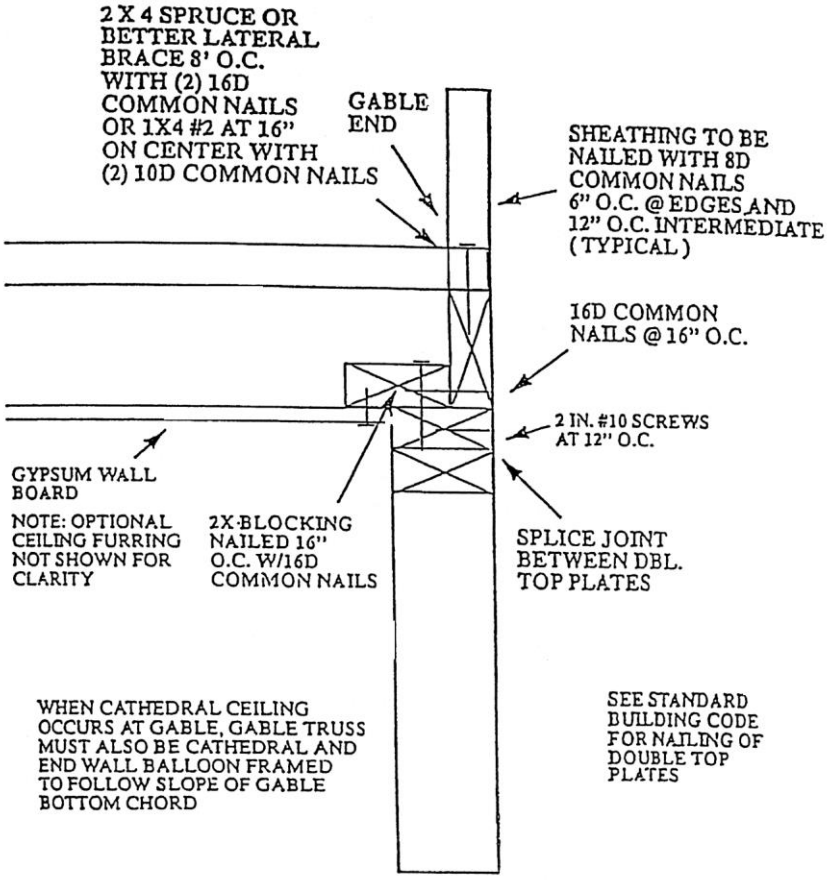


Exhibit 3

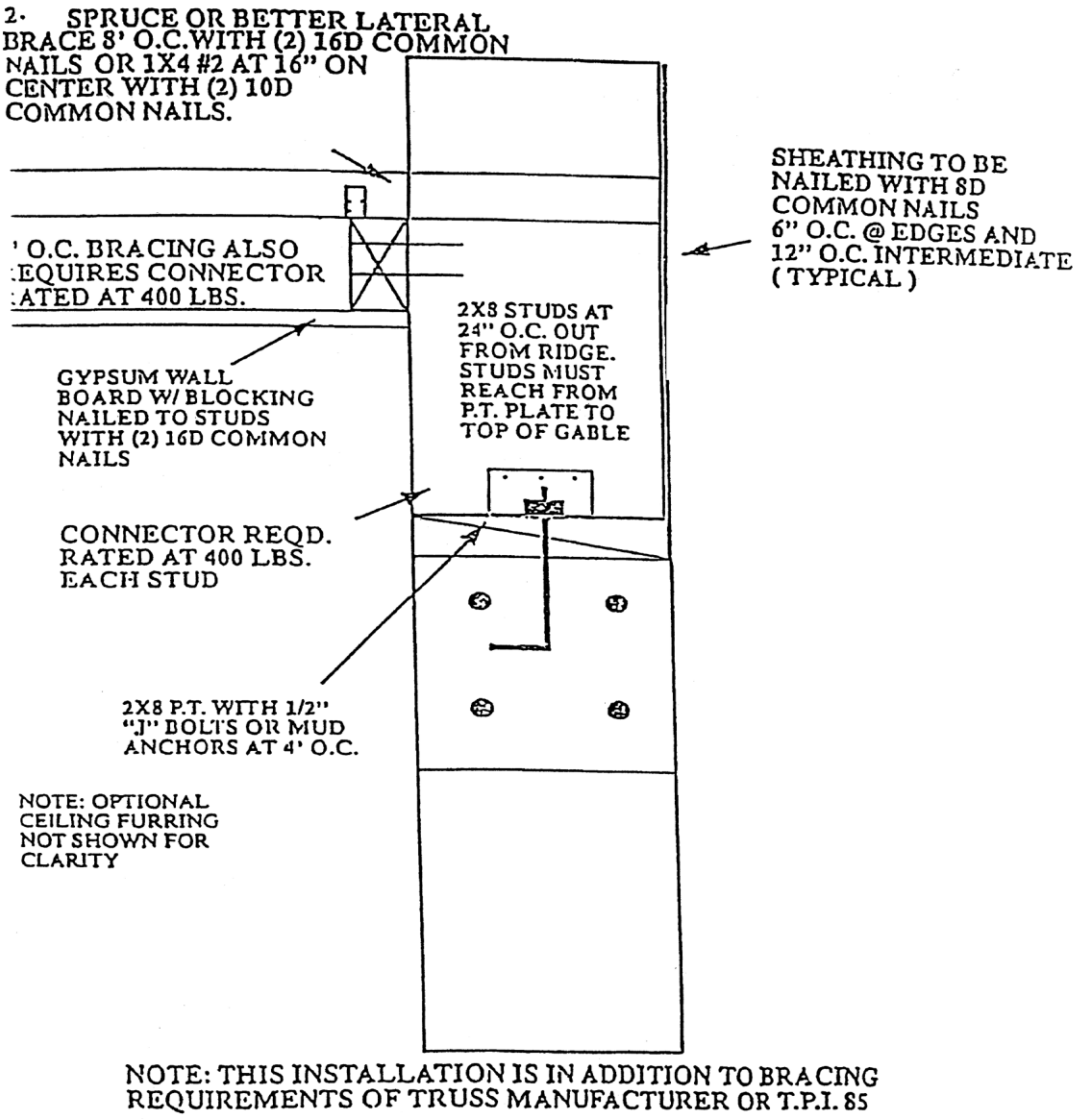
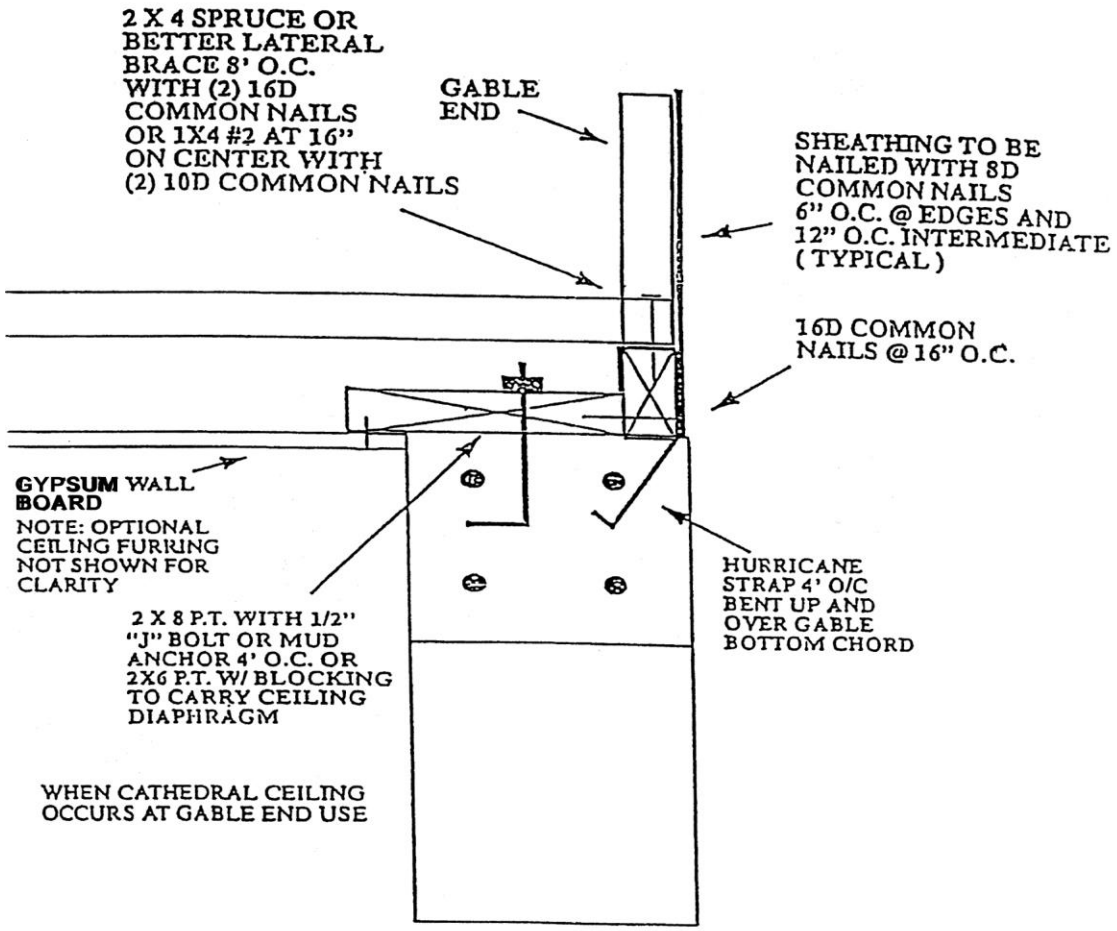

2· SPRUCE OR BETTER LATERAL BRACE 8' O.C.WITH (2) 16D COMMON NAILS OR 1X4 #2 AT 16" ON CENTER WITH (2) 10D COMMON NAILS.
' O.C. BRACING ALSO :EQUIRES CONNECTOR :ATED AT 400 LBS.
SHEATHING TO BE NAILED WITH 8D COMMON NAILS 6" O.C. @ EDGES AND 12" O.C. INTERMEDIATE (TYPICAL)
2X8 STUDS AT 24" O.C. OUT FROM RIDGE. STUDS MUST REACH FROM P.T. PLATE TO TOP OF GABLE
GYPSUM WALL BOARD W/ BLOCKING NAILED TO STUDS WITH (2) 16D COMMON NAILS
CONNECTOR REQD. RATED AT 400 LBS. EACH STUD
2X8 P.T. WITH 1/2" "J" BOLTS OR MUD ANCHORS AT 4' O.C.
NOTE: OPTIONAL CEILING FURRING NOT SHOWN FOR CLARITY
NOTE: THIS INSTALLATION IS IN ADDITION TO BRACING REQUIREMENTS OF TRUSS MANUFACTURER OR T.P.I. 85

Exhibit 4



NOTE: THIS INSTALLATION IS IN ADDITION TO BRACING REQUIREMENTS OF TRUSS MANUFACTURER OR T.P.I. 85

Exhibit 5

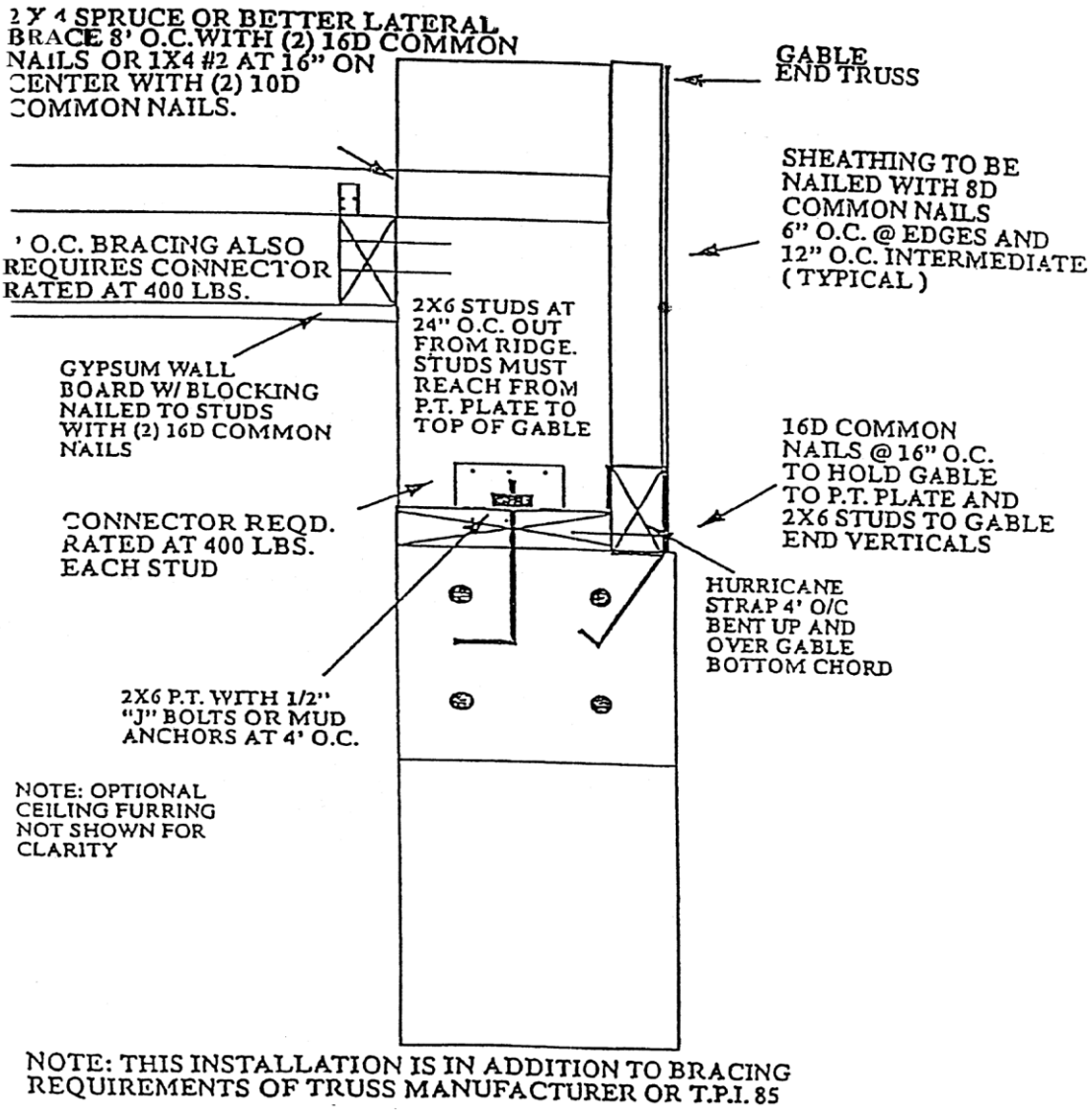
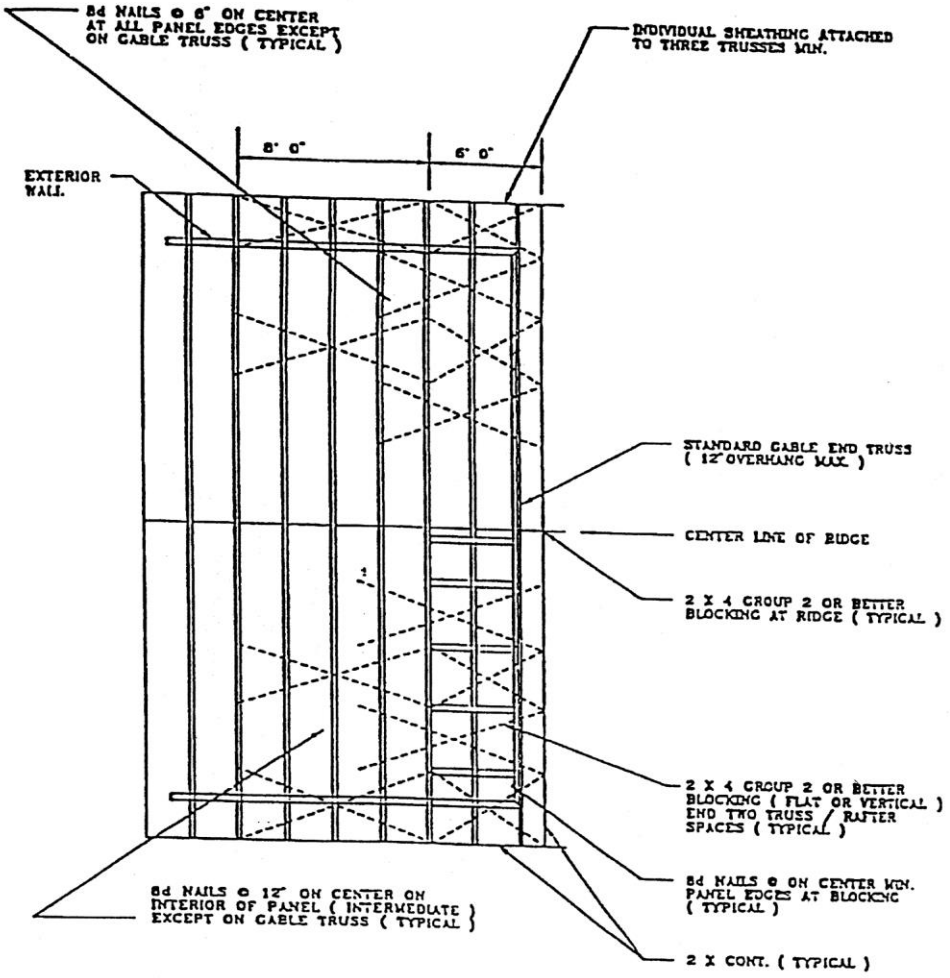

2 X 4 SPRUCE OR BETTER LATERAL BRACE 8' O.C.WITH (2) 16D COMMON NAILS OR 1X4 #2 AT 16" ON CENTER WITH (2) 10D COMMON NAILS.
GABLE END TRUSS
SHEATHING TO BE NAILED WITH 8D COMMON NAILS 6" O.C. @ EDGES AND 12" O.C. INTERMEDIATE (TYPICAL)
' O.C. BRACING ALSO REQUIRES CONNECTOR RATED AT 400 LBS.
2X6 STUDS AT 24" O.C. OUT FROM RIDGE. STUDS MUST REACH FROM P.T. PLATE TO TOP OF GABLE
GYPSUM WALL BOARD W/ BLOCKING NAILED TO STUDS WITH (2) 16D COMMON NAILS
16D COMMON NAILS @ 16" O.C. TO HOLD GABLE TO P.T. PLATE AND 2X6 STUDS TO GABLE END VERTICALS
CONNECTOR REQD. RATED AT 400 LBS. EACH STUD
HURRICANE STRAP 4' O/C BENT UP AND OVER GABLE BOTTOM CHORD
2X6 P.T. WITH 1/2" "J" BOLTS OR MUD ANCHORS AT 4' O.C.
NOTE: OPTIONAL CEILING FURRING NOT SHOWN FOR CLARITY
NOTE: THIS INSTALLATION IS IN ADDITION TO BRACING REQUIREMENTS OF TRUSS MANUFACTURER OR T.P.I. 85

Exhibit 6



NOTE :

1. ALL NAILS TO BE COMMON NAILS MIN.
2. IF BUILDING WIDTH EXCEEDS 40' 0" FEET OR HEIGHT IS MORE THAN TWO STORIES 10d INSTEAD OF 8d FOR ATTACHMENT OF ROOF SHEATHING.

Exhibit 7

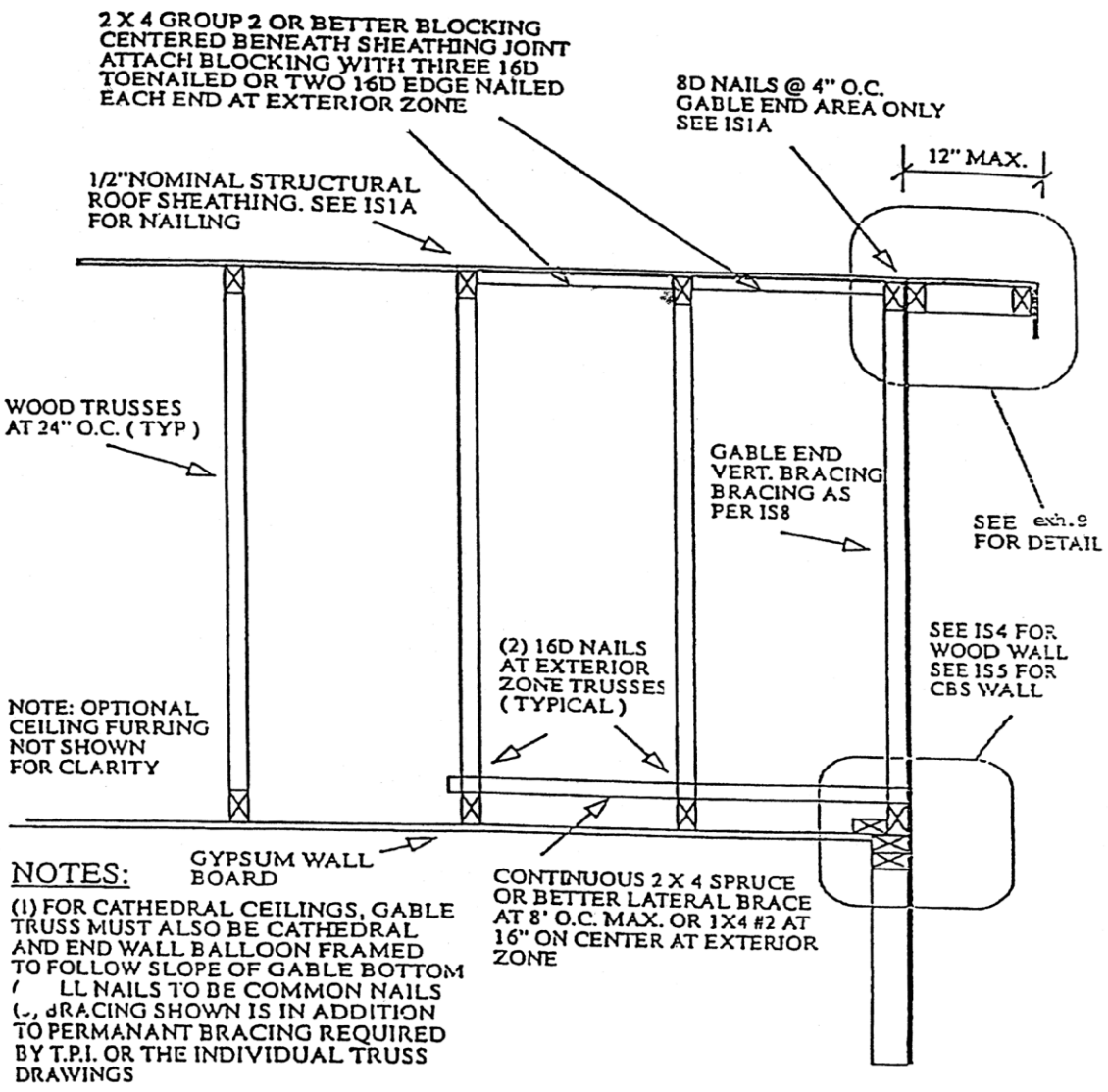

2 X 4 GROUP 2 OR BETTER BLOCKING CENTERED BENEATH SHEATHING JOINT ATTACH BLOCKING WITH THREE 16D TOENAILED OR TWO 16D EDGE NAILED EACH END AT EXTERIOR ZONE
8D NAILS @ 4" O.C. GABLE END AREA ONLY SEE IS1A
12" MAX.
1/2"NOMINAL STRUCTURAL ROOF SHEATHING. SEE IS1A FOR NAILING
WOOD TRUSSES AT 24" O.C. (TYP)
GABLE END VERT. BRACING BRACING AS PER IS8
SEE exh.9 FOR DETAIL
(2) 16D NAILS AT EXTERIOR ZONE TRUSSES (TYPICAL)
SEE IS4 FOR WOOD WALL SEE IS5 FOR CBS WALL
NOTE: OPTIONAL CEILING FURRING NOT SHOWN FOR CLARITY
GYPSUM WALL BOARD
CONTINUOUS 2 X 4 SPRUCE OR BETTER LATERAL BRACE AT 8' O.C. MAX. OR 1X4 #2 AT 16" ON CENTER AT EXTERIOR ZONE
NOTES:
(1) FOR CATHEDRAL CEILINGS, GABLE TRUSS MUST ALSO BE CATHEDRAL AND END WALL BALLOON FRAMED TO FOLLOW SLOPE OF GABLE BOTTOM
/ LL NAILS TO BE COMMON NAILS
(., dRACING SHOWN IS IN ADDITION TO PERMANANT BRACING REQUIRED BY T.P.I. OR THE INDIVIDUAL TRUSS DRAWINGS

Exhibit 8

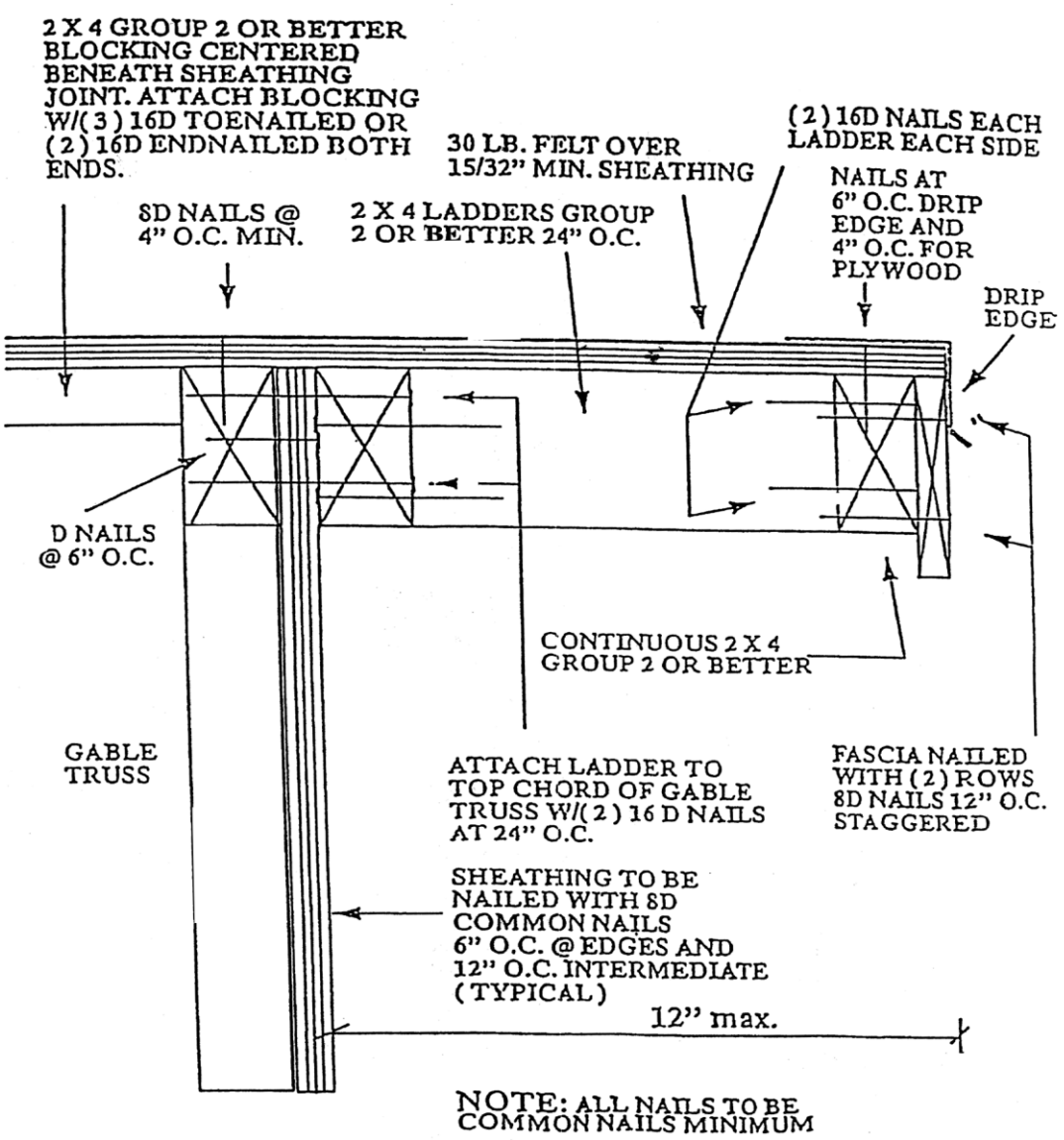
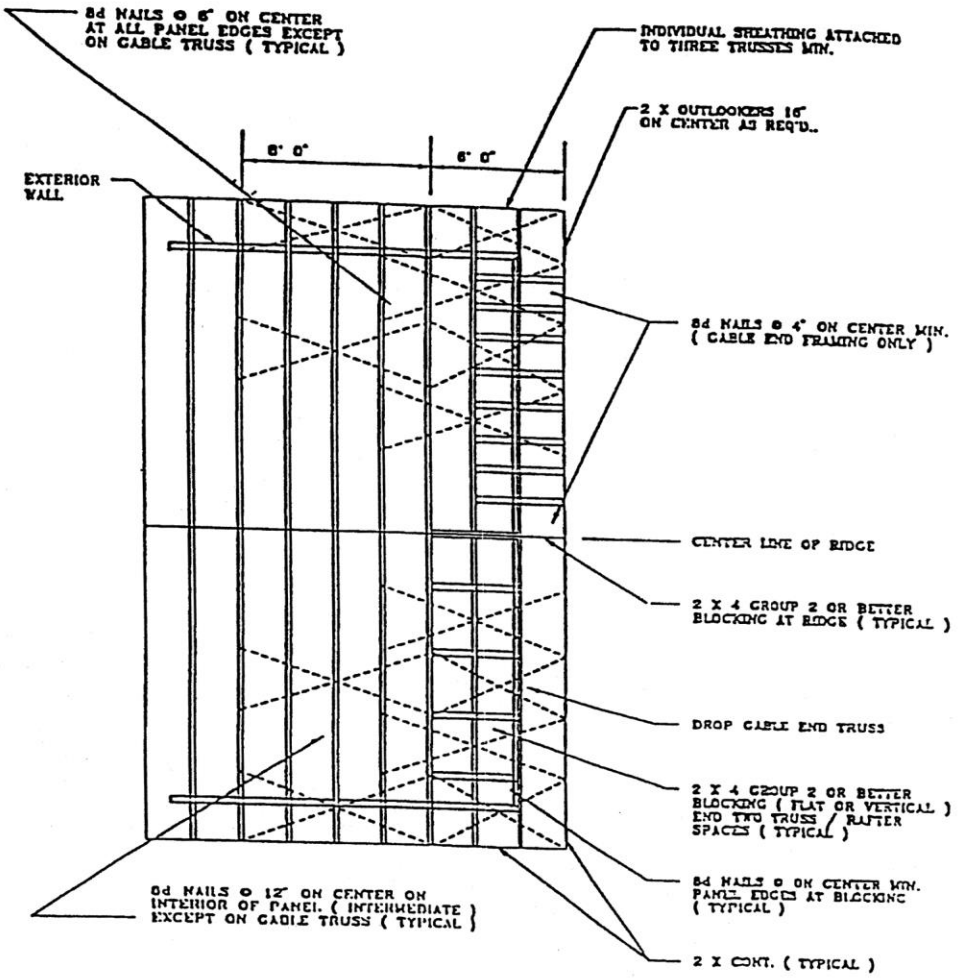

2 X 4 GROUP 2 OR BETTER BLOCKING CENTERED BENEATH SHEATHING JOINT. ATTACH BLOCKING W/(3) 16D TOENAILED OR (2) 16D ENDNAILED BOTH ENDS.
30 LB. FELT OVER 15/32" MIN. SHEATHING
(2) 16D NAILS EACH LADDER EACH SIDE
NAILS AT 6" O.C. DRIP EDGE AND 4" O.C. FOR PLYWOOD
8D NAILS @ 4" O.C. MIN.
2 X 4 LADDERS GROUP 2 OR BETTER 24" O.C.
DRIP EDGE
D NAILS @ 6" O.C.
CONTINUOUS 2 X 4 GROUP 2 OR BETTER
GABLE TRUSS
ATTACH LADDER TO TOP CHORD OF GABLE TRUSS W/(2) 16 D NAILS AT 24" O.C.
FASCIA NAILED WITH (2) ROWS 8D NAILS 12" O.C. STAGGERED
SHEATHING TO BE NAILED WITH 8D COMMON NAILS 6" O.C. @ EDGES AND 12" O.C. INTERMEDIATE (TYPICAL)
12" max.
NOTE: ALL NAILS TO BE COMMON NAILS MINIMUM

Exhibit 9



NOTE :

1. ALL NAILS TO BE COMMON NAILS MIN.
2. IF BUILDING WIDTH EXCEEDS 40' 0" FEET OR HEIGHT IS MORE THAN TWO STORIES 10d INSTEAD OF 8d FOR ATTACHMENT OF ROOF SHEATHING.

Exhibit 10

11

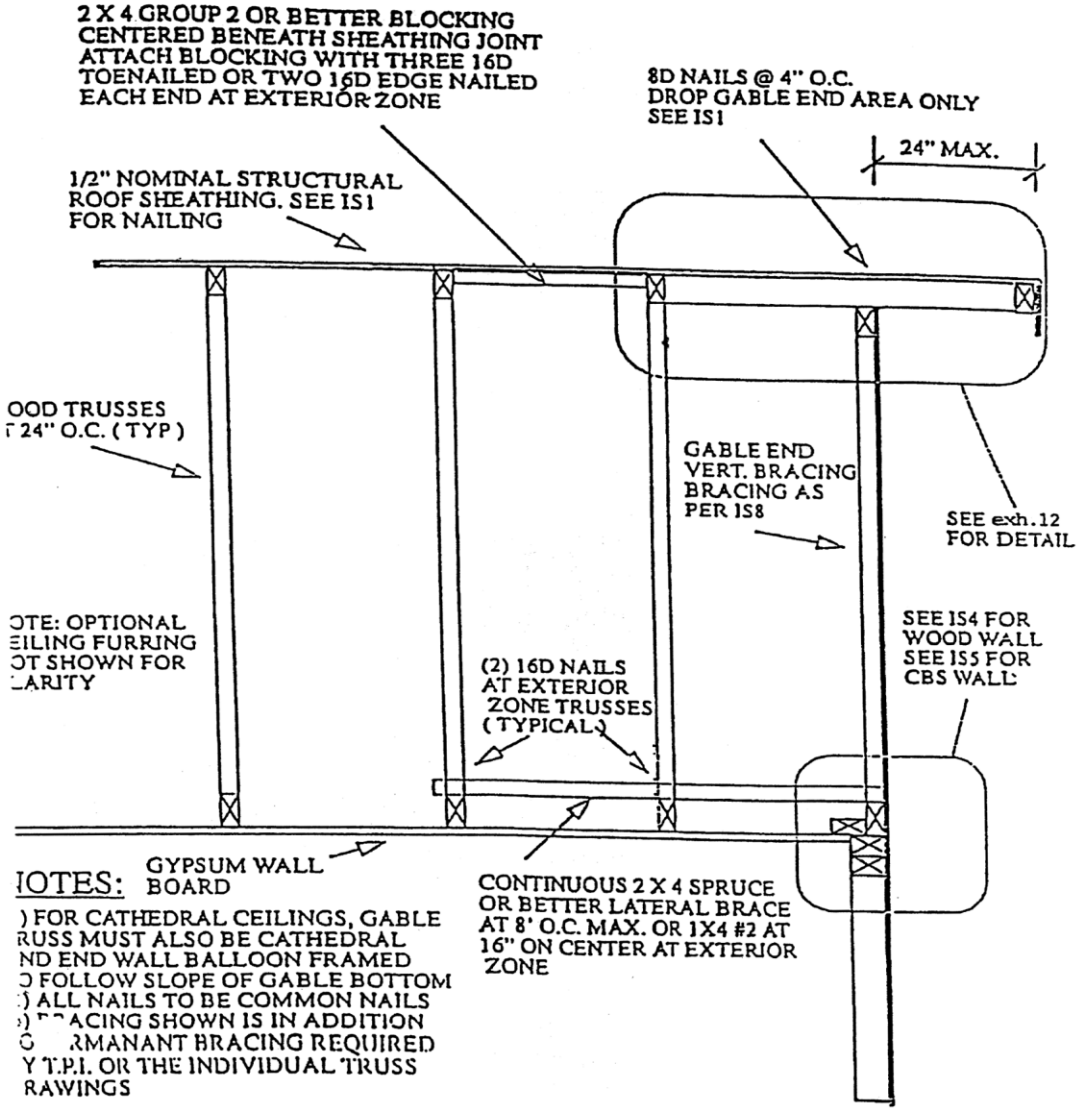
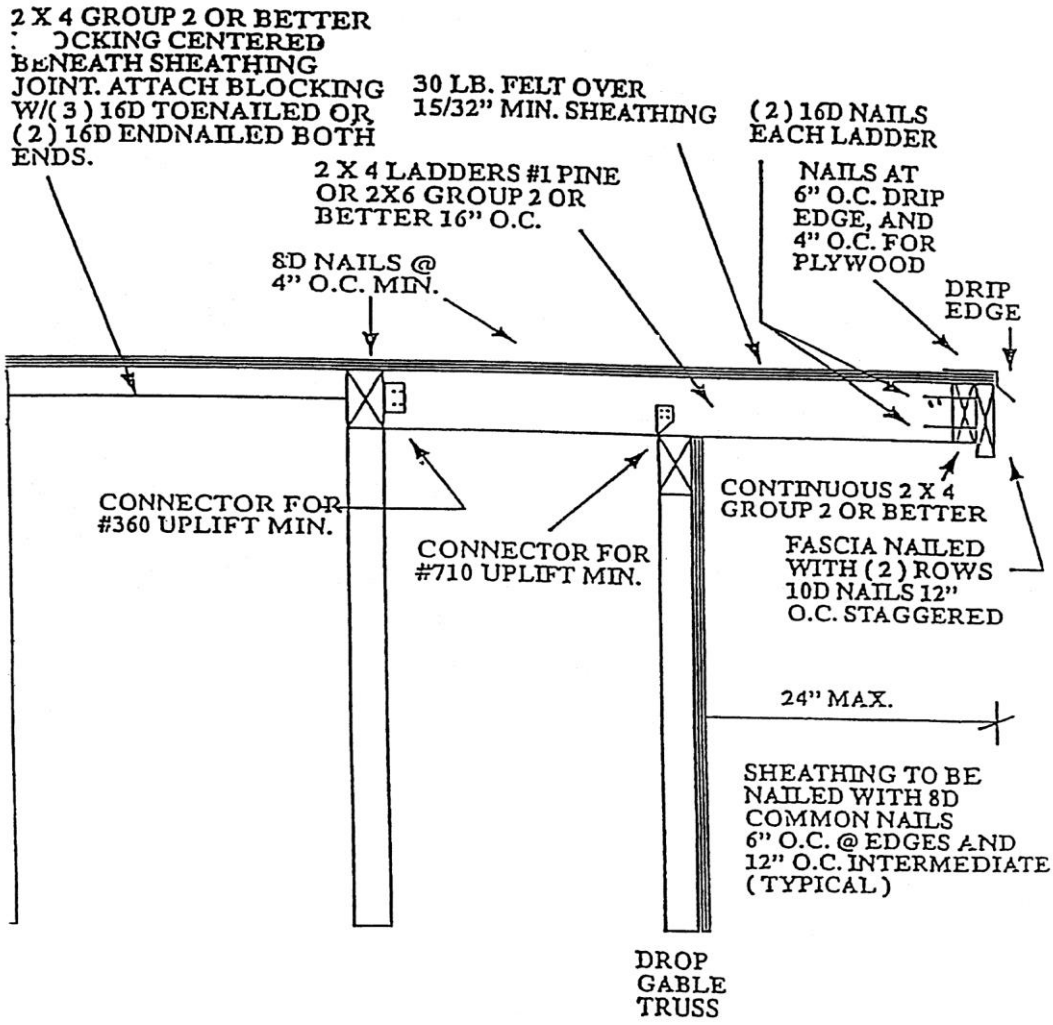


Exhibit **11**

12



NOTE: ALL NAILS TO BE COMMON NAILS MINIMUM

Exhibit **12**

13

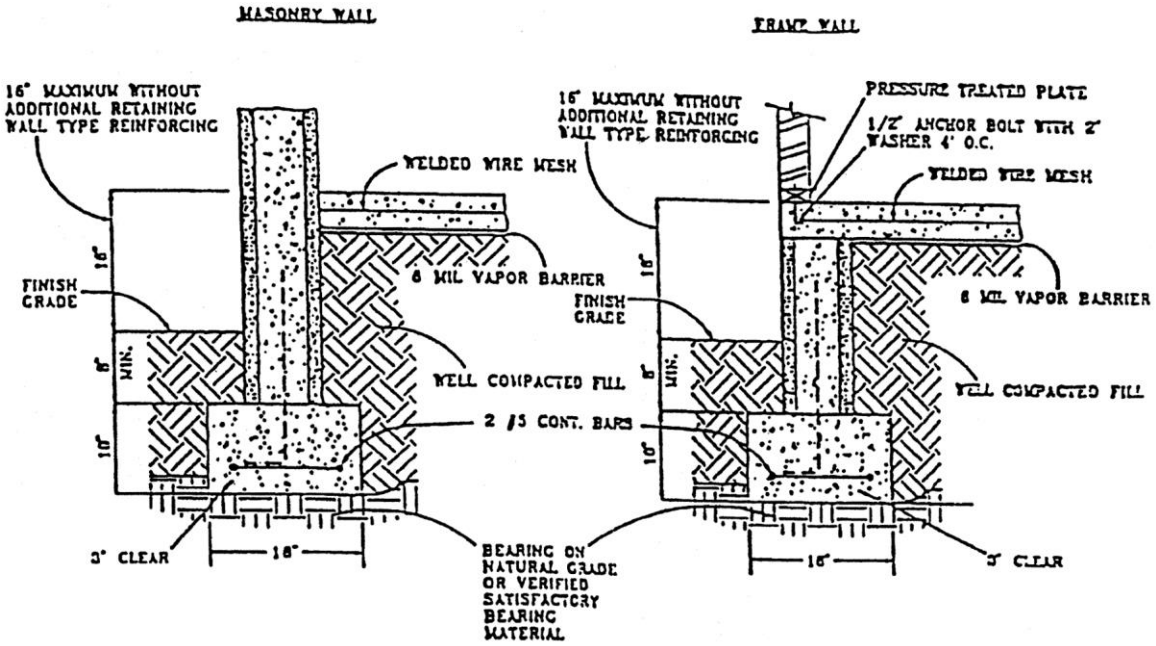


Exhibit **13**

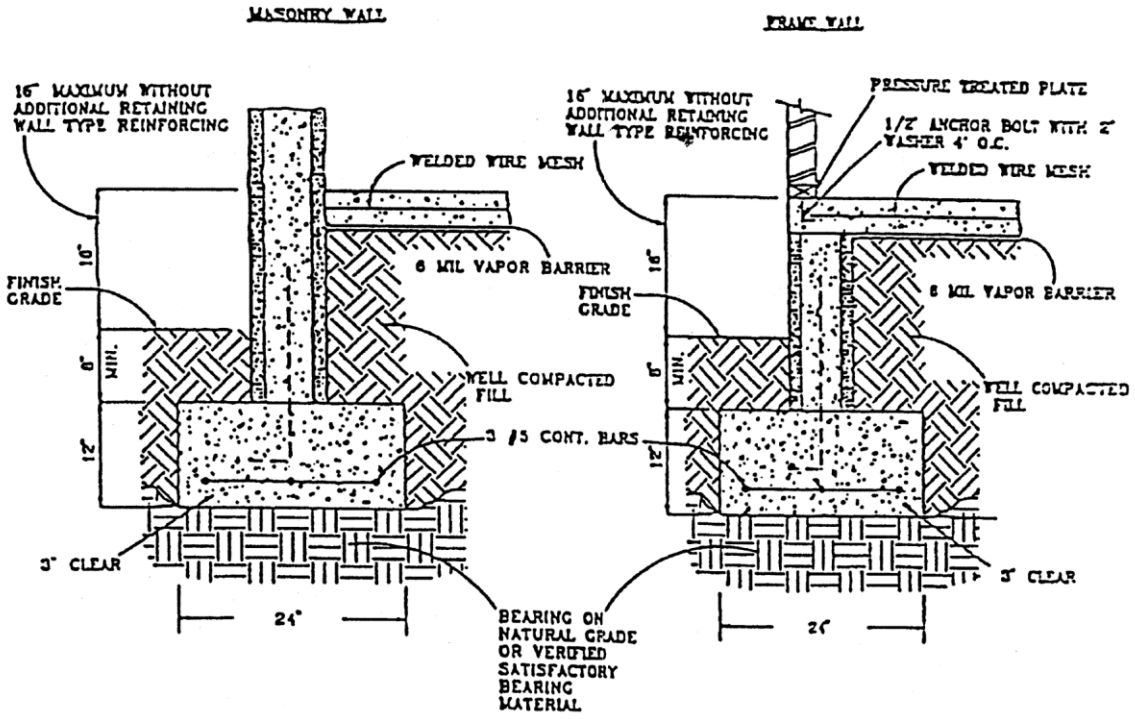
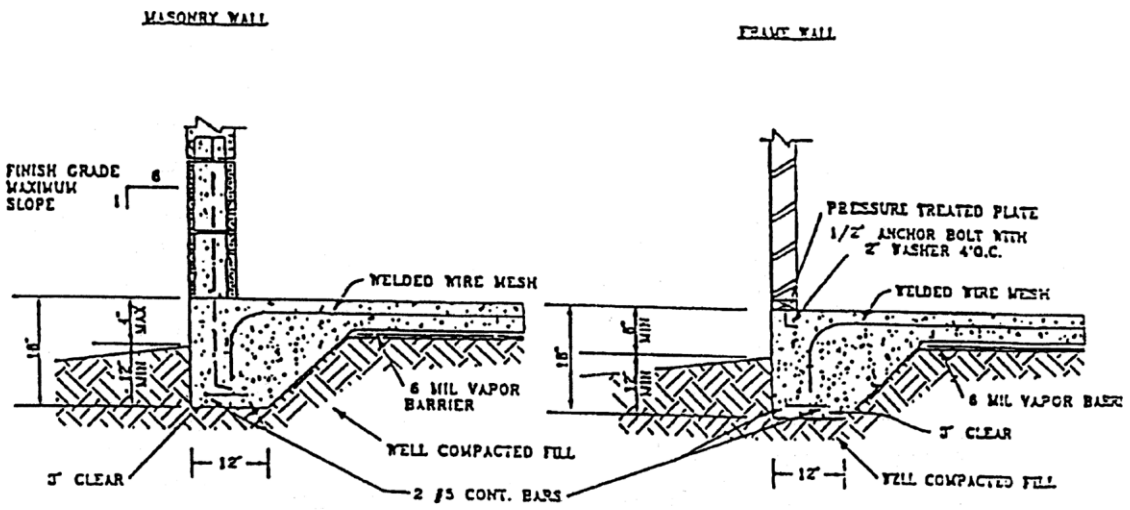


Exhibit 14

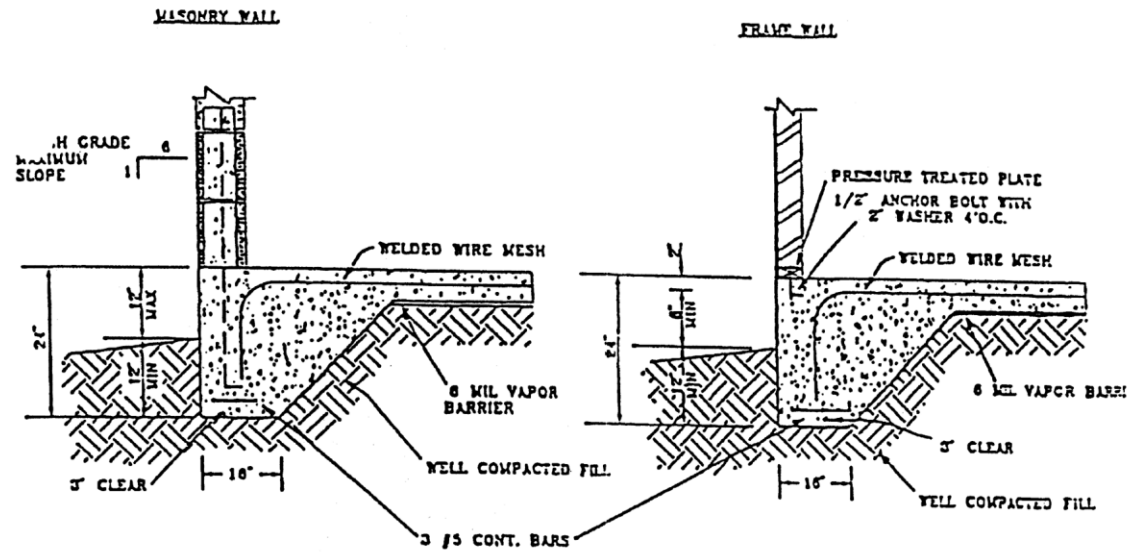


1) THE BOTTOM OF FOUNDATIONS SHALL EXTEND NO LESS THAN 12 INCHES BELOW FINISH GRADE.

2) ALL WOOD FRAMING AND SHEATHING LESS THAN 8 INCHES FROM EXPOSED EARTH SHALL BE PRESSURE TREATED WOOD.

3) CLEARANCE BETWEEN WOOD SIDING AND EARTH SHALL NOT BE LESS THAN 6 INCHES.

Exhibit 15



1) THE BOTTOM OF FOUNDATIONS SHALL EXTEND NO LESS THAN 12 INCHES BELOW FINISH GRADE.

2) ALL WOOD FRAMING AND SHEATHING LESS THAN 8 INCHES FROM EXPOSED EARTH SHALL BE PRESSURE TREATED WOOD.

3) CLEARANCE BETWEEN WOOD SIDING AND EARTH SHALL NOT BE LESS THAN 6 INCHES.

Exhibit 16

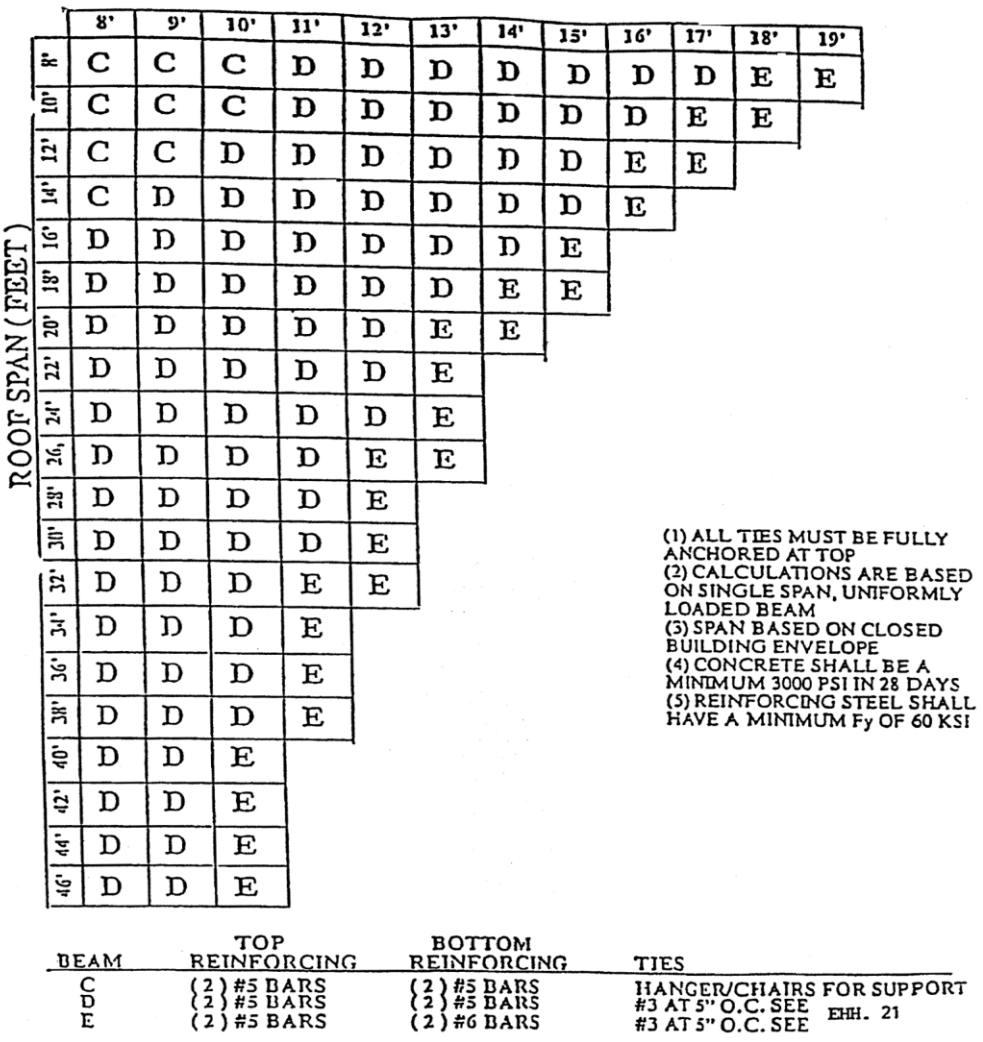
ROOF SPAN (FEET)	8'	9'	10'	11'	12'	13'	14'	15'
8'	A	A	A	B	B	B	B	B
10'	A	B	B	B	B	B	B	
12'	B	B	B	B	B	B		
14'	B	B	B	B	B	B		
16'	B	B	B	B	B			
18'	B	B	B	B				
20'	B	B	B	B				
22'	B	B	B	B				
24'	B	B	B					
26'	B	B	B					
28'	B	B	B					
30'	B	B						

(1) ALL TIES MUST BE FULLY ANCHORED AT TOP
(2) CALCULATIONS ARE BASED ON SINGLE SPAN, UNIFORMLY LOADED BEAM
(3) SPAN BASED ON CLOSED BUILDING ENVELOPE
(4) CONCRETE SHALL BE A MINIMUM 3000 PSI IN 28 DAYS
(5) REINFORCING STEEL SHALL HAVE A MINIMUM Fy OF 60 KSI

BEAM	TOP REINFORCING	BOTTOM REINFORCING	TIES
A	(2) #5 BARS	(2) #5 BARS	HANGER/CHAIRS FOR SUPPORT
B	(2) #5 BARS	(2) #5 BARS	#3 AT 4" O.C. see .exh. 21

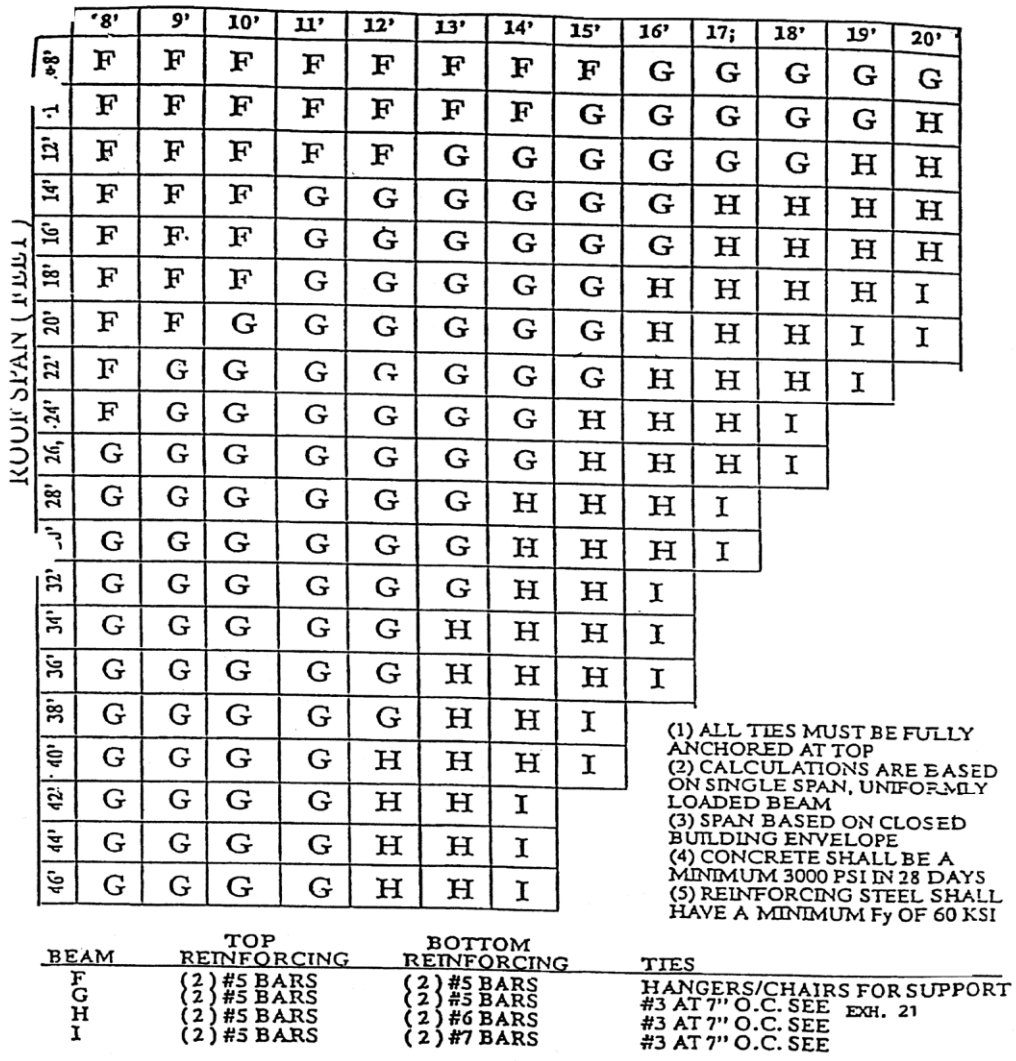
CONCRETE TIE BEAM SCHEDULE: 8"x10"

Exhibit 17



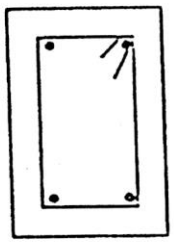
CONCRETE TIE BEAM SCHEDULE: 8"x12"

Exhibit 18

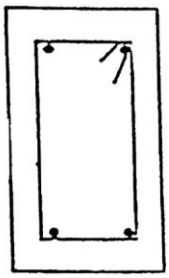


CONCRETE TIE BEAM SCHEDULE: 8"x16"

Exhibit 19



#3 TIES WHERE REQUIRED, SEE 16" BEAM SCHEDULE. TIES CLOSED AND ANCHORED AT TOP.



#3 TIES WHERE REQUIRED, SEE 16" BEAM SCHEDULE. TIES CLOSED AND ANCHORED AT TOP.

8"X18" TIE BEAM

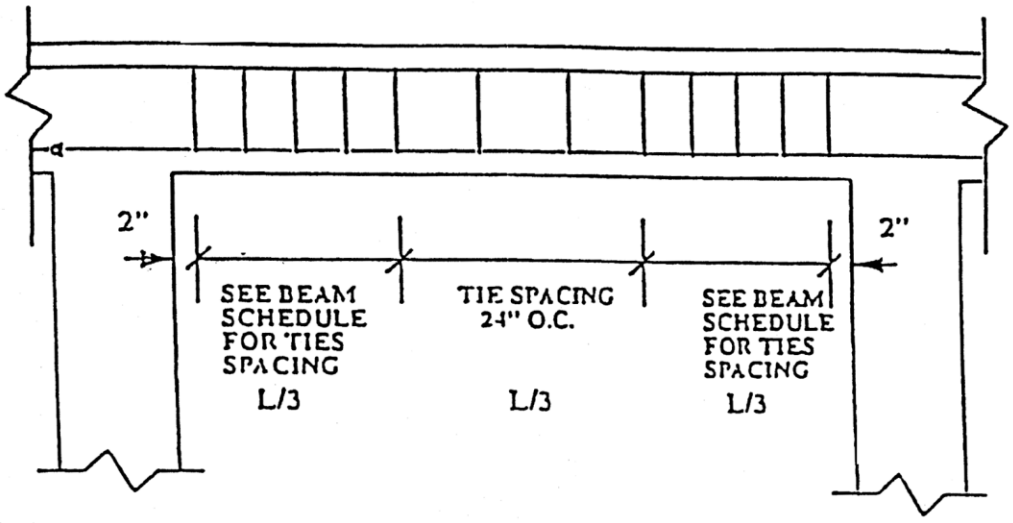
8"X20" TIE BEAM

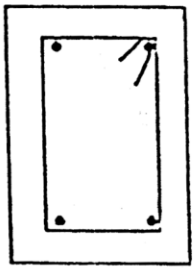
MAINTAIN 1 AND 1/2 INCH CLEAR COVER ON ALL SIDES TO TIES

CALCULATIONS ARE BASED ON SINGLE SPAN, UNIFORMLY LOADED BEAM.
BEAM SPANS ARE BASED ON CLOSED BUILDING ENVELOPE
CONCRETE SHALL BE A MINIMUM 3000 PSI IN 28 DAYS
REINFORCING STEEL SHALL HAVE A MINIMUM Fy OF 60 KSI

Exhibit 20

EXHIBIT 21
TYPICAL TIE SPACING





MAINTAIN 1 AND 1/2 INCH CLEAR COVER ON ALL SIDES TO TIES

#3 TIES WHERE REQUIRED, SEE SCHEDULE.
TIES CLOSED AND ANCHORED AT TOP.

CALCULATIONS ARE BASED ON SINGLE SPAN, UNIFORMLY LOADED BEAM.
BEAM SPANS ARE BASED ON CLOSED BUILDING ENVELOPE
CONCRETE SHALL BE A MINIMUM 3000 PSI IN 28 DAYS
REINFORCING STEEL SHALL HAVE A MINIMUM Fy OF 60 KSI

Exhibit 21

ARTICLE IV. ADMINISTRATIVE CONSTRUCTION CODE

* * *

Sec. 6-112. Penalties.

Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 14 of this code. ~~If anyperson, firm, corporation, or other legal entity whether public or private, shall fail or refuse to obey or comply with, or violates, any of the provisions of this division, such person, firm, corporation, or other legal entity whether public or private, upon conviction of 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 violation or noncompliance shall be considered as a separate offense. In addition, any person, firm, corporation, or other legal entity whether public or private, convicted under the provisions of this section shall pay all costs and expenses involved in the case.~~

Secs. 6-113—6-140. Reserved.

ARTICLE V. OUTDOOR LIGHTING

Sec. 6-141. Definitions.

The following words, terms and phrases, when used in this ~~division~~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.~~:~~

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

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

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

Hood. See *Shield*.

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

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

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

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

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

Sec. 6-142. Penalties.

(a) Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 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 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) Violation of this division may also be prosecuted before the code enforcement board.~~

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

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

Sec. 6-144. Exemptions.

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

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

Sec. 6-145. Maximum lighting levels.

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

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

(2) No lighting source shall cause more than 1.0 footcandle of illumination to fall on adjoining residential 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.

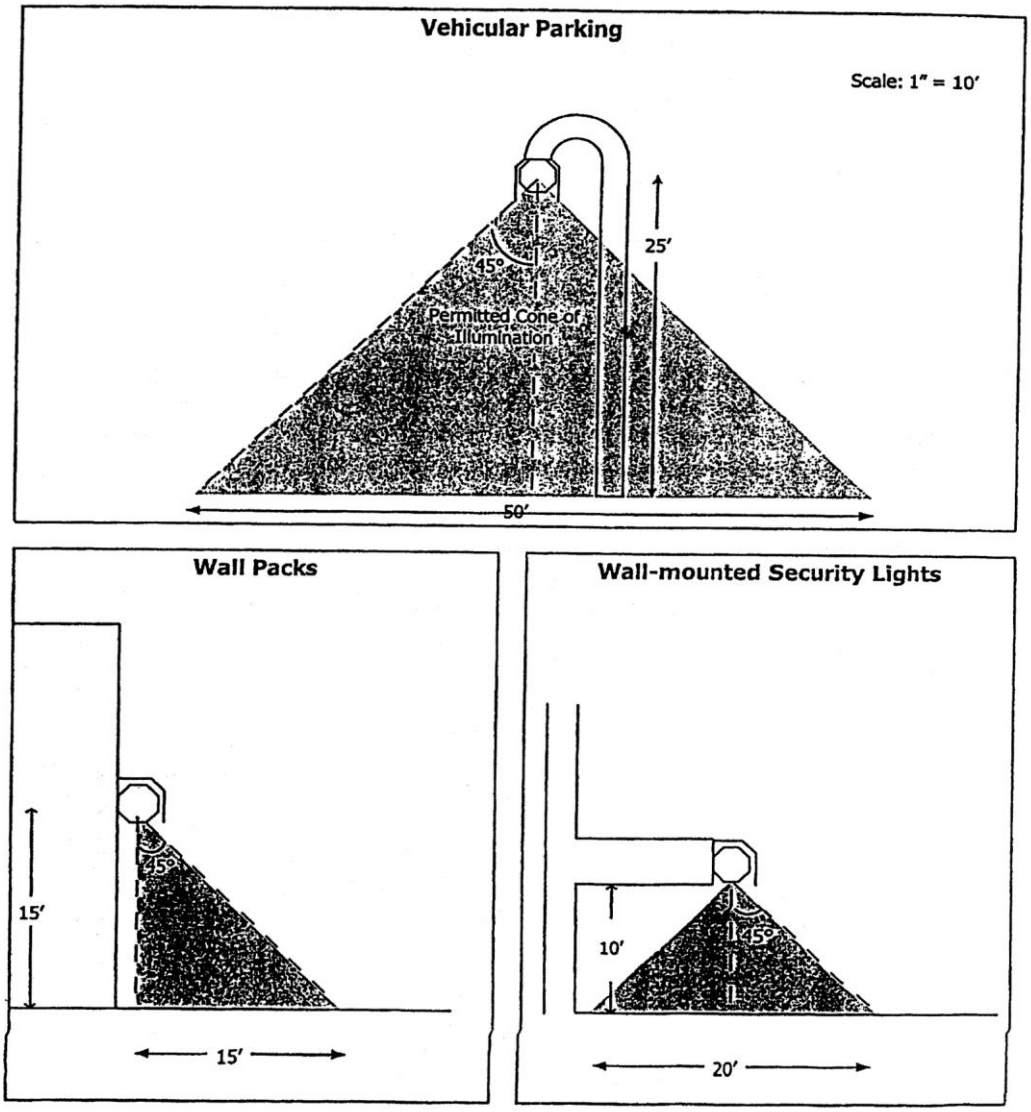
(b) ~~Except for uplighting, light sources which are required to be shielded shall be shielded~~ All light emitted from a shielded fixture shall ~~in such a manner than no light emitted from the light source shall travel upward or horizontally. In addition, light sources required to~~ be directed downward ~~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.

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

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

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

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

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

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

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

Sec. 6-173. Recovery coordination.

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

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

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

(1) Re-establishing services that meet the physical and safety needs of the community to include: water, food, ice; medical care; emergency access; continuity of governmental operations; communications; security of residents and possessions from harm; health, and temporary housing.

(2) Re-establishing infrastructure necessary for community reconstruction such as: electrical distribution systems; potable water and sanitary sewer service; restoring medical and health care; rebuilding damaged stormwater and transportation facilities; and housing facilities.

(3) Restoring the community's economic base per accepted econometric principles and practices.

(4) Improving the community's ability to withstand the effects of future major or catastrophic disasters.

(5) Re-opening or re-establishment of public beach access points.

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

Priorities for power, water and sewerage treatment, and communication restoration will be in accordance with 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

f. Any required city zoning or other development regulations with the exception of existing ~~density or~~ intensity requirements ~~established~~, unless compliance with such zoning or other development regulations would preclude reconstruction otherwise intended by this buildback policy as determined by the city manager in paragraph (3), below, or otherwise by resolution of the city council.

(3) To minimize the need for individual variances or compliance determinations prior to reconstruction~~s~~, the regulations of the ~~city~~ land development code affecting setbacks, parking, buffering and open space may be modified. City manager ~~or designee~~ may require documentation as to the actual uses~~, densities,~~ and intensities existing prior to the disaster event and at the time of the original construction through such means as photographs, diagrams, plans, affidavits, and permits prior to authorizing modifications to the above requirements. These requirements may be modified as follows:

a. Front, rear, side or water body setbacks may be modified to permit the reconstruction of existing structures that are nonconforming with regard to a specific setback so long as the reconstruction will not result in an increase in the height of the structure as defined by the land development code; and the reconstruction will not result in a further diminution of the setback. City manager ~~or designee~~ may approve bay windows, chimneys and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.

b. Front, rear, side, or water body setbacks may be modified to permit the construction of an ~~handicapped~~ access appurtenance for disabled persons to any reconstruction.

c. Front, rear, side or water body setbacks may be modified to allow for the replacement of stairs or decking that provides access into any reconstructed dwelling unit.

~~d~~. Front, rear, side or water body setbacks may be modified to legitimize minor existing encroachments in setbacks discovered at the time of reconstruction.

e. ~~Buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted prior to the adoption of such regulations shall be considered legally nonconforming and may also be reviewed by the city manager or designee under this section.~~

f. A diminution of the front yard setbacks on a collector or arterial roadway shall be consistent with future road widening requirements.

(4) The city manager ~~or designee~~ is authorized to modify the parking requirements for nonresidential uses as established by the ~~city~~ land development code. In no instance shall the parking requirements be modified where the reconstruction involves the increase ~~of density or~~ intensity of use. Such requirements may be modified under the following circumstances:

a. To improve ingress and egress to the site in accordance with the county access management plan.

b. To eliminate or reduce the instances where conditions require that parked vehicles back out onto the public streets.

c. To allow for the provision of ~~handicapped~~ disabled-permit parking spaces in accordance with the ~~city land development~~building code.

(5) The city manager ~~or designee~~ is authorized to modify the buffering or open space requirements of the land development code when such modifications ~~and reconstruction~~ will:

a. Accommodate modifications to existing parking or additional parking.

b. To accommodate changes as a result of reconstruction.

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.

(1) *Initial building moratorium.* An initial building moratorium may be declared when one or more of the following actions or findings occur:

a. The city is declared a disaster area by either the Governor of the State of Florida or the President of the United States.

b. A finding has been made by the city council that a state of local emergency exists in accordance with F.S. ch. 252;

c. Fifty or more structures have received major damage or have been destroyed as determined by the chief building official; or

d. The city is unable to maintain minimum acceptable levels of service expected during non-emergency situations as provided for by the capital improvement element of the comprehensive plan.

(2) *Destroyed structure moratorium.* No building permit will be issued for at least 30 days following the expiration of the initial building moratorium for the replacement of any structure which has been destroyed. When a building permit is issued, structures damaged can be rebuilt in accordance with the buildback policy set forth herein.

(3) *Major damaged structure moratorium.* No building permit for repairs of a major damaged structure will be issued for at least ten days following the expiration of the initial building moratorium.

(4) *Minor damaged structure moratorium.* No building permits for the repair of minor damaged structures will be issued for at least five days following the expiration of the initial building moratorium.

(5) *New development moratorium.* No building permit for new construction or reconstruction unrelated to rebuilding or repairing structures damaged by the disaster will be accepted nor building permits will be issued for at least 30 days following the expiration of the initial building moratorium so that damage may be assessed and repairs be made. The city manager will determine and advise the city council whether a new development moratorium is required based upon the results of damage assessment and recommendations from the ~~chief~~ building official.

(6) *Outstanding building permit inspection moratorium.*

a. All building permits that were issued prior to the disaster will be suspended for a minimum period of 30 days following the expiration of the initial building moratorium, unless the ~~chief~~ building official determines on an individual case-by-case basis that sufficient inspection staff is available to adequately inspect the structures should construction begin or resume. Suspension of the building permit means that no further construction authorized by the building permit is permitted and that no inspections by the city building department will be performed during the moratorium period. Applications for inspections relating to building permits suspended under this section shall 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 construction in progress pursuant to validly issued pre-disaster building permits to verify that the work in place suffered no damage as a result

of the disaster. In the event that the city determines that such construction sustained damage during the disaster or suspects that damage occurred, the property owner and/or general contractor is responsible for rework, removal, retesting, and uncovering work to facilitate inspection so that compliance with the building permit and the building code can be ensured.

(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.

(8) *Site development plan, subdivision plat review, and zoning request moratorium.*

a. Site plans which have been submitted to the city prior to the disaster will not be reviewed by the city staff for a period of 30 days following the expiration of the initial building moratorium. All submittal dates and review periods will be adjusted accordingly to reflect the time period covered by this 30-day moratorium.

b. No new site plans, zoning requests or subdivision plats will be accepted by the city for a period of 30 days following the expiration of the initial building moratorium.

c. All submittal dates and review periods will be adjusted accordingly to reflect the time period covered by this 30-day moratorium.

(b) *Duration.* All moratoria other than the initial building moratoria as enacted will be in effect for the length of time described above and may be terminated or extended by the city council.

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 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. 6-180. Economic redevelopment policies.

(a) The following general policies will guide the use resources employed towards rebuilding of the community's economic base:

(1) Reopen the business community.

(2) Re-establish the tourist industry.

(b) Damaged businesses and other economic enterprises necessary for the public health and safety and for restoring the community's economic base will be allowed to use temporary structures such as modular buildings, mobile homes, or similar type structures to carry out their activities, until their damaged structure is rebuilt or replaced according to applicable development and redevelopment regulations.

Sec. 6-181. Guidelines for acquiring damaged property.

(a) When determined to be in the public interest, the city council may enter into negotiation with a property owner or owners whose improved real estate property has been damaged by the disaster for the purpose of acquiring such buildings and associated land or lot for transfer by sale, lease or donation to the city when the following conditions are met:

(1) The property must be located in an area damaged by the disaster;

(2) The property should be free of any encumbrances; and

(3) The building structure must:

a. Have been damaged substantially beyond repair or must have been damaged to the extent that the cost of reconstruction or repairs exceeds 50 percent of the replacement value of the buildings or structures at the time of the disaster; or

b. Not be capable of repair because of buildback policy provisions herein or significantly increased building costs; or have been abandoned by its owner.

(b) Property acquired under these conditions must be dedicated for such purposes as the city council may agree are consistent with:

(1) Open space uses; or

(2) Managing the land for its dedicated purposes, future uses which would likely result in threats to human life or property damage of the same type that has occurred during previous disasters will not be permitted.

(c) Allowable open space uses include parks for outdoor recreational activities, nature preserves or trails, beach access, unimproved parking lots, and structures functionally related to these uses such as open-sided picnic facilities, refreshment stands, or other non-habitable structures primarily supporting the recreational activities.

Sec. 6-182. Authority.

Nothing in this division limits the authority of the city council to declare, repeal or extend a state of local emergency.

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 guilt 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 division~~ article ~~or the emergency measures which are effective as a result of this division~~article~~, 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.

b. ~~Media broadcasts or notices issued by the National Weather Service or National Hurricane Center of a hurricane or tropical storm warning shall be deemed sufficient notice to the~~ The owner of real property upon which construction is occurring or any contractor responsible for the construction

~~to~~ shall secure, store or remove loose construction debris and loose construction materials against the effects of high wind.

c. Materials stockpiled on top of any structure under construction shall be permanently installed by the property owner or contractor ~~at the direction of the city manager, or said manager's designee~~. However, if such installation cannot be timely completed, then the property owner or contractor shall:

1. Band together the construction materials and mechanically fasten them to the top of the structure in such a manner so a threat of becoming airborne during a tropical storm or hurricane is not experienced;

2. Remove the construction materials from the top of the structure and mechanically tie them down to the ground;

3. Remove the construction materials from the job site; or

4. Store the construction materials inside a protected structure.

d. Interiors of structures under construction shall be secured to prevent materials from becoming airborne.

e. All debris on a construction site shall be stored in commercial containers and shall be properly secured.

f. Commercial containers and portable toilets must be removed from a construction site or mechanically tied to the ground.

g. Piles of dirt, sand, and stone on a construction site shall be located away from the canals, right of ways, adjoining properties, swales, culverts, and inlet grates.

h. All construction materials or debris required to be secured, stored or removed shall remain so ~~secure, stored or removed hereunder from the property~~ until the National Weather Service, National Hurricane Center or other appropriate weather agency has removed all portions of Collier County from those areas included in a hurricane or tropical storm warning, or the city manager~~, or said manager's designee,~~ lifts an inclement weather directive pursuant to this ~~Code section~~article, whichever event ~~shall~~ first occurs.

i. In the event of a violation of this article, in addition to all other remedies provided ~~in this Code or otherwise~~ by law, the city may take whatever emergency action it deems necessary to secure, store or remove all loose construction materials and debris, including, but not limited to, roof tiles and roofing materials. In such circumstances, the city shall seek reimbursement ~~bill the property owner and~~or his/her agent ~~contractor~~ for all charges and expenses incurred to eliminate these potentially unsafe conditions pursuant to section 14-62 ~~by any means necessary~~. The securing of an outside contractor to perform these services shall be deemed to be the securing of emergency services and shall not require the city to utilize a competitive bid process to select a contractor. A notice of violation shall be posted at the job site and mailed to the property owner or contractor. The written notice shall constitute a stop work order and shall remain in effect until the bill is paid. Upon receipt of payment, the building official ~~or his designee~~ shall allow resumption of work. ~~If the bill for such services remains unpaid for a period of 30 days or more, the city may record a claim of lien encumbering the property and thereafter proceed according to law to enforce the lien~~.

j. The owner of the property and the contractor shall be jointly and severally responsible for compliance with the provisions of this article.

k. The owner or contractor~~, personally or through their agent or representative, shall have the right to~~ may appeal the decision of the city ordering the cessation of all work and appear before the construction board of adjustment~~s~~ and appeals pursuant to section 6-40~~at a specified time and place to show cause why they should not be responsible for weather emergency code~~ compliance.

(3) *Developed sites.*

a. On ~~all~~ developed property, all household furnishings including, but not limited to, furniture and lawn equipment not secured by a fence or screen enclosure, shall be secured, stored or removed so as to not create a safety hazard due to hurricane force winds.

b. All materials and household furnishings required to be secured, stored or removed shall remain so ~~secure, stored or removed hereunder from the property at the direction of~~ until the city manager~~, or said manager's designee,~~ lifts an inclement weather directive pursuant to this ~~Code~~ section, or until the National Weather Service, National Hurricane Center or other appropriate agency has removed all portions of Collier County from those areas included in a hurricane or tropical storm warning, whichever event occurs first.

c. ~~Media broadcasts or notice at the direction of the city manager, or said manager's designee issued by the National Weather Service or National Hurricane Center of a hurricane or tropical storm warning for Collier County shall be deemed sufficient notice to the owner of developed real property to store or secure furnishings or to remove furnishings not secured or stored from the property.~~

(c) *Penalties.*

(1) *Penalty.* The violation or failure to comply with any provision of this ~~Code~~ article ~~shall~~ is punishable according to the penalties and procedures set forth in chapter 14 of this code.~~constitute an offense against the city. Penalties shall be assessed in accordance with section 1-14 of this Code, or its successor.~~

~~(2) *Stop work order; order to abate.* Additionally, where a violation related to any construction or condition for which a permit has been issued; or is subject to issuance, the violation may be enforced by the building official or designee through the issuance of a stop work order in accordance with the procedures set forth in the Florida Building Code; or an order to repair, restore or demolish the work; to vacate the premises; or otherwise to abate the violation enforceable.~~

(~~2~~3) *Nuisance.* Any violation of this article is subject to abatement as a public nuisance.

~~(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. 8-33. Placement of tobacco products in open display unit.

No vendor shall place tobacco products in an open display unit unless such unit is located in a restricted access area or sell, permit to be sold, offer for sale, or display for sale any tobacco products by means of self-service merchandising in a non-restricted access area.

Sec. 8-34. Exceptions.

~~[~~The exceptions to the provisions of section 8-33 are as follows:~~]~~

(1) An establishment that prohibits persons under 18 years of age on the premises.

(2) Specialty tobacco stores.

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. 8-3~~67~~—8-50. Reserved.

ARTICLE III. SOLICITORS

Sec. 8-51. Intent and purpose.

The intent and purpose of this article is to require any solicitor to establish the solicitor's identity to safeguard the interests of residents of the city in the prevention of fraud and prevention of other crime. This article is also intended to protect the privacy of the residents of the city by limiting solicitation to reasonable hours.

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. 8-53. Exception.

The permit requirement of this article shall not apply to Collier County residents under the age of 18 engaging in solicitation for any civic, charitable, or governmental organization. Any parent or legal guardian accompanying any such individual shall not be required to obtain a permit.

Sec. 8-54. Acts prohibited.

No person shall:

(1) Enter into or upon residential premises in the city under false pretenses to engage in solicitation for any purpose.

(2) Enter upon any residential premises to engage in solicitation, when the owner or occupant has displayed a "No Soliciting" or "No Peddlers" sign on such premises.

(3) Remain in or on any residential premises to engage in solicitation after the owner or occupant has requested any such person to leave.

(4) Engage in solicitation in the city without a permit as provided in this article.

(5) Engage in solicitation prior to 9:00 a.m. or after 5:00 p.m.

(6) Engage in solicitation in the city with a permit issued in another's name.

(7) Engage in solicitation without a permit visibly displayed.

(8) Fail to produce photo identification upon request when engaged 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. 8-56. Issuance.

Upon furnishing the information required under section 8-55, the applicant shall be issued a permit, unless the information furnished in compliance with this article shows that the applicant has been:

(1) Convicted of a violent felony crime;

(2) Three or more convictions for crimes involving theft, fraud, violence or moral turpitude;

(3) Two convictions for crimes involving theft, fraud, violence or moral turpitude if less than ten years have passed since released from any court ordered incarceration or supervision;

(4) One conviction for a felony crime involving theft, fraud, or moral turpitude if less than five years have passed since released from any court ordered incarceration or supervision; or

(5) One conviction for a misdemeanor crime involving theft, fraud, violence or moral turpitude if less than three years have passed since released from any court ordered incarceration or supervision.

Sec. 8-57. Duration, renewal.

A permit issued under this article shall be valid for 30 days from the date of issuance. Renewals for like periods may be granted, unless earlier revoked as provided in this article. A maximum of two renewals will be granted without submission of a new permit application and payment of the applicable permit fee. Prior to issuing a renewal, the individual shall attest to the accuracy of the information provided in the original permit application and disclose any changes to the information previously provided therein.

Sec. 8-58. Duty to carry, exhibit permit.

Every solicitor shall carry the solicitor's permit and photo identification at all times while engaged in solicitation. The permit shall be visibly displayed while engaged in solicitation and the photo identification shall be shown upon request.

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.

Sec. 8-71. Definitions.

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

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

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

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

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

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

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

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

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

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

Sec. 8-72. Exemptions.

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

(1) Any individual noncommercial property owner engaging in ~~lawn, landscaping or~~ lawn or landscaping maintenance on one's own property;

(2) Any landscape architects licensed by the state engaging in lawn or landscaping maintenance services;

(3) Any person ~~individual or business entity, which~~that possesses a license from the state to apply herbicides, pesticides, chemicals; ~~or~~and

(4) Any ~~individual or business entity~~person possessing a valid specialty contractor's license from Collier 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~~C~~ode 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~~F~~ertilizer 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 c~~C~~ertification 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.~~

~~3. Rates and methods of applying fertilizer and irrigation that minimize negative environmental consequences.~~

~~4. Utilization of integrated pest management to both minimize pests and decrease chemical applications.~~

~~d. Illustrate an ability to apply his or her knowledge of the concepts identified herein by providing a written, detailed management plan that outlines maintenance activities to be carried out for specific locations.~~

d~~e~~. Provide an initial application fee ~~of $50.00~~ and a fee for each renewal as established by resolution of the city council, which shall be used to defray the costs of the program. ~~A fee of $15.00 shall be charged to renew certification. The application fee may be amended by resolution of the city council as may be necessary.~~

~~(3) The city shall provide any person who has satisfied the requirement set forth herein and paid the application fee, registration and a decal indicating the city considers that person to be a certified lawn and landscape maintenance professional.~~

~~(4) The registration program shall be managed and administered by the growth management department. However, the city manager or designee shall retain the authority to approve registration of any applicant for lawn and landscape registration.~~

~~(5) It shall be the responsibility of the landscape professional to complete required training and to register with the city.~~

Sec. 8-75. Duration, renewal.

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

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

(a) *Identification.* Every registered lawn and landscaping professional shall carry ~~his or her~~ their registration and photo identification at all times while engaged in lawn or landscaping maintenance work in the city.

(b) The city-issued lawn and landscape professionals decal shall be displayed on every state-licensed motor vehicle used by a commercial fertilizer applicator or institutional applicator, and by lawn and landscape maintenance professionals when performing services within the city limits. One decal will be issued with each registration;

each additional decal will cost $5.00. The decal shall be displayed prominently and in such a manner as not to be obstructed.

(cb) *Permitting.* All registered landscape professionals are required to obtain appropriate permits from the city.

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

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

Sec. 8-77. Penalty, ~~R~~revocation 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~~registration 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.

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. 8-801—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§. 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.

Sec. 10-6. Emergency measures.

(a) In addition to any other powers conferred by law, upon the declaration of a state of emergency pursuant to this ~~article~~chapter, the chair~~man, or the vice-chairman in his absence, or the city manager in the absence of the chairman and vice-chairman,~~ may order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, and with such limitations and conditions as ~~he~~ the chair may deem appropriate to protect the health, safety and welfare of the community:

(1) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and combustibles.

(2) Establish curfews, including but not limited to the prohibition of or restrictions on pedestrian and vehicular movement, standing and parking, except for the provision of designated essential services, such as fire, police, emergency medical services and hospital services, including the transportation of patients, utility emergency repairs and emergency calls by physicians.

(3) Utilize all available resources of the city government as reasonably necessary to cope with the disaster emergency.

(4) Declare certain areas off limits to all but emergency personnel.

(5) Make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.

(6) Establish emergency operating centers and shelters in addition to or in place of those provided for in the city's emergency plan.

(7) Declare that during an emergency it shall be unlawful and an offense against the city for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.

(8) Declare that during an emergency it shall be unlawful and an offense against the city for any person operating within the city to charge more than the normal average retail price for any merchandise, goods, or services sold during the emergency. The average retail price as used in this subsection is defined to be that price at which similar merchandise, goods, or services were being sold during the 90 days immediately preceding the emergency or at a markup which is a larger percentage over wholesale cost than was being added to wholesale cost prior to the emergency.

(b) Preceding or during the emergency, the chair, or in the chair's absence, the vice-chair, or in both of the chair and vice-chair's absence, the city manager~~man, or the vice-chairman in his absence, or the city manager in the absence of the chairman and vice-chairman,~~ shall have the authority to call on the National Guard or the Army, Coast Guard, or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue, and traffic control.

Sec. 10-7. Authority of council.

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

Chapter 11~~ARTICLE VII.~~ MISCELLANEOUS OFFENSES

ARTICLE I. SEXUAL OFFENDERS AND SEXUAL PREDATORS

Sec. 11-1~~18-200~~. Sexual offender and sexual predator residency prohibition.

(a) *Findings and intent.*

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

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

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

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

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

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

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

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

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

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

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

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

(e) *Exceptions*.

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

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

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

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

(2) The exceptions in subsections ~~18-200~~11-1(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~~ is ~~addition to and~~ supplemental to F.S. ch. 162, pts. I and II, or as otherwise provided by general law.

Sec. 14-4. 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. Said definitions are inclusive as well as supplemental to those definitions set forth in F.S. ch. 162. These definitions are supplemental to the definitions in section 1-2 of this code and shall prevail in case of conflict.

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

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

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

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

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

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

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

Sec. 14-5. Notice to subsequent owners.

Any owner of property that is subject to a code enforcement proceeding under this chapter who transfers ownership of such property between the time the initial notice or pleading was served and the time of the hearing is required to comply with the provisions of F.S. § 162~~0~~.06(5)~~, as amended~~.

Secs. 14-6—14-20. Reserved.

ARTICLE II. SPECIAL MAGISTRATES

Sec. 14-21. Appointments; qualifications.

(a) The council may appoint up to three special magistrates.

(b) Special magistrates shall at a minimum:

(1) Be a graduate of a law school accredited by the American Bar Association;

(2) Be a member in good standing of the Florida Bar; or another state bar.

(3) Be an arbitrator qualified by a recognized arbitration association.

(c) Special magistrate appointments shall be for a two-year term. Any special magistrates shall be eligible for reappointment by the council. The council shall have the authority to remove a special magistrate with or without cause upon ten days' written notice.

(d) If any special magistrate resigns or is removed prior to expiration of their term, or if the council determines that a special magistrate shall not be reappointed, the city manager may make a recommendation for appointment from the candidates previously interviewed to fill the vacancy.

Sec. 14-22. Powers and duties of the special magistrate.

The special magistrate shall have the jurisdiction and authority to do the following:

(1) Adopt rules and regulations for the conduct of hearings to be approved by council;

(2) Subpoena violators and witnesses to appear at its hearings, which subpoena may be served by the Collier County Sheriff or any person authorized by law to serve process;

(3) Subpoena evidence to its hearings, including, but not limited to, records, surveys, plats, and other documentary evidence; which subpoena may be served by the Collier County Sheriff or any person authorized by law to serve process;

(4) Take testimony under oath;

(5) Hold hearings on notice of violations or contested citations where applicable;

(6) Issue orders having the force of the law to command whatever steps are necessary to bring a violation into compliance;

(7) Modify or reduce any existing orders, including any assessed fines prior to their recordation pursuant to guidelines adopted by resolution of the council;

(8) Such other powers as provided by general law.

Secs. ~~2~~14-23—~~2~~14-30. Reserved.

ARTICLE III. CODE ~~COMPLIANCE~~ ENFORCEMENT NOTICE OF VIOLATION PROCEDURE

Sec. 14-31. Notice of violation.

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

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

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

(1) Pursue code enforcement action, in which case the consent agreement will automatically deemed to be null and void, will have no further effect on the parties, and will not be binding on the special magistrate; or

(2) Enforce the terms and conditions of the consent agreement in a court of competent jurisdiction by injunction or an action for specific performance, in the city's sole discretion.

Sec. 14-52. Additional enforcement measures.

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

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

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

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

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

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

(d) Nothing contained 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, abate or remedy any violation or noncompliance of this code or any emergency measure that may be made effective pursuant to this code, including but not limited to injunctive relief; or to recover damages suffered by the city as a result of a violation; or to recovery of reasonable attorney's fees, court costs, court reporter's fees and other expenses of litigation.

(e) Remedies provided in section 14-71.

(e) 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. 14-512—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 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, ~~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~~ owninger and occupant of any establishment open to the public shall provide receptacles adequate to contain litter generated from the establishment.

(8) *Placement of waste at curb.* ~~Owners, lessees, commercial businesses, or occupants of any property~~ It is a violation of this article to ~~shall not~~ place ~~their~~ any trash receptacle, bagged garbage, yard waste, recycle bin, or other waste or abandoned property out by the curb of ~~their property~~ for trash pickup before 6:00 p.m. of the evening before the scheduled pickup day. All owners and ~~, lessees, commercial businesses, or~~ occupants of any property shall remove any such containers and place them inside their garage or to the side or rear of their dwelling or structure by 7:00 p.m. on the evening of trash pickup.

(9) *Wind-driven debris and litter.* All persons~~owners, occupants, contractors, disposal contractors, and cleaning persons, and commercial businesses~~ shall ensure that ~~store their litter in such a manner as to eliminate~~ no wind-driven ~~debris and~~ litter is generated from their property or activities~~in and about the city, their residence, or their business~~. Spillage and overflow around containers shall constitute an illegal accumulation of litter and shall be cleaned up immediately.

(10) *Weeds and litter on private property.* Owners and~~, lessees~~, occupants of a property~~, or agents of the owner of any lot, developed or undeveloped,~~ shall ~~control all excessive growth of~~ maintain grasses ~~or~~and weeds on such property to a maximum height of ~~over~~ 15 inches ~~by cutting the grasses and weeds. Owners, lessees, occupants or agents for the owner of developed and undeveloped lots shall control all excessive growth of grasses or weeds within the right-of-way adjacent to their property by cutting or removing the grasses and weeds.~~ The practice of scalping or removing grass or weeds by clearing the topsoil is prohibited except when done as part of the building process when a permit has been issued for the property. All accumulations of litter and~~,~~ pollution~~, abandoned property, downed trees or other matter~~ on or within such ~~lots~~ private property ~~or the public~~ street right-of-way adjacent ~~to the lot~~ shall be removed by the owner or ~~,~~ occupant~~, lessee, or agent of an owner~~, ~~except that trash may be placed in the right-of-way as part of trash pickup as outlined in subsection (8) of this section~~.

(11) *Abandoned property*. Abandoning property, allowing property to be abandoned, or allowing abandoned property to persist, is a violation of this article.

Sec. 18-37. Penalties; a~~A~~batement of nuisances.

(a) Violation of this article shall be penalized in accordance with ch. 14 of this code. The city may abate violations of this article in accordance with the procedures in section 14-62.~~Whenever the city manager or designed code compliance official shall determines that an activity or condition as described in section 18-36(1) through (9) and (11) exists, then a notice of violation may be served on the owner of record of the property. The notice shall include a property description, the date, the ordinance code number which has been violated, a description of the violation, the name of the recorded owner, a correction deadline date to be no more than 20 days from the date of the letter or notice, and the name of the city manager or designed code compliance official. Notice shall be deemed served by personal service, by certified or registered mail with return receipt requested, or by posting a notice at the property and city hall for a period of seven days when the property owner refuses to accept the certified letter or the letter is returned as not deliverable. For the purposes of this section, delivery by certified or registered mail shall be deemed to occur upon deposit in the U.S. mail with sufficient postage attached. If the activity or condition described in the notice is not abated after the correction date passes, the city manager or designated code compliance official may initiate abatement of the activity or condition as prescribed in subsection (c) of this section~~.

~~(b) Annually, the city manager or designated code compliance official shall publish the code compliance policy and abatement procedure regarding violations of section 18-36(10). Whenever the city manager or code compliance official shall determines that grass or weeds on a developed or undeveloped lot exceed 15 inches is in violation of section 18-36(10) (weeds over 15 inches), a notice of violation shall be posted on the lot and at the code compliance office. The notice shall include the date, the location, the type of violation, the ordinance number, the date by which the violation must be corrected, and the name and phone number of the investigating code compliance officer. Notice shall require corrective action in no more than seven days from the date the notice is posted. If the overgrown weeds are not truly abated as described in the notice after the passing of seven days, the city manager or his designated code compliance official may, initiate abatement of the overgrown weeds as prescribed in subsection (c) of this section.~~

(b~~c~~) ~~After the property owner or his agent has refused to abate the activity or condition described in the notice by the specified date, the city may, through its employees, servants, agents, or contractors, enter upon the property and take such steps as are reasonably required to effect the abatement of the nuisance.~~

~~(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'''s board of adjustments and appeals.

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

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

(b) Prior to the expiration of the 20 days provided for in subsection 18-37(cd), any owner shall have a right to request a hearing before the code enforcement board special magistrate to show cause, if any, why the expense and charges incurred by the city under this article are excessive or unwarranted or why such expenses should not constitute a lien against the property.

(c) If, after the hearing, the code enforcement board special magistrate determines that the assessment is fair, reasonable, and warranted, the assessment resolution shall be recorded forthwith. If the code enforcement board special magistrate determines that the charges are excessive or unwarranted, it the magistrate shall direct the city manager or his designated code compliance official to recompute the charges and the code enforcement board shall hold a further hearing after notice to the owner upon the recomputed charges.

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

(a) Officers of city code compliance department are hereby empowered to issue written corrective notices and/or notices to appear in misdemeanor court to any person violating the provisions of this article. Officers are further empowered to process these cases for hearing before the city code enforcement board.

(b) Written corrective notices issued to violators of this article shall state the date observed, the nature of the offense committed, the corrective measures to be taken and the date on or before which such corrections

~~shall be made. If the agent issuing the written corrective notice has reason to believe a violation presents a serious threat to the public health, safety or welfare of the public or that the violation is of such a nature as to require immediate correction, the violator may be required by the notice to effectuate immediate corrective measures upon receipt of the notice. The time period allowed for taking corrective measures shall not exceed 20 days. All such notices issued shall be maintained by the issuing authority for public inspection during normal office hours. Notices mailed to the violator''s address indicated on the records of the county property appraiser''s most current tax roll of such lot or parcel of land for ad valorem taxation purposes by registered or certified mail, return receipt requested, shall be deemed personal service upon the person for the purpose of this article.~~

~~(c) Any person who has been served with such notice in accordance with the provisions of this article, and who neglects or refuses or fails to fully comply with the corrective notices so ordered and/or to comply within the timeframe so ordered therein, shall be in violation of this article.~~

Secs. 18-3841—18-60. Reserved.

ARTICLE III. FERTILIZER REGULATIONS

Sec. 18-61. Short title.

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

Sec. 18-62. Intent and purpose.

(a) To provide for the regulation of fertilizers containing nitrogen or phosphorous and to provide specific management guidelines for fertilizer application in order to minimize the negative environmental effects said fertilizers have in and on the waterbodies within and surrounding the city.

(b) These guidelines and practices are established to help communities, developers, builders, contractors, businesses and homeowners be partners in improving and protecting Florida's environment.

(c) This article is based on the "Model Ordinance for Florida-Friendly Fertilizer Use" or equivalent as encouraged by F.S. § 403.9337.

(d) Nitrogen and phosphorous are essential ingredients for plant growth; however, overuse and improper application of these nutrients create water quality issues and pollute our treasured natural waters. They promote algae blooms and other excessive plant growth. Low to no phosphorus fertilizer and slow release nitrogen fertilizer, along with proper utilization, result in absorption by plants and lower levels of nitrogen and phosphorus reaching the water bodies within and surrounding the city and their associated watersheds.

(e) Certification and training, as required by article IV (Marco Island Lawn and Landscape Maintenance Registration Regulations), will result in increasing the knowledge of lawn and landscape maintenance professionals, and their customers, of:

(1) The effects of pesticides, fertilizers and overwatering on the environment;

(2) Ways to reduce the amount of fertilizers and pesticides utilized; and

(3) Methods to limit water use on lawns and landscapes thus potentially lowering the impacts of nonpoint source pollution on local water bodies.

Sec. 18-63. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rapid release or water soluble nitrogen means any product containing:

(1) Ammonium nitrate.

(2) Ammonium sulfate.

(3) Calcium nitrate.

(4) Diammonium phosphate.

(5) Monoammonium phosphate.

(6) Potassium nitrate.

(7) Sodium nitrate.

(8) Urea (not in the form of slow release nitrogen).

(9) Others as may be designated in writing by the administrator.

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

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

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

(1) Isobutylidene diurea (IBUD).

(2) Resin, polymer, or sulphur coated urea.

(3) Biosolids or residuals from domestic wastewater treatment.

(4) Ureaformaldehyde.

(5) Composted animal manure.

(6) Others as may be designated in writing by the city manager or designee.

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

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

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

Sec. 18-64. Fertilizer regulations.

(a) *Applicability.* This section shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the city unless such applicator is specifically exempted by the terms of this section from the regulatory provisions of this section. This section shall be prospective only, and shall not impair any existing contracts.

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

(1) Bona fide farm operations as defined in the Florida Right to Farm Act, F.S. § 823.14.

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

(3) Yard waste compost, mulches, or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil. Yard wastes shall not be disposed of or stored by shorelines, seawalls, swales or near storm drains.

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

(5) Newly planted turf and/or landscape plants may be fertilized only for a 60 day period beginning 30 days after planting, if needed to allow the plants to become well established. Caution should be used to prevent direct deposition of nitrogen and phosphorus into the water.

(c) *Impervious surfaces.* Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces. Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed. Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container. In no case shall grass clippings, vegetative material, and/or vegetative debris, including coconuts either intentionally or accidentally, be washed, swept, thrown, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, sidewalks or roadways.

(d) *Fertilizer free zones.*

(1) Fertilizer shall not be applied within ten feet of any pond, stream, storm drain, watercourse, lake, canal or wetland as defined by the Florida Department of Environmental Protection, or from the top of a seawall.

(2) Spreader deflector shields are required when fertilizing adjacent to fertilizer free zones or impervious surfaces.

(e) *Timing of fertilizer application.* No applicator shall apply fertilizers containing nitrogen or phosphorous to turf and/or landscape plants during the rainy season (June 1 - September 30) and the prohibited application period and to saturated soils.

(f) *Fertilizer content and application rate.*

(1) Phosphorus fertilizer shall not be applied to turf or landscape plants unless a soil or tissue deficiency has been verified by an approved test. Where a deficiency has been verified, phosphorous fertilizer shall not be applied at application rates that exceed 0.25 lbs. P_2O_5/1000 ft^2 per application and not to exceed 0.50 lbs. P_2O_5/1000 ft^2 per year.

(2) Fertilizer applied to turf or landscape plants within the city must contain no less than 50 percent slow release nitrogen per guaranteed analysis label as guaranteed analysis and label are defined in F.S. ch. 576.

(3) *Total yearly applications.* Fertilizers shall not be applied more than four times during any one calendar year to a single area. No more than four pounds of nitrogen per 1,000 square feet shall be applied to any turf or landscape area in any calendar year.

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

(g) *Education and outreach.*

(1) The city will provide educational materials, notices and/or presentations notifying residents that fertilizers applied within the city shall be formulated and applied in compliance with this section.

(2) The beautification committee, in conjunction with city staff, shall incorporate into their community outreach programs no less than two educational sessions on the requirements of the fertilizer ordinance per year.

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

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

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

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

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

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

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

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

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

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

Secs. 18-66—18-100. Reserved.

ARTICLE IV. NOISE CONTROL

Sec. 18-101. Short title.

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

Sec. 18-102. Intent and purpose.

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

(b) The ~~Marco Island C~~city ~~c~~council finds that ~~unreasonably~~ excessive noise degrades the environment of the city to a degree that such noise:

(1) Is harmful to the health, safety, and welfare of city residents and visitors; and

(2) Interferes with the comfortable enjoyment of life and property; and

(3) Interferes with the well-being, tranquility, and privacy of one's home; and

(4) Can cause and aggravate health problems.

(c) The effective control of ~~unreasonably~~ excessive noise is essential to the health, safety, and welfare of city residents and visitors, and fosters the comfortable enjoyment of life, including, but not limited to, recreation, work, communication, and rest.

(d) This section is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of residents and visitors of the ~~C~~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 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 th~~e "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 ~~C~~city ~~of Marco Island~~ and federal government.

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

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

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

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

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

Noise disturbance or *excessive noise* means any sound, which because of its volume level, duration~~,~~ and character, 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~~of 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 pers~~s~~'on's ordinary auditory senses, so long as the pers~~s~~'on'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~~is unlawful for any person~~(s)~~, including the property owner(s), to permit, cause, allow, create, emit, or sustain ~~unreasonably~~ excessive noise from a property, including the air space above the property~~thereof, located in the City of Marco Island~~. Noise disturbances ~~violations~~ are ~~considered~~ irreversible and irreparable violations of this article.

(b) *Prima facie evidence.* For the purposes of this subsection, the following shall constitute prima facie evidence that ~~a sound~~ noise (whether recurrent, intermittent, or continuous) is ~~unreasonably~~ excessive ~~and raucous if~~:

(1) Between the hours of 10:00 p.m. and 7:00 a.m., the sound is plainly audible a minimum of 50 feet from the property line of the source of the sound or within a fully enclosed structure or residence on any receiving property; or

(2) Sound pressure levels by receiving land use;

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

(b) ~~(~~3) Multifamily dwellings and duplexes. ~~In the case of multifamily dwellings and duplex dwelling units, it~~ It ~~shall be~~is 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 ~~neighb~~'~~or's~~ dwelling unit within such multifamily or duplex structure. The plainly audible standard does not apply to this paragraph~~in multifamily dwellings and duplexes~~.

(c~~d~~) It ~~shall be~~is 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 c~~C~~ommunity 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 a~~A~~ny 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 ~~H~~houses of worship ~~(excluding~~ between 7:00 a~~p~~.m. and 7:00 p~~a~~.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~~ prohibits ~~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 Isla'nd'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 Isla'nd's Noise Control Ordinance. You are being given a five minute warning to bring the sound level into compliance with the City of Marco Isla'nd'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 Isla'nd'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~~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 i~~ssued 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~~magistrate, and the potential imposition of a fine for the violation(s).

(5) Any person(s), including the property owner(s), who violates any of the provisions of this section shall be subject to a civil penalty not to exceed $250.00 for a first violation (excludes the violation which resulted in the property ow~~n~~'er'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 ci'ty'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 ~~C~~city ~~of Marco Island, Florida~~, by including measures for protection and/or relocation of endangered, threatened, or species of special concern or status.

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

Sec. 18-142. Definitions.

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

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

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

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

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

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

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

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

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

Sec. 18-143. New development.

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

(1) Prior to submission of any permit application, the applicant must survey 100 percent of the affected property for the most commonly found listed species on Marco Island: the Burrowing Owl (Athene

cunicularia floridana), the Gopher Tortoise (Gopherus polyphemus), American Osprey (Pandion haliaetus), beach-nesting and migratory coastal bird species, including American Oystercatcher (Haemotapus palliates), Black Skimmer (Rynchops niger), Least Tern (Sternula antillarum), Piping Plover (Charadrius melodus), Red Knot (Calidris canutus rufa), Snowy Plover (Charadrius nirosus), Reddish Egret (Egretta rufescens), Roseate Spoonbill (Platalea ajaja), Tricolored Heron (Egretta tricolor), and Little Blue Heron (Egretta caerulea), and Bald Eagle (Haliaeetus leucocephalus). If a listed species is on the property, the appropriate state and/or federal agency must be contacted for management guidelines, and compliance with all agency permits and protections is required.

(2) If a listed species is found on the property, then the applicant must include the survey with the permit application and indicate that a state or federal permit is being pursued for removal, relocation or protection of the listed species onsite. The survey must be conducted by a professional environmental surveyor licensed to conduct such work or an FWC authorized or registered agent. In addition, all burrowing owl burrows and gopher tortoise must be posted by the City of Marco Island, Audubon of the Western Everglades (AWE), or Florida Fish and Wildlife Conservation Commission (FWC) staff or authorized agents.

(3) Further, a management plan for a protection zone during construction shall be submitted to the city for review and approval ~~by the community affairs department~~ for the management of on-site habitat and wildlife, including measures for protection and/or relocation of species of special status. Such plans shall comply with current federal, state and local policies. The city may consider and utilize recommendations and letters of technical assistance of the FWC, and recommendations and guidelines of the USFWS, in issuing developmental orders on property containing wildlife species of special status.

Sec. 18-144. Activities within protection zones.

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

(1) City-approved volunteers, including FWC and Audubon staff and volunteers, who maintain burrows in designated zones in the city, may conduct maintenance activities that shall include the clipping of vegetation within the protection zone, staking and posting the zone with flagging tape, string or rope, and signage, and recording pertinent data.

(2) FWC or Audubon-trained contractors may enter the protection zone to remove debris with the full understanding that they can do nothing to disturb or harm the species or burrow in any manner. Contractors and lawn/lot maintenance companies shall accept full responsibility for the actions of their employees to ensure that all laws protecting such species are adhered to. Entry into a protection zone is prohibited except by authorized or registered agent, property owner, FWC, and trained city or Audubon staff, volunteers or consultants.

(3) FWC or Audubon-trained city employees and property owners may enter the protection zone for the purpose of maintaining vegetation if using equipment that does not exert pressure on the ground to ensure the burrow does not collapse.

(4) Scientific research/investigations approved by the FWC and/or the USFWS may occur within the city. The city shall be notified of all such research/investigations and provided with all study reports and publications.

(5) Authorized representatives of developers including, but not limited to, professional environmental consultants that are conducting surveys or monitoring in conjunction with private or municipal construction may enter only after training or permit from FWC.

(6) To prevent unnecessary disturbance, take or burrow collapse, operation and parking of any vehicles or equipment is prohibited within 33 feet of burrowing owl burrows and within 25 feet of gopher tortoise burrows.

Sec. 18-145. Protection and permitting procedures.

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

(1) No active or inactive owl and/or gopher tortoise burrow, or nests of any other listed species, may be taken without proper state or federal permits issued by the FWC or USFWS, as required.

(2) If state or federal permit(s) are issued, they shall be posted on site during all phases of the construction.

(3) No city building permits will be issued for applicants to take a gopher tortoise burrow, unless FWC has issued permit to take the tortoise burrow(s) and construction can commence with a protection zone in place. No city permits will be issued for applicants to take a burrowing owl burrow unless an FWC migratory nest/burrow removal permit has been issued and provided to the city. Only inactive burrows can be taken per FWC migratory nest/burrow removal permit provisions and the FWC Burrowing Owl Guidelines. For burrowing owls, the protection zone ~~requirement shall be a protection zone,~~ shall consist~~ing~~ 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 s~~Silt fencing, having a diameter of at least 25 feet, erected prior to construction activities around two to three sides of each affected burrow during all phases of construction, leaving one or two sides open for species ingress and egress.

b. FWC or Audubon trained contractors will be responsible for maintaining the zone and informing all workers and subcontractors to avoid the zone and to do nothing to violate the burrow(s) in such a way as to make it collapse. Any violation or destruction will ~~place~~ subject the contractor ~~subject~~ to penalty. Such protection zone shall be removed upon completion of construction activities.

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

(5) All FWC and USFWS rules and guidelines relating to protection and/or taking procedures shall be followed if not described in this article.

(6) The city will enforce trash and food waste management policies to protect listed species and control nuisance wildlife and human health threats. Trash bins must remain closed at all times and secured

from wildlife entry. Discarding of food waste or other trash is prohibited anywhere outside proper receptacles.

(7) Feeding any wildlife is prohibited in the city, except the use of bird feeders at least 300 feet from any designated conservation area.

(8) State and federal protections will be enforced for bald eagles, ospreys, shorebirds, wading birds, brown pelicans, and their nests and roost sites, including required protection buffer zones.

(9) State and federal protections for manatees will be enforced within the city, including manatee speed zones on waters of the city.

(10) Mangroves, dunes and dune vegetation are protected from damage and destruction because of their value to listed species as habitat and the well-documented protection they provide from tropical storms and coastal inundation and erosion. Trimming of mangroves is regulated by the state department of environmental protection. Any permits issued for the removal of mangroves or any required mitigation related to mangrove impacts shall be administered by FDEP.

(11) To protect the regionally significant populations of beach-nesting birds and migratory flocks within the city, the following policies are in effect:

a. No trespassing in posted or closed nesting or habitat areas (protection zones).

b. ~~Fireworks, d~~Dogs and other lethal disturbance sources are prohibited on beaches.

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

d. Nothing in this paragraph shall be construed to regulate the use of fireworks in conflict with ch. 2007-67, §10(5), Laws of Florida.

Sec. 18-146. Enforcement and penalties.

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

(1) The city shall seek the property ow~~n~~'er's permission to enter property for the purpose of inspection and monitoring of any protected species.

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

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

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

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

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

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

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

~~a. First offense—Minimum of $150.00, not to exceed $500.00 for each offense as provided for in F.S. § 162.22;~~

~~b. Second offense—Minimum of $500.00, not to exceed $1,500.00, as provided for in F.S. § 162.09; and~~

~~c. Third offense—Minimum of $1,500.00, not to exceed $2,000.00, as provided for in F.S. § 162.09.~~

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

~~In addition to the penalties provided herein, the city may recover reasonable attorn~~'ey's fees, court costs, court report~~t~~'er's fees and other expenses of litigation by appropriate suit at law against the person found to have violated this division or the orders, rules, regulations and permits issued hereunder.~~

Secs. 18-14~~8~~7—18-170. Reserved.

ARTICLE VI. PALM LETHAL YELLOWING (PLY) DISEASE

Sec. 18-171. Intent and purpose.

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

Sec. 18-172. Definitions.

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

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

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

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

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

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

Public nuisance has the meaning ascribed to it in section 1-2 of this code ~~shall means any tree infected with a plant disease known as the PLY, including without limitation, all species of coconut palm trees and any tree that is a carrier of the disease.~~

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

(a) F.S. ch. 252 authorizes the waiver of procedures and formalities otherwise required in order to take whatever prudent action is necessary to ensure the health, safety and welfare of a community in the event of a state of emergency. In the case of PLY, city council shall make a determination that a localized state of emergency exists. However, if the threat is deemed imminent, the city manager ~~or designee~~ may make the declaration, subject to ratification by city council at the next regularly scheduled meeting. The city manager ~~or designee~~ shall provide city council with the boundary for the area(s) subject to the localized state of emergency.

(b) Upon declaration, the localized state of emergency from the PLY shall continue until the city manager ~~or designee~~ determines that the threat of danger no longer exists and terminates the emergency. The declaration of termination of the localized state of emergency is subject to ratification or rejection by the city council at the next regularly scheduled meeting after the declaration or termination occurs.

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

In addition to any other powers conferred by law, the city manager~~, or designee,~~ may order and promulgate one or more of the following measures to be effective within designated areas during the period of such declared emergency, and with such limitations and conditions as may be deemed appropriate to protect against damage or loss of property by PLY:

(1) Require the mandatory inoculation of all coconut palm trees.

(2) Require removal of palm trees found to be infected by, or a carrier of PLY, by the property owner within five days from the date the tree(s) are found to be diseased or as determined by the city manager ~~or designee~~.

(3) Utilize all available resources of the city government as reasonably necessary to cope with the emergency, including expenditures for the survey of the existing coconut palm tree population, the inoculation of city-owned coconut palm trees, the removal of infected trees on city-owned property and on private property when the owner has failed to comply with mandated inoculation or removal thereof, and to make other reasonable expenditures in implementing this code.

(4) Have suspected trees inoculated or ~~have such trees~~ removed in lieu of mandating inoculation or removal by landowner.

(5) Curtail the transportation of coconut palm trees into or out of the city.

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

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

(a) Upon declaration of a localized state of emergency, it shall be unlawful for any owner of ~~any parcel of~~ land within an area designated for mandatory inoculation to keep or maintain any coconut palm tree, Christmas palm tree or other carrier of PLY without providing inoculation and/or treatment documentation as approved by the city manager ~~or designee~~.

(b) If inoculation of a tree(s) is mandated pursuant to this article, it shall be the duty and responsibility of ~~the~~ property owners ~~of any such property or parcel of land containing such tree~~ 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 tress are located who have not complied with the requirement of this code or have not submitted a certificate of compliance.~~

(~~b~~c) A property owner may at any time inoculate the property own~~n~~'er's trees; however if any such inoculation is required, the antibiotic and treatment procedures used must be in accordance with generally accepted inoculation practices.

(c~~d~~) 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.

(d~~e~~) Examples of PLY susceptible palm species within the city shall include without limitation, the following:

Coconut	Date	Jamaican Tall
Christmas	Malayan Dwarf	*Pritchardia* sp.
Clustering Fishtail	Malayan	Maypan cultivar
Windmill	Screwpine	Panama Tall

Note: PLY does not attack Cabbage, Royal, Mexican W~~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~~

must be removed and disposed of by burial at a county owned disposal facility within five days after notification to owner.

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

~~(a) Within the time period referred to in this article for mandated inoculation, the property owner of any parcel of land within the city on which said trees are located must inoculate or make provision for inoculation of trees by persons who have been approved by the city manager or designee to provide the treatment necessary to abate PLY.~~

(a~~b~~) If a property owner fails to provide for inoculation, the city may inoculate or have its agent inoculate such trees and the property owner shall be liable for the expenses incurred by the city, its agents or contractors, in treating the affected palms. The expenses of inoculation shall constitute a lien on the real property upon which the inoculation has taken place in accordance with section 18-180.

(b~~c~~) If infected trees have not been removed by owner within five days after notification, the city shall abate the nuisance and shall, through its employees, agents or contractors, be authorized to enter upon the property and take steps as are reasonably required to effect abatement. The expenses of tree removal shall constitute a lien on the real property upon which the tree removal has taken place, in accordance with section 18-180.

(c) The city shall recover the expenses incurred for nuisance abatement in accordance with the procedure in section 14-62 of this code.

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

~~(a) For abatement work performed by the city as provided for in section 18-179(b) and (c), an invoice shall be mailed to the property owner for all costs associated with the inoculation or tree removal, including any administrative costs actually incurred by the city.~~

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

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

~~City of Marco Island~~

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

~~Legal Description:~~

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

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

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

~~(d) If an owner fails to pay any such assessment within 20 days after said assessment has been made, the city manager shall cause a certified copy of the assessment resolution to be recorded in the public records and the assessment shall constitute a lien on the property as of the date of the recording.~~

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

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

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

No person shall knowingly sell, offer for sale, transport into the city for sale, plant or cause to be planted, trees with or carriers of PLY. ~~The city manager or designee~~ Code 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

Sec. 18-210. Short title.

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

Sec. 18-211. Definitions.

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

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

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

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

Department means the ci'ty's public works department.

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

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

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

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

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

Emergency has the meaning ascribed to it in section 1-2 of this code means, as provided in section ~~10-1 of this Ccode, any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property~~.

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

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

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

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

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

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

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

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

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

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

MS4 (see *Municipal separate storm sewer system*)

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

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

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

Person has the meaning ascribed to it in section 1-2 of this code ~~means an individual, corporation, limited liability company, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.~~

Pollutant means anything that causes or contributes to pollution. Pollutants may include, but are not limited to paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard

wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that the same may cause or contribute to pollution; floatables; pesticides; herbicides; fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

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

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

Rendered or *rendition* 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 manag'er'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 manag'er'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.

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

Sec. 18-212. Illicit discharges.

(a) *Purpose and intent.* The purpose of this section is to provide for the health, safety, and general welfare of the citizens of the city by minimizing discharge of pollutants through the regulation of non-stormwater discharges to the ci'ty's municipal separate storm sewer system (MS4) to the maximum extent practicable. This section establishes methods for controlling the introduction of pollutants into the ci'ty's MS4 within the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this section are:

(1) To regulate the contribution of pollutants to the city's MS4 ~~by~~ from stormwater discharges by any user;

(2) To prohibit illicit connections and discharges to the city's MS4; and

(3) To establish legal authority to carry out all inspection and monitoring procedures, necessary to ensure compliance with this section.

(b) *Applicability; interconnected MS4s.* This section shall apply to the entire city's MS4, unless explicitly exempted by the city in writing.

(c) *Ultimate responsibility.* The standards set forth herein, and promulgated pursuant to this section, are minimum standards. This section does not intend or imply that compliance by any person will ensure there will be no contamination, pollution, nor unauthorized discharge of pollutants.

(d) *Control of pollutant contributions from interconnected MS4s.* Interconnected MS4s, including MS4s not owned by the city, shall be controlled so that they do not impair the operation of the receiving MS4 or contribute to the failure of the receiving MS4 to meet any applicable local, state, or federal law or regulation. Owners of sections of an interconnected MS4 shall be responsible for the quality of stormwater within their portion of the system and shall coordinate with the owners of the downstream segments.

(e) *Prohibitions; illicit~~/illegal~~ discharges ~~and illegal dumping~~.*

(1) It is a violation of this article to ~~No person shall throw, drain, or otherwise discharge,~~ cause~~, or~~ allow, continue, or maintain ~~others under such person's control to similarly~~ discharge into the city's MS4 that is not composed entirely of stormwater or otherwise in compliance with federal, state or local permits, ~~any pollutants or waters containing any pollutants, other than stormwater~~, whether such discharges occur through piping connections, runoff, exfiltration, infiltration, seepage, or leaks~~.~~ Polluting matter includes, but is not limited to, the following:

a. Petroleum products, including, but not limited to oil, gasoline, grease;

b. Solid waste;

c. Paints;

d. Steam cleaning waste;

e. Pesticides, herbicides or fertilizers, or as regulated by existing ordinance;

f. Degreasers, solvents;

g. Sanitary sewage;

h. Chemically treated cooling water;

i. Antifreeze and other automotive products;

j. Lawn clippings, leaves, branches, or yard trash;

k. Animal carcasses;

l. Recreational vehicle gray waters;

m. Dyes;

n. Construction materials and waste;

o. Any liquids in quantity or quality that are capable of causing a violation of the city's NPDES stormwater permit; and

p. Solids in such quantities or of such size capable of causing interference or obstruction to the flow of the city's MS4.

(2) No lawn mowing, clipping or other such discharge of debris is permitted towards or into waterbodies or watercourse(s).

(3) No direct discharge of roof drains to the city's canal system is permitted.

(f) *Prohibitions; illicit connections.*

(1) It is a violation of this article to ~~No person may~~ maintain, use, or establish~~,~~ any direct or indirect connection to the city's MS4 that introduces non-stormwater discharge or results in any discharge in violation of any provision of federal, state, or local governmental law, rule, regulation, including:

a. Any drain or conveyance, whether on the surface or subsurface, which allows a discharge in violation of this article to enter the MS4, including but not limited to any conveyances that allow any non-stormwater discharge, including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the department; or

b) Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by the department.

(2) Any ~~This subsection is effective upon adoption of the ordinance and applies to illicit~~ connections to the city's MS4 made prior to March 5, 2018 (the effective date of the ordinance from which this article is derived) that does not comply with this article is prohibited and shall be made to comply, regardless of whether made under a permit or other authorization, or whether permissible under laws or practices applicable or prevailing at the time the connection was made.

~~(3) A person is considered to be in violation of this section, if the person connects a line conveying sewage to the~~ city's ~~MS4 or allows such a connection to continue~~.

(g) *Violation of permits.* Any discharge into the city's MS4 ~~in violation of any federal, state, or local governmental law, rule, regulation or permit is prohibited,~~ except ~~those discharges~~ as ~~set forth~~ authorized in this article or in accordance with a valid NPDES permit.

(h) *Stormwater discharges from commercial, industrial or construction activities to the MS4 or regulated waters.*

(1) Stormwater from areas of any commercial activity, industrial activity, or construction activity shall be controlled, treated and managed on-site using best management practices so as not to cause a~~n illicit or illegal~~ discharge to the city's MS4 or regulated waters in violation of this article.

(2) All erosion, pollutant, and sediment controls required by this ~~city~~ code or by any applicable local, state, or federal permit, including elements of a stormwater pollution prevention plan required under an NPDES permit, shall be properly implemented, installed, operated, and maintained.

(3) Authorized discharges to the city's MS4 shall be controlled so that they do not impair the operation of the city's MS4 or contribute to the failure meet any applicable local, state, or federal law or regulation.

(4) Authorized discharges to regulated waters as defined by the Clean Water Act, shall be controlled so that they do not adversely impact the quality or beneficial uses of those waters, or result in violation of any applicable local, state, or federal law or regulation.

(5) Any person who has been issued an NPDES permit authorizing discharges to the city's MS4 shall submit a complete copy of the permit to the city's building department ~~within 30 days after March 5, 2018 (the effective date of the ordinance from which this article is derived), or~~ within 30 days after the issuance of a permit.

(i) *Authorized exemptions.* The following ~~commencement, conduct, or continuance of any illicit or illegal~~ discharges to the city's MS4 is ~~prohibited~~are not a violation of this article~~, except as described as follows~~:

(1) Water line flushing;

(2) Flushing of reclaimed water lines;

(3) Street cleaning;

(4) Diverted stream flows;

(5) Rising ground waters;

(6) Foundation and footing drains;

(7) Dechlorinated swimming pool discharges;

(8) Uncontaminated ground water infiltration (as defined at 40 C.F.R. § 35.205(20));

(9) Uncontaminated pumped ground water;

(10) Discharges from potable water sources;

(11) Air conditioning condensate;

(12) Irrigation water, including landscaping and lawn water;

(13) Springs;

(14) Individual residential car washing;

(15) Flows from riparian habitat and wetlands; and

(16) Discharges or flows from emergency firefighting activities and emergency response activities done in accordance with an adopted spill response/action plan.

(j) *Non-application of prohibitions.* The prohibitions provided in this section shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Florida Department of Environmental Protection; provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations.

(k) *Emergency conditions.*

(1) Notwithstanding any other provisions of this section, whenever the city manager~~, or said manager's designee~~, or as otherwise provided pursuant to section 10-3 of this Code, determines that emergency conditions or activities require immediate action to protect the public health, safety or welfare, or to provide for compliance with these regulations, city approved construction plans, city inspectors and employees are authorized to enter at a reasonable time in or upon any property, consistent with subsection (l) of this section ~~provision~~, for the purpose of testing, inspecting, investigating, measuring, sampling and correcting such emergency conditions. Failure to admit personnel responding to emergency conditions, shall constitute a separate violation of this section only if actual violation is determined.

(2) Suspension due to illicit discharges in emergency conditions. The city manager~~, or said manager's designee,~~ may, without prior notice, suspend MS4 discharge access ~~to a person such suspension is~~ when the manager deems necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4. If the violator fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.

(3) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this section may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. ~~It is considered an offense of this section, if the person reinstates~~ Reinstatement of MS4 access to premises terminated pursuant to this section is prohibited without ~~the~~ prior city approval ~~of the city~~.

(l) *Inspection and monitoring for compliance.* City code inspectors may request access for inspection of facilities discharging or suspected of discharging to the city's MS4 to effectuate the provisions of this section and to investigate violations or potential violations of any of the terms ~~hereinof~~ this article.

(m) *Reporting requirements.* ~~Illicit discharges to the city's MS4 are prohibited.~~ Any person owning or occupying a premise or facility who has knowledge of a discharge of pollutants from those premises or facilities or other type of evidence which might result in a violation of the prohibitions found in this section shall immediately take action to abate the discharge of pollutants and shall notify the department and city code enforcement department within 24 hours of the discharge of pollutants. The initial notification may be by telephone, but the person responsible shall submit a written report within 72 hours of discovery. The written report shall include a description of the discharge volume, content, frequency, discharge point location to the MS4, measures taken or to be taken to terminate the discharge, and the name, address and telephone number of the person who may be contacted for additional information.

(n) *Penalty*. Violation of this article shall be punishable according to the procedures and penalties set forth in chapter 14 of this code.~~; *additional remedies.* Enforcement of this article shall be conducted pursuant to F.S. ch. 162. Penalties for violations of this article shall be as specified therein, or any other appropriate remedy provided by law. The city may seek enforcement action against the owner or developer of record, any person in actual or constructive possession, and any person or entity responsible for carrying out any prohibited action. The provisions of this section are an additional and supplemental means of enforcing city codes and ordinances. Nothing in this section shall prohibit the city from enforcing this code by injunctive relief, or by any other means provided by law.~~

(o) *Appeals.* Appeals ~~relating to~~ of any administrative decision or determination made ~~to concerning~~ in the administration of ~~implementation or application of the provisions of~~ this article~~section~~ shall follow ~~be~~ the procedures and requirements in section 1-15 of this code.~~filed in writing within 30 calendar days after the decision is rendered by the city council, city manager (or said manag'er's designee), department director, or building official, all as provided for herein. Appeal of the decision of the city manag'er's designee, department director, or building official will be considered by the city manager. Appeal of the city manag'er's decision will be considered by the city council.~~

~~(p) *Injunctive and other relief.* City council, through the city attorney, may file a petition in the name of the city in the circuit court of the county or such other courts as may have jurisdiction seeking the issuance of an injunction, damages, or other appropriate relief to enforce the provisions of this article or other applicable law or regulation. Suit may be brought to recover any and all damages suffered by the city as a result of any action or inaction of any person who causes or suffers damage to occur to the ci'ty's storm sewer system, or for any other expense, loss or damage of any kind or nature suffered by the city.~~

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

(a) *Activities; purpose and intent.* The purpose of this section is to provide for the health, safety, and general welfare of the citizens of the city through the regulation of potential pollution from construction activities. These activities would include connections or areas not connected to the city's MS4 system.

(1) No building permit shall be issued for any building in the city, unless a site plan is submitted with the application for such building permit illustrating ~~the location of driveways, sidewalks if required by this code, parking strips consistent with this code and~~ a perimeter retaining structures or a surface water management plan which provides for containment of runoff on-site with surplus routed to rights-of-way or right-of-way swales for drainage as applicable.

(2) Site plans for construction projects in all zoning districts shall be reviewed and administratively approved by staff for on-site erosion control per applicable code provisions outlined herein. Appropriate erosion control devices must be planned, implemented, and maintained in accordance with the best management practices (BMPs) described in the Florida Department of Environmental Protection's "Erosion & Sediment Control Designer & Reviewer Manual," most current edition, and required as part of any permit review, approval, and compliance. If approved BMPs are not working properly, it is the responsibility of the developer or contractor to utilize new BMP methods as necessary to provide erosion and sediment control.

~~(b) *Erosion and sediment control.* Construction activity can result in the generation of significant amounts of pollutants, which may reach surface or ground waters. One of the primary pollutants of surface waters is sediment due to erosion. Excessive quantities of sediment which reach water bodies of floodplains have been shown to adversely affect their physical, biological, and chemical properties. Transported sediment can obstruct stream channels, reduce the hydraulic capacity of water bodies of floodplains, reduce the design capacity of culverts and other works, and eliminate benthic invertebrates and fish spawning substrates by siltation. Excessive suspended sediments reduce light penetration and, therefore, reduce primary productivity. Therefore, the minimum standards set forth in subsection (c) below shall apply to any construction activity within the city.~~

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

(1) Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place;

(2) All sediment control measures are to be adjusted to meet field conditions at the time of construction and be constructed prior to any grading or disturbance of existing surface material on the balance of site. Perimeter sediment barriers shall be constructed to prevent sediment or trash from flowing or floating on to adjacent properties;

(3) Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Where practicable, temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain undisturbed for longer than 30 days. Permanent stabilization shall be applied to areas that are to be left undisturbed for more than 90 days;

(4) During construction of a project, soil stock piles shall be stabilized or protected with sediment trapping measures. The developer is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as soil intentionally transported from the project site;

(5) A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved

that, in the opinion of the city~~"~~'s reviewer, is uniform and mature enough to survive and will inhibit erosion;

(6) Stabilization measures shall be applied to earthen structures, such as dams, dikes and diversions immediately after installation;

(7) After any significant rainfall, sediment control structures will be inspected for integrity. Any damaged devices shall be corrected immediately;

(8) Concentrated runoff shall not flow down, cut, or fill slopes, unless contained within an adequate temporary or permanent channel, flume or slope drain structure;

(9) Whenever water seeps from a slope face, adequate drainage or other protection shall be provided;

(10) Sediment ~~will~~ shall be prevented from entering any storm drain system, ditch, or channel. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered, or otherwise treated, to remove sediment;

(11) Before temporary or newly constructed stormwater conveyance channels are made operational, adequate outlet protection, and any required temporary or permanent channel lining, shall be installed in both the conveyance channel and receiving channel;

(12) When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area to the greatest extent possible during construction. Non-erodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by non-erodible cover materials;

(13) When a live watercourse must be crossed by construction vehicles, a temporary stream crossing constructed of non-erodible material shall be provided;

(14) The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed;

(15) Periodic inspection and maintenance of all sediment control structures must be provided to ensure the intended purpose is accomplished. The developer shall be continually responsible for all sediment leaving the property. Sediment control measures shall be in working condition at the end of each working day;

(16) Underground utility lines shall be installed in accordance with the following standards in addition to other applicable criteria:

a. No more than 500 linear feet of trench may be opened at one time;

b. Excavated material shall be placed on the uphill side of trenches;

c. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both, and discharged in a manner that does not adversely affect flowing streams or off-site property; and

d. Re-stabilization shall be accomplished in accordance with these regulations;

(17) Where construction vehicle access routes intersect paved public roads, provisions shall be made to minimize the transport of sediment by tracking onto the paved surface. Where sediment is transported onto a public road surface with curbs and gutters, the road shall be cleaned thoroughly at the end of each work day. Sediment shall be removed from the roads by shoveling or sweeping and then transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual subdivision lots as well as to larger land-disturbing activities;

(18) All temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed, in the opinion of the city's reviewer. Disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation;

(19) Properties and waterways downstream from construction sites shall be protected from sediment deposition and erosion;

(20) Phased projects should be cleared in conjunction with construction of each phase;

(21) The city permit reviewer may approve modifications or alternate plans to these erosion control criteria due to site specific conditions.

(cd) *Development of an erosion and sediment control plan.* An erosion and sediment control plan must be submitted as part of the building permit application that include land disturbing activities. This plan and its implementation is a way of providing reasonable assurance that water quality standards will not be violated during the construction phase of a project. The plan must identify the location, relative timing, and specifications for all erosion and sediment control and stabilization measures that will be implemented as part of the project's construction. This plan can be prepared on a site plan/plot plan depicting the improvements proposed. The plan must illustrate methods that would provide reasonable assurances that no offsite discharges of pollutants will be allowed. Said plan shall be prepared by a state licensed professional engineer. The preparer will certify the plans to and for reliance by the city with the submittal that they are familiar with state stormwater best management practices, and that the proposed plan meets or exceeds those criteria.

(de) *Development of a stormwater pollution prevention plan (SWPPP) for NPDES requirements.* Applicants are advised that preparation and adherence to a SWPPP is required where the permitted activity also requires an NPDES construction permit pursuant to F.A.C. § 62-621.300(4). Namely, those construction activities resulting in greater than one acre of soil disturbance discharging to waters of the state or a permitted MS4 must also apply for and receive coverage from Florida Department of Environmental Protection under Florida's NPDES Generic Permit for Stormwater Discharge from Large and Small Construction Activities (CGP) before disturbing the soil.

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

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

(1) Retention/detention system or pond side slopes shall be vegetated or other approved methods for erosion control;

(2) Retention/detention system storage volume and geometry shall be maintained to the dimensions shown on the approved plans;

(3) Littoral zone coverage with wetland plants shall be maintained to SFWMD standards;

(4) Vegetation shall be mowed frequently enough to provide easy access to the ponds for inspections and maintenance;

(5) Weirs and orifices shall be kept clear of debris to allow their proper functioning;

(6) Skimmer blades shall be maintained to minimize floating debris and oils from leaving the ponds and allow unrestricted flow through the control structure;

(7) The dimensions and elevations of control structures shall be preserved;

(8) Underdrains shall be properly functioning;

(9) Channel dimensions and geometry shall be maintained to approved designs;

(10) Vegetation in dry ponds and channels shall be kept to a minimum to maintain flow and storage capacities; and

(11) Underground stormwater management systems (exfiltration systems, underdrains, and similar types of structures and systems) shall be maintained and kept clear of debris to allow for their proper functioning, as designed. If stormwater management system effluent degradation is identified, effluent testing can be directed by city department or environmental staff.

Sec. 18-215. Stormwater management design criteria.

(a) *Applicability.* This article shall apply to any development not specifically exempted by subparagraph (b) below.

(b) *Exemptions.* The following are exempt from the requirements of this section:

(1) Construction of, or related to, one~~One single family home~~ dwelling containing not more than three dwelling units~~,~~ on ~~an individual site,~~a lot of record not shared or approved to be shared with any other dwelling, and that is not part of a site plan that includes any adjacent lots of record~~used for housing~~.

~~(2) One duplex structure, on an individual site, used for housing.~~

~~(3) One triplex structure, on an individual site, used for housing.~~

~~(4) Storage buildings, sheds, swimming pools, and other accessory structures constructed on (1), (2), or (3) above.~~

(2~~5~~) Model homes. Additional temporary parking spaces may be installed as long as they are removed when the model home use changes.

(3~~6~~) Fences.

(4~~7~~) Agricultural related activities, which cause insignificant hydrological impacts as determined by the city engineer.

(c) ~~*Special circumstances*~~*Development within approved master stormwater systems*.

(1) Any development located within a subdivision or other area that has a city or county approved master stormwater system is only subject to review for compliance with parameters of the approved master stormwater management plan.

(d) *Stormwater plan.* It shall be unlawful to engage in any development activity prior to obtaining approval of a stormwater plan by the city engineer in accordance with the provisions of this section.

(e) *Minimum design standards for stormwater plans.*

(1) The design for the stormwater management facility shall be consistent with the requirements of the SFWMD and furthermore shall include hydrologic analysis acceptable to the city engineer. Design of control structures and detention/retention facilities shall be based on both the 10-year, 1-hour and 25-year, 72-hour return periods and peak flows controlled to meet the pre-development discharge rates. All retention systems will need to demonstrate full recovery within 72 hours. Finished floor elevations shall be based off available Federal Emergency Management Agency ("FEMA") data. If no FEMA model/data is available (i.e., Zone X), the greater of 100 year-72-hour zero discharge calculation or 18 inches above crown elevation of city road shall be used.

(2) All stormwater calculations, reports, and plans shall be signed and sealed by a Florida registered professional engineer.

(3) Stormwater pond slopes above actual water surface and swales shall be stabilized.

(4) Construction of private stormwater storage facilities ~~are~~ is prohibited in public rights-of-way and/or easements.

(5) Artificial watercourses shall be designed considering soil type to prevent erosion.

(6) Stormwater outfalls should discharge into a city-approved drainage system. Whenever the discharge structure/outfall pipe does not abut a city/county/state or similar facility, the applicant shall submit documentation demonstrating legal rights to convey discharge across private property.

(7) Water quality treatment to follow all current FDEP/SFWMD requirements, including nutrient loading analyses.

(f) *Performance standards for stormwater plans.* To ensure attainment of the objectives of this section and that performance standards will be met, the design, construction, and maintenance of stormwater systems shall, at a minimum, be consistent with the following standards:

(1) Channeling untreated runoff directly into off-site water bodies is prohibited.

(2) Discharge of runoff from detention ponds shall not exceed the calculated predevelopment rate, or rate determined by a basin study, whichever is less, as determined by the city engineer.

(3) The banks of detention and retention areas shall be stabilized and maintained to the approved design.

(4) Vegetated areas shall be created, or where practicable, retained in their natural state along the banks of all watercourses, water bodies, or wetlands. The width of these areas shall be sufficient to prevent erosion, trap the sediment or overload runoff, provide access to the water body, and allow for periodic flooding without damage to structures.

(5) Intermittent watercourses such as swales and ditches shall be vegetated.

(6) The use of the stormwater facilities and vegetated buffer zones as open space, recreation, and conservation areas shall be encouraged, and wetlands, lakes, and other natural water bodies shall not be used as primary sediment traps.

(7) Those areas that are not to be disturbed shall be protected by an adequate barrier from construction activity. Whenever possible, natural vegetation shall be retained and protected.

(8) Control of erosion by sedimentation facilities shall be established prior to development and receive regular maintenance to ensure that they continue to function properly.

(9) Disturbed areas shall be revegetated, stabilized and protected from erosion as soon as possible.

(10) Design to resist saltwater intrusion by adhering to applicable best management practices.

(11) Stormwater facilities are required to be maintained to design parameters.

(g) *Content of stormwater plans.* All stormwater plans must be signed and sealed by a Florida professional engineer. These plans will present, at the minimum:

(1) The existing hydrological conditions of the site and of receiving water shall be described where appropriate, including the following:

a. The direction, flow rate, and volume of flow of surface water runoff under predevelopment conditions for both the 10 year-1 hour and 25 year-72-hour return periods.

b. The location of areas on the site where surface waters collect.

c. A description of all watercourses, wetlands, and water bodies on or adjacent to the site.

d. Groundwater levels, including seasonal fluctuations, using U.S. Soil Conservation Service ("SCS") methodology or other appropriate means. (Give elevations based on North American Vertical Datum ("NAVD") wherever possible.)

e. A map and description of the 100-year floodplain.

f. Plans drawn ~~shall be~~ at a scale acceptable to the city engineer.

g. Elevations in floodplains shall be NAVD.

h. A current boundary description ~~is required as~~ prepared by a professional land surveyor.

i. A site plan ~~is required~~ showing any easements of records.

j. ~~The engineer of record shall provide~~ A~~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.

(2) All components of the stormwater system and measures for the detention, retention or infiltration of water and control structures shall be described where appropriate, including:

a. The channel, direction, flow rate and volume of surface water that will be conveyed from the site, with a comparison of predevelopment conditions.

b. Detention and retention areas, including plans for discharge of contained water. These measures are to be designed to control both the 10 year-1 hour and 25 year-72-hour storm events.

c. A plan for the control of erosion and sedimentation, which specifies the type and location of control measures, the stage of development at which they will be put into place or used, and provisions for the maintenance of them.

d. Any other information that the engineer of record and the city engineer consider necessary for an evaluation of a proposed development.

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

Chapter 22 FIRE PREVENTION AND PROTECTION

ARTICLE I. IN GENERAL

Secs. 22-1—22-30. Reserved.

ARTICLE II. FIRE PREVENTION AND PROTECTION CODE

Sec. 22-31. ~~NFPA~~ Florida Fire Prevention Code~~code~~s ~~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 Ccode 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 or who fails to carry out an order made pursuant of this Code or violates any condition attached to a permit, approval, or certificate shall be subject to the penalties established by this jurisdiction.

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

* * *

(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~~ 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)

D~~C~~. 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)

E~~D~~. 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.	
2nd Re-Review	10% of Original Review $42.00 minimum
3rd Re-Review	25% of Original Review $52.00 minimum
4th Re-Review	50% of Original Review $103.00 minimum
5th 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

B. Fire Code Compliance Inspection Fees Through Permit Process:

1. SITE PLAN INSPECTION (All Categories)	$206.00
2. BUILDING S - 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~~
~~2nd Re-inspection~~	~~$52.00~~
~~3rd Re-inspection~~	~~$77.00~~
~~4th Re-inspection~~	~~$103.00~~
~~5th and subsequent re-inspections:~~	~~$206.00~~
~~23. YELLOW TAGS (re-inspections of permitted work)~~	
~~1st Fail: per unit~~	~~$77.00~~
~~2nd Fail: per unit~~	~~$108.00~~
~~3rd Fail: per unit~~	~~$144.00~~
~~4th Fail: per unit~~	~~$360.00~~
~~5th Fail & each subsequent fail~~	~~$515.00~~
~~24. RED TAG S - Construction areas or site s - (Immediate stop work order) (re-inspections 2×fee)~~	

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

~~C. SPECIAL EVENTS FEE:~~

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

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

~~1. A fee will be assessed for a notice of fire compliance certificate inspection for all new commercial and/or change of ownership of commercial occupancies, or those required to be inspected on a recurring basis.~~

~~2. Each occupancy type is assessed a fee based upon its use. Properties with multiple structures or uses will incur a fee for each structure or use inspected.~~

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

~~Fee per Apartment/ Condominium Building:~~
~~Up to 2 stories~~ ~~$75.00~~

~~3 to 5 stories~~	~~$82.00~~
~~6 to 9 stories~~	~~$103.00~~
~~10 stories and taller~~	~~$206.00~~

~~Assembly Occupancies:~~	
~~50 to 99 Persons~~	~~$100.00~~
~~100 to 300 Persons~~	~~$130.00~~
~~301 to 1,000 Persons~~	~~$162.00~~
~~Over 1,000 Persons~~	~~$320.00~~

~~Assisted Living Facilities:~~	
~~Up to 16 Persons (Small Facility)~~	~~$110.00~~
~~Over 16 Persons (Large Facility)~~	~~$140.00~~

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

~~Day Care Centers and Nursery Schools:~~	
~~3 to 6 Clients~~	~~$75.00~~
~~7 to 12 Clients~~	~~$85.00~~
~~Over 12 Clients~~	~~$95.00~~

~~Hotels, Motels, Dormitories, Lodging and Rooming Houses:~~	
~~Each building having up to 30 units under the same management In which there are sleeping accommodations.~~	~~$130.00~~
~~Each additional unit over 50~~	~~$2.25~~

~~Industrial/Manufacturing Occupancies:~~	
~~Up to 1,000 sq. ft.~~	~~$75.00~~
~~1,001 to 5,000 sq. ft.~~	~~$100.00~~
~~5,001 to 10,000 sq. ft.~~	~~$135.00~~
~~10,000 to 50,000 sq. ft.~~	~~$206.00~~

~~Marinas:~~	
~~Docking facilities~~	~~$155.00~~
~~Fueling facilities add~~	~~$55.00~~

~~Associated facilities such as storage and mercantile incur separate fees in accordance with this schedule.~~

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

~~Mercantile:~~

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

~~Storage Occupancies:~~

~~1,000 to 5,000 sq. ft.~~	~~$100.00~~
~~5,001 to 10,000 sq. ft.~~	~~$130.00~~
~~10,001 to 25,000 sq. ft.~~	~~$155.00~~
~~25,001 to 50,000 sq. ft.~~	~~$205.00~~

~~Exception:~~

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

~~3. Re-inspection Fees All Occupancies.~~

~~a. First re-inspection:~~

~~1. No fee if all violations are corrected or other arrangements have been made with the fire prevention bureau.~~

~~2. A fee of $75.00 if violations still exist.~~

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

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

(a) The fee schedule for malfunctioning or nuisance fire alarms, detection and suppression systems is established by resolution of the city council, as amended from time to time.~~will be evaluated annually to make adjustments to keep the fee generated in line with expenses. This will be done at the time the ci'ty'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 ci~~'~~ty'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 incident~~s.~~

~~(~~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 ~~E~~'PA'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 ci~~'~~ty~~'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 statue~~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.

* * *

Sec. 26-37. Variances and appeals.

(a) *General.* The ~~Marco Island C~~city ~~C~~council shall hear and decide on requests for appeals and requests for variances from the strict application of this ordinance. Pursuant to F.S. § 553.73(5), the ~~Marco Island C~~city

~~C~~council shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the Florida Building Code. This section does not apply to Section 3109 of the Florida Building Code, Building.

(b) *Appeals.* The ~~Marco Island C~~city ~~C~~council shall hear and decide appeals pursuant to section 1-15 of this code when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this ordinance. Any person aggrieved by the decision of ~~Marco Island~~ the ~~City~~ ~~C~~council may appeal such decision to the circuit court, as provided by Florida Statutes.

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

(d) *Historic buildings.* A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the Florida Building Code, Existing Building, Chapter 12 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the build~~i~~ing's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the build~~i~~ng's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the Florida Building Code.

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

(f) *Considerations for issuance of variances.* In reviewing requests for variances, the ~~Marco Island C~~city ~~C~~council shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this ordinance, and the following:

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

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

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

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

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

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

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

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

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

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

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

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

(2) Determination by the ~~Marco Island C~~city ~~C~~council that:

a. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;

b. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and

c. The variance is the minimum necessary, considering the flood hazard, to afford relief.

(3) Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the office of the clerk of the court in such a manner that it appears in the chain of title of the affected parcel of land; and

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

Sec. 26-38. Violations.

(a) *Violations.* Any development that is not within the scope of the Florida Building Code but that is regulated by this ordinance that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with this ordinance, shall be deemed a violation of this ordinance. A building or structure without a FEMA Elevation Certificate, other required design certifications, or other evidence of compliance required by this ordinance or the Florida Building Code is presumed to be a violation until such time as that documentation is provided.

(b) *Authority.* For development that is not within the scope of the Florida Building Code but that is regulated by this ordinance and that is determined to be a violation, the floodplain administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the ow~~n~~'er's agent, or to the person or persons performing the work.

(c) *Unlawful continuance.* Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties set forth in chapter 14 of this code.~~as prescribed by law. Pursuant to F.S. § 162.22, a person found to be in violation of this article may be charged a fine not to exceed $500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days~~.

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

Secs. 26-39—26-60. Reserved.

DIVISION 2. DEFINITIONS

Sec. 26-61. General.

(a) *Scope.* Unless otherwise expressly stated, the following words and terms shall, for the purposes of this ordinance, have the meanings shown in this section. These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.

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

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

Sec. 26-62. Definitions.

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

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

* * *

~~*DIVISION 4. MISCELLANEOUS PROVISIONS*~~

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

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

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

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

Chapter 32 LAW ENFORCEMENT

ARTICLE I. IN GENERAL

Secs. 32-1—32-30. Reserved.

ARTICLE II. POLICE OFFICE'RS' PENSION PLAN

Sec. 32-31. Establishment.

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

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 memb'er'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.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 32-33. Benefit amounts and eligibility.

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

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

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

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

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

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

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

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

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

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

Sec. 32-34. Membership.

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

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

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

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.

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

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

a. City contributions as outlined in this section;

b. Member contributions; and

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

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

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

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

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

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. The board shall meet at least quarterly each year. The board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

(2) The trustees shall, by a majority vote at the first board meeting and annually thereafter, elect a chairman, vice-chairman and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.

(3) Each trustee shall be entitled to one vote on the board. Three affirmative votes shall be necessary for any decision by the trustees at any meeting of the board. A trustee shall have the right to abstain from voting as the result of a conflict of interest and shall comply with the provisions of F.S. § 112.3143.

(4) The board shall engage such actuarial, accounting, legal, and other services as shall be required to transact the business of the plan. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the plan shall be paid from the fund at such rates and in such amounts as the board shall agree. In the event the board chooses to use the city's legal counsel, actuary or other professional, technical or other advisors, it shall do so only under terms and conditions acceptable to the board.

(5) The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:

(a) To construe the provisions of the plan and determine all questions arising thereunder.

(b) To determine all questions relating to eligibility and membership.

(c) To determine and certify the amount of all retirement allowances or other benefits hereunder.

(d) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the plan.

(e) To distribute to members, at regular intervals, information concerning the plan.

(f) To receive and process all applications for benefits.

(g) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the plan and fund.

(h) To have performed actuarial studies and valuations, at least as often as required by law, and make recommendations regarding any and all changes in the provisions of the plan.

(i) To perform such other duties as may be required to administer the plan in accordance with this chapter.

(6) Notwithstanding any provision herein to the contrary, "legal resident" members appointed by the Marco Island City Council to the Board of Trustees of the City of Marco Island Police Officers' Pension Plan pursuant to paragraph (1) of this section, shall serve in the same capacity as members of the board of trustees of the City of Marco Island Firefighters' Pension Plan as follows. Upon the effective date of this section, the "legal resident" members of the firefighters' pension plan board of trustees shall be appointed as the "legal resident" members of board of trustees of this plan. Said trustees shall serve until the expiration of their terms on the firefighters' pension plan board of trustees. Upon expiration of the members' terms and thereafter, the city council shall appoint or reappoint two legal residents pursuant to paragraph (1) of this section, whose duty it shall be to serve on both the board of trustees of this plan and the board of trustees of the firefighters' pension plan.

Sec. 32-47. Finances and fund management.

(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 are insured by the National Credit Union Share Insurance Fund.

3. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States or by an agency of the government of the United States.

4. Bonds issued by the State of Israel.

5. Stocks, commingled funds administered by national or state banks, mutual funds and bonds or other evidences of indebtedness, provided that:

i. Except as provided in subparagraph ii, all individually-held securities and all securities in a commingled or mutual fund must be issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia.

ii. Up to 25 percent on a market-value basis of the assets of the fund may be invested in foreign securities.

iii. The board shall not invest more than five percent of its assets in the common stock, capital stock, or convertible securities of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent of the outstanding capital stock of that company; nor shall the aggregate of its

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

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

(c) At least once every three years, and more often as determined by the board, the board shall retain a professionally qualified independent consultant, as defined in F.S. § 185.06, to evaluate the performance of all current investment managers and make recommendations regarding the retention of all such investment managers. These recommendations shall be considered by the board at its next regularly scheduled meeting.

(d) The board may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the plan.

(e) Neither the board nor any trustee shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due to the negligence of the board or trustee, willful misconduct or lack of good faith.

(f) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.

(g) The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be to the best interest of the fund to exercise.

(h) The board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.

(i) Where any action which the board is required to take or any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as trustee under this chapter, can reasonably be taken or performed only after receipt by it from a member, the city, or any other entity, of specific information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.

(j) Any overpayments or underpayments from the fund to a member, retiree or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board in such a manner that the actuarial equivalent of the benefit to which the member, retiree or beneficiary was correctly entitled, shall be paid. Overpayments shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayments shall be made up from the fund in a prudent manner.

(k) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits provided for herein.

(l) In any application to or proceeding or action in the courts, only the board shall be a necessary party, and no member or other person having an interest in the fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.

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

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*.

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

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

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:

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

(i) The straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit, or

(ii) The actuarially equivalent straight life annuity commencing at the same annuity starting date, computed using a 5.00 percent interest rate and the mortality basis prescribed in {Internal Revenue} Code Section 415(b)(2)(E)(v).

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

(i) The actuarially equivalent straight life annuity commencing at the same annuity starting date, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan for the particular form of payment, or

(ii) The actuarially equivalent straight life annuity commencing at the same annuity starting date, computed using a 5.00 percent interest rate and the mortality basis prescribed in {Internal Revenue} Code Section 415(b)(2)(E)(v).

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this subsection (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).

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

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

(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).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) *Required minimum distributions.*

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

b. *Death of participant before distributions begin.*

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

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

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

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

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

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

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

(B) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(ii) No designated beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

3. Death of surviving spouse before distributions to surviving spouse begin. In any case in which (i) the participant dies before the date distribution of his or her interest begins, (ii) the participant's surviving spouse is the participant's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, subparagraphs b.1. and b.2. above shall apply as though the surviving spouse were the participant.

c. *Requirements for annuity distributions that commence during participant's lifetime.*

1. *Joint life annuities where the beneficiary is not the participant's spouse.* If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

2. *Period-certain annuities.* Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the uniform lifetime table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the uniform lifetime table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this subparagraph c.2., or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the joint and last survivor table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

d. *Form of distribution.* Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subparagraphs d.1., d.2. and d.3. below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the ~~[~~Internal Revenue~~]~~ Code and the

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

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

    (i) The annuity distributions will be paid in periodic payments made at intervals not longer than one year;

    (ii) The distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in paragraphs b. or c. above, whichever is applicable, of this subsection (3);

    (iii) Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

    (iv) Payments will either be non-increasing or increase only as follows:

        (A) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

        (B) To the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the {Internal Revenue} Code;

        (C) To provide cash refunds of employee contributions upon the participant's death; or

        (D) To pay increased benefits that result from a plan amendment.

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

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

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

f. *Definitions.*

1. *Designated beneficiary.* The individual who is designated as the beneficiary under the plan and is the designated beneficiary under Section 401(a)(9) of the {Internal Revenue} Code and Section 1.401(a)(9)-4 of the Treasury regulations.

2. *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to paragraph b. of this subsection (3).

3. *Life expectancy.* Life expectancy as computed by use of the single life table in Section 1.401(a)(9)-9 of the Treasury regulations.

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

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

1. *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:

(i) 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;

(ii) Any distribution to the extent such distribution is required under Section 401(a)(9) of the {Internal Revenue} Code;

(iii) The portion of any distribution which is made upon hardship of the member; and

(iv) The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the {Internal Revenue} Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the {Internal Revenue} Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

c. *Eligible retirement plan.* An eligible retirement plan is an individual retirement account described in Section 408(a) of the {Internal Revenue} Code, an individual retirement annuity described in Section 408(b) of the {Internal Revenue} Code, an annuity plan described in Section 403(a) of the {Internal Revenue} Code, an annuity contract described in Section 403(b) of the Internal Revenue Code, a qualified trust described in Section 401 (a) of the {Internal Revenue} Code, an eligible plan under Section 457(b) of the {Internal Revenue} Code which is maintained by a state, political

subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of {Internal Revenue} Code Section 408A(c)(3)) that accepts the distribu{t}ee's eligible rollover distribution.

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

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

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

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

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

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

(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. 32-49. Repeal or termination of plan.

(1) This article establishing the plan and fund, and subsequent ordinances pertaining to said plan and fund, may be modified, terminated, or amended, in whole or in part; provided that if this or any subsequent ordinance shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the member or beneficiary shall not be affected thereby.

(2) If this article shall be repealed, or if contributions to the plan are discontinued or if there is a transfer, merger or consolidation of government units, services or functions as provided in F.S. ch. 121, the board shall continue to administer the plan in accordance with the provisions of this article, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this article who are designated by any of said members. In the event of repeal, discontinuance of contributions, or transfer, merger or consolidation of government units, services or functions, there shall be full vesting (100 percent) of benefits accrued to date of repeal. The board shall determine the date of distribution and the asset value required to fund all nonforfeitable benefits after taking into account the expenses of such distribution. The board shall inform the city, or then current plan sponsor, if additional assets are required, in which event the city, or then current plan sponsor, shall continue to financially support the pension plan until all nonforfeitable benefits have been funded.

(3) The board of trustees shall determine the method of distribution of the asset value, that is, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each police officer entitled to benefits under the plan as specified in F.S. § 185.37(3).

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

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

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

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

Sec. 32-51. Pension validity.

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

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

Sec. 32-52. Forfeiture of pension.

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

(a) The committing, aiding or abetting of an embezzlement of public funds;

(b) The committing, aiding or abetting of any theft by a public officer or employee from employer;

(c) Bribery in connection with the employment of a public officer or employee;

(d) Any felony specified in F.S. ch. 838;

(e) The committing of an impeachable offense;

(f) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which such officer or employee acts or is employed, of the right to receive the faithful performance of duties as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of such public office or employment position.

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

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

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

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

(1) *Rollover distributions.* Notwithstanding any provision of the plan to the contrary that would otherwise limit a distribu~~t~~'ee's election under this section, ~~a~~ distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(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 distribu{'ee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving spouse.

(c) *Distributee:* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse.

(d) *Direct rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

Sec. 32-54. Share account.

(1) In addition to any other benefit provided under this plan, a share account shall be established for the benefit of active members of this plan, as specified in this section. Such share plan shall be an element of this plan and shall exist in conjunction with the defined benefit component that meets minimum benefits and minimum standards under F.S. ch. 185. Each member who is employed by the city during a plan year commencing after the share account is established shall be entitled to participate in the share account in accordance with a formula to be determined through collective bargaining between the city and the fraternal order of police.

(2) An individual account will be established for each member, and the amount to which each member is entitled shall be credited to such account at the end of each quarter. No credits shall be made to an account after the member has separated from city service as a police officer or otherwise terminated membership in the plan.

(3) The share account shall be funded entirely and solely by insurance premium tax revenues received in excess of the "frozen amount" as described in section 32-35(2). The share account shall annually be credited with the same rate of investment earnings as the overall rate of return on all plan investments, net of all investment management and administrative expenses. Such account funds shall be commingled with the fund for investment purposes, however, shall be accounted for separately on a bookkeeping basis only.

(4) Each share account shall be credited or debited with interest on a quarterly basis at the fund's actual net rate of investment return for the preceding quarter. The board of trustees may assess a quarterly fee to each share account to recoup the costs of administering the share plan.

(5) Each member shall vest in his or her share account upon attaining six or more years of credited service. A member shall be entitled to a distribution from his or her defined contribution account at the same time

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

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.

(g) *Compliance with orders of city manager and director; setting of regulations.*

(1) No person shall fail or refuse to comply with any reasonable order relating to the regulation, direction, or control of traffic or to any other order lawfully given by the city manager and/or director, or to willfully resist, obstruct, or abuse any police officer or other city, county, state, or federal official in the execution of their duties.

(2) The city manager may set such other regulations from time to time, which will help in promoting the health, safety, and general welfare of persons and the orderly administration of a park pursuant to policies established by the city council.

(h) *Tents and camping.* No person shall establish or maintain any tent or other temporary lodging or sleeping place within a park, unless authorized through the facility use policy.

(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.

(j) *Hunting and fishing.* It shall be unlawful for any person to:

(1) Hunt, pursue with dogs, trap, or in any way molest any wild bird or animal found within the confines of a park.

(2) Fish in park waters in violation of the rules and regulations of the city, county, or state.

(k) *Animals.*

(1) The city council may, by resolution, establish policies and rules regarding the use of city parks, including dog parks, by persons in the possession of animals.

(2) Dog owners shall be allowed to walk their dogs on leash in city parks identified by city council by resolution, or in dog parks identified by city council by resolution, where dog owners may walk and play with their dogs off-leash.

(l) *Swimming.* Swimming and wading is prohibited in all lakes, ponds, streams, and canals.

(m) *Certain toys prohibited.*

(1) Motorized models that are fuel or electric powered including: planes, cars, rockets, or boats are not permitted within a park with the following exceptions:

a. Electric powered, radio-controlled toy vehicles;

b. Electric powered planes at Winterberry Park except during athletic events;

c. Electronically controlled, wind powered sail boats at the Mackle Park Lake;

(2) Motorized scooters, motorized skateboards, and motorized bicycles are not permitted on park roads, walks, trails, or athletic courts.

(3) Skateboards and rollerblades are not permitted on park athletic courts.

(n) *Metal detectors.* No person shall use any metal detector within a park.

(o) *Alcoholic beverages and illegal substances.* It shall be unlawful for any person to:

(1) Offer for sale any beer, wine, liquor, or other intoxicating beverage, unless authorized through the facility use policy.

(2) Be under the disturbing influence of any beer, wine, liquor, or other intoxicating beverage or any illegal substance, drug, stimulant, depressant, or hallucinating agent.

(3) Possess, consume, or use any beer, wine, liquor, or other intoxicating beverage unless authorized through the facility use policy.

(4) Possess, consume, or use any illegal substance, drug, stimulant, depressant, or hallucinating agent.

(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.

a. Only licensed motor vehicles, including automobiles, motorcycles, trail bikes, mini-bikes, motor scooters, or mopeds may be operated and only on those roadways provided for the use of motor vehicles.

b. Operators of said motor vehicles shall obey all applicable city, county, and state laws, codes, ordinances, rules, or regulations governing the use of such vehicles.

c. No person shall operate a motor vehicle on walks or paths established as footpaths, exercise trails, nature trails, or bicycle paths, unless permitted by the director through the facility use policy.

d. All-terrain vehicles (ATV), unlicensed trail bikes, and recreation vehicles shall be prohibited in parks.

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.

(2) Parking.

a. No person shall park any motor vehicle upon any roadway in the park or at any location where posted signs or symbols painted on the pavement prohibit parking.

b. No person shall park any motor vehicle upon any lawn or grassy area unless specifically authorized by the director through the facility use policy.

~~(r)~~l *Facility use policy fee structure.*

(1) The city council may adopt policies for the private use of park facilities and fees associated with such use by resolution.

(2) Any person or group wishing to reserve a city park or sponsor or engage in any special activity at a city park, must apply to the department for use of a park prior to use in accordance with the policy adopted by the city council.

(3) When a refund is requested, the department will strictly follow the policy adopted by the city council.

(s) *Plants and trees.*

(1) No person shall cut, break, disturb, or remove any plant or tree from a park.

(2) No person shall attach a rope, wire, cable, or other material to any plant or tree in a park.

(3) Memorial plaques may be installed provided permission is granted by the director and the plaque size is consistent with administrative standards.

(4) Memorial plants or trees shall not be decorated with any ornamentation of any kind unless authorized through the facility use policy for a special event.

(t) *Tobacco products.* No person shall be permitted to smoke cigarettes, cigars and/or pipes or consume any other tobacco products in city parks except in those locations specifically designated for the above purposes and hereinafter referred to as "smoking areas".

(1) The city council shall designate specific smoking areas within each park by resolution. At no time shall the following areas be designated as smoking areas:

a. Children's playgrounds or any area within 50 feet of children's playgrounds;

b. Entrances to park buildings;

c. Athletic fields, player benches, dugouts or scorekeeper's booths.

(2) Signs shall be posted stating that tobacco products are only permitted in designated smoking areas.

(3) Smoking areas shall be furnished with benches or picnic tables, a trash receptacle and a cigarette disposal receptacle.

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

(a) Violation of this article shall be punishable according to the penalties and procedures in chapter14 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 Ccode 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.~~

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

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

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

Secs. 34-5—34-30. Reserved.

ARTICLE II. COMMUNITY PARK AND RECREATION IMPACT FEE

Sec. 34-31. Definitions.

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

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

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

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

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

Applicant means the person who applies for a building permit.

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

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

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

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

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

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

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

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

Owner has the meaning ascribed to it in section 1-2 of this code ~~means the person holding legal title to the real property upon which parks and recreational facilities impact construction is to occur.~~

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

Person has the meaning ascribed to it in section 1-2 of this code ~~means an individual, a corporation, a partnership, an incorporated association, or any other similar entity.~~

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

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

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

Sec. 34-32. ~~Penalties; additional remedies~~Reserved.

~~(a) 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 distinctive 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. 34-33. Findings; purpose of article.

The city council does hereby find the following facts:

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

(2) Implementation of the impact fee to require construction to contribute its fair share to the cost of improvements and additions to the city park system is an integral and vital element of the regulatory plan of growth management incorporated in the city's master plan.

(3) The standard of service for the city park system, determined by the county through "Impact Fees for Parks and Recreation Facilities for Collier County, Florida, 1991 Update," prepared by Henderson Young & Co. (March 13, 1991, with revisions: March 22, 1991, and any subsequent updates adopted by December 7, 1998) is hereby accepted, approved, and adopted by the city and found to be in conformity with the city's master plan.

(4) Capital planning is an evolving process and the standard for service for the city park system constitutes a projection of anticipated need for parks and recreational facilities, based upon present knowledge and judgment. Therefore, in recognition of changing growth patterns and the dynamic nature of population growth, it is the intent of the city council that the standard of service for the city park system and the impact fee imposed be reviewed and adjusted periodically to ensure that parks and recreational facilities impact fees are imposed equitably and lawfully, based upon actual and anticipated growth at the time of their imposition.

(5) The imposition of a community park impact fee is to provide a source of revenue to fund the construction or improvement of the city park system necessitated by growth as delineated in the capital improvement budget and the city's master plan.

(6) The city council specifically finds that community parks within the city provide a real and substantial benefit to all residents of the city.

(7) This section shall not be construed to permit the collection of impact fees in excess of the amount reasonably anticipated to offset the demand on the city park system generated by ~~impact~~ construction of additional dwelling units~~occurring subsequent to the effective date of the ordinance from which this article is derived~~.

(8) The revenue derived from the impact fee shall be utilized only for the acquisition of improvements and additions to the city park system which are necessitated by the impact of additional dwelling units~~new construction~~.

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

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

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

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

~~(1) Alterations or expansion of an existing dwelling unit where no additional dwelling units are created.~~

~~(2) The construction of accessory buildings or structures which will not create additional dwelling units.~~

~~(3) The replacement of a dwelling unit where no additional dwelling units are created.~~

Sec. 34-36. Payment.

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

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

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

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

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

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

Sec. 34-37. ~~Applicability to changes of size and use~~Reserved.

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

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

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

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

(1) Design and construction plan preparation;

(2) Permitting and fees;

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

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

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

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

(7) Landscaping;

(8) Construction management and inspection;

(9) Surveying, soils and material testing;

(10) Acquisition of capital equipment for community parks;

(11) Repayment of monies transferred or borrowed from any budgetary fund of the city subsequent to the adoption of the ordinance from which this article is derived, which were used to fund growth-impacted improvements or additions as provided in this article;

(12) Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the city to fund growth-impacted improvements and additions to community parks subsequent to the adoption of the ordinance from which this article is derived;

(13) Reimbursement of excess community park impact fees due an applicant pursuant to section 34-36;

(14) Design and construction of roadway improvements required by community park facilities; and

(15) To the extent provided by law, payment for the costs incurred in the preparation of any update to the impact fee study and any amendments or supplements.

(c) Funds deposited in the community park impact fee account shall not be used for any expenditure that would be classified as maintenance or repair expense.

(d) Funds on deposit which are not immediately necessary for expenditure shall be invested by the city. All income derived from such investments shall be deposited in the community park impact fee account and used as provided in this section.

(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.

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

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

(b) The alternative community park impact fee calculations shall be based on data, information, or assumptions contained in this article and the impact fee study or an independent source, provided that the independent source is a local study supported by a database adequate for the conclusions contained in such study performed pursuant to a generally accepted methodology and based upon generally accepted standard sources of information relating to facilities planning, cost analysis and demographics.

(c) If a previously approved parks and recreational facilities impact construction project submitted, during its approval process, an alternative parks and recreational facilities impact study which complied with the criteria required by this section, and if such study is determined by the city council to be current, the parks and recreational impact of such previously approved parks and recreational facilities impact construction shall be presumed to be as described in the prior study. In such circumstances, an alternative community park impact fee shall be established reflecting the impact described in the prior study. There shall be a rebuttable presumption that an alternative parks and recreational facility impact study conducted more than two years earlier is invalid.

(d) If the city council determines that the data, information and assumptions utilized by the applicant to calculate the alternative community park impact fee comply with the requirements of this section and that the alternative community park impact fee was calculated by the use of a generally accepted methodology, the alternative community park impact fee shall be paid in lieu of the fee set forth in section 34-40.

(e) If the city council determines that the data, information and assumptions utilized by the applicant to calculate the alternative community park impact fee do not comply with the requirements of this section or that the alternative community park impact fee was not calculated by the use of a generally accepted methodology, then the city shall provide to the applicant by certified mail, return receipt requested, written notification of the rejection of the alternative community park impact fee and the reason therefor.

(f) The decision of the city council shall be in writing.

(g) Any applicant or owner who submits a proposed alternative community park impact fee pursuant to this section and desires the immediate issuance of a building permit shall pay, prior to or at the time the request for hearing is filed, the applicable community park impact fee pursuant to section 34-40. Such payment shall be deemed paid under protest and shall not be construed as a waiver of any rights of review. Any difference between the amount paid and the amount due, as determined by the council, shall be refunded to the applicant or owner.

Sec. 34-40. Amount of fee.

Land Use	Community Parks Impact fee per Dwelling Unit
Single-family detached	
Less than 1,800 square feet	$598.00
1,800—3,000 square feet	777.00
More than 3,000 square feet	919.00
Two-family and m~~M~~ultifamily	
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. ~~01-02~~2021-13, 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.

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

Internal consistency means that the goals, objectives, and policies of the comprehensive plan are not in conflict with one another. They should be coordinated, related, and consistent. "Internal consistency" does not

require that all goals, objectives, and policies of a comprehensive plan take action in the direction of realizing each and every other goal, objective, and policy of the plan. In addition, to be internally consistent with the comprehensive plan, an amendment to the comprehensive plan relating to the land uses, densities or intensities, capacity or size, timing, and other aspects of development of specific property must be compatible with the type and densities or intensities of use permitted by the comprehensive plan on contiguous property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~*Small scale amendment* shall mean and refer to any proposal to amend the comprehensive plan that is commonly referred to as a "small scale amendment." A small scale amendment is an amendment that involves a use of ten acres or less; and the proposed amendment does not involve a text change to the goals, policies, and objectives of the local governmnt's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity; provided, however, that text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment shall be 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. 38-4. Purpose and intent.

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

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~~ 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 applica'nt'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 apprais'er'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 survey'or'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 ci'ty'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 ci'ty's existing comprehensive plan with supporting data and analysis;

(9) An analysis of the impact upon the ci'ty'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~~2~~), 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 ci'ty'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, suppling 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 applica~~'nt'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 direct~~t~~'or'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. T**he 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 ©(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 subsecti©on (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 the record during the board public hearing, all regarding any pending application for amendment of the comprehensive plan, shall automatically be made a part of the record during the city council public hearing.

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

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

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

c. *Second public hearing by city council.*

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

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

3. Within ten city working days after the second public hearing and adoption of the amendment, the director shall forward a copy of the adopted amendment, together with supporting data and analysis, to the state land planning agency and any other reviewing agency or local government that provided timely comments after the first (transmittal) public hearing on the amendment. The transmittal package must contain: (i) a full, executed copy of the adoption ordinance(s); in the case of a text amendment, a full copy of the amended language in legislative format with new words inserted in the text underlined, and words deleted stricken with hyphens; in the case of a future land use map amendment, a copy of the future land use map clearly depicting the parcel, its existing future land use designation, and its adopted designation; and a copy of any data and analyses the local government deems appropriate. An amendment adopted under this paragraph does not become effective until 31 days after the state land planning agency notifies the local government that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the state land planning agency or the

~~administration commission enters a final order determining the adopted amendment is "in compliance" with the act, as set forth in F.S. § 163.3184(1).~~

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

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

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

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

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

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

(a~~c~~) *Reliance on information presented by applicant.* The city and its departments, boards, and agencies, shall have the right to rely on the accuracy of statements, documents, and all other information presented to them by the applicant, or the applicant's agent or consultants, in review of an application ~~for a plan amendment approval issued pursuant to this Code~~. The applicant shall execute an application form for the comprehensive plan amendment must include the following statement: Under penalties of perjury, I declare that I have read the foregoing application and all attachments thereto, and that the facts stated in it, are true to the best of my knowledge," followed by the signature of the applicant making the declaration. The written declaration shall be in conspicuous, bold type and printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration. Also in conspicuous, bold type about the signature line, the applicant shall be advised that "as provided in § 92.525(3), Florida Statutes, a person who knowingly makes a false declaration is guilty of the crime of perjury by false written declaration, a felony of the third degree, punishable as provided in §§ 775.082, 775.083, or 775.084, Florida Statutes."

(b~~d~~) *Documents submitted at any public hearing.* The public is hereby advised that any document, paper, letter, map, book, tape, photograph, film, sound recording, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, submitted at or before a public hearing as a part of said public hearing or with relation to a comprehensive plan amendment application, is hereby declared to be a public record pursuant to F.S. ch. 119, and is automatically made a part of the record of the

public hearing at which it was submitted. The original public record may not be returned to the person submitting the document, and all public hearing participants are hereby so advised.

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.

(a) *Qualifications of members.* Members of the planning board shall be permanent residents and qualified electors of the city. Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or who have shown interest in the area of planning, zoning and related fields. Further consideration in the appointment of planning board members shall be made so as to provide the planning board with the needed technical, professional, business and/or administrative expertise to accomplish the duties and functions of the planning board as set forth in this article, and as from time to time established by the city council.

(b) *Number of members; appointment.* The planning board shall be composed of seven members to be appointed by the city council.

(c) *Number of members; appointment.* The appointment, removal, and terms of members shall be in accordance with chapter 2, article IV of this Code.

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. 38-71. Title of article.

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

Sec. 38-72. Definitions.

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

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

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

Sec. 38-74. Intent of article.

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

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

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

Sec. 38-76. Reserved.

Sec. 38-77. Application.

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

(b) Only 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 th'e applicant's interest in the subject real property, the city may require such information and verification as deemed necessary by the city to establish th'e 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 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:

(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 obtain~~'ed at the city's community development department office.~~

(c) 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.

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.~~

(b) The city shall begin the review process by giving notice to the developer that the city intends to undertake a periodic review of the development.

(c) Upon receipt of such notice of review, the developer shall submit to the city a monitoring and compliance report which shall address each and every requirement or commitment of the development agreement, including its status and the degree to which compliance has or has not been reached. In addition to the compliance report by the developer, the city shall make such other review as it deems appropriate or necessary.

(d) ~~If the city finds and determines that the developer has complied in good faith with the terms and conditions of the agreement during the period under review, the review for that period shall be considered concluded.~~

(e) If the city makes a preliminary finding that there has been a failure to comply with the terms of the development agreement, the city council shall conduct a public hearing at which the developer shall be given the opportunity to demonstrate good faith compliance with the terms of the agreement. If the city council finds and determines on the basis of substantial competent evidence that the developer has not complied with the terms and conditions of the agreement during the period under review, the city council may modify or revoke the agreement.

Sec. 38-84. Governing laws and policies.

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

~~(b) The city may apply subsequently adopted laws and policies to a development that is subject to a development agreement only if the city council has held a public hearing and determined that:~~

~~(1) They are not in conflict with the laws and policies governing the development agreement and do not prevent development of the land uses, intensities, or densities in the development agreement;~~

~~(2) They are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement;~~

~~(3) They are specifically anticipated and provided for in the development agreement;~~

~~(4) The city demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of the development agreement; or~~

~~(5) The development agreement is based on substantially inaccurate information supplied by the developer.~~

~~(c) This section does not abrogate any rights that may vest pursuant to common law.~~

Sec. 38-85. Enforcement.

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

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

~~If state or federal laws are enacted after the execution of a development agreement which are applicable t'o and preclude the parties' compliance with the terms of a development agreement, such agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws.~~

Chapter 40 SPECIAL DISTRICTS

ARTICLE I. IN GENERAL

Secs. 40-1—40-30. Reserved.

ARTICLE II. HIDEAWAY BEACH DISTRICT

Sec. 40-31. Establishment.

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

Sec. 40-32. Establishment of district boundary.

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

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

The district shall have all powers as authorized by law, to effectuate its purpose to improve, renourish, preserve, maintain, monitor and provide public access to the beach property located within the boundaries of the

district, and such other improvements and appurtenances within the district as may be necessary for the improvement, renourishment, preservation, maintenance, monitoring and providing of access to such beach lands. In addition, as necessary to effectuate its purposes as set forth herein, the district shall have the following powers:

(1) The right to exercise any and all provision or powers granted to the district by applicable law;

(2) The full and complete right to contract;

(3) The authority to prescribe, fix, maintain and regulate fees, charges or rents for the use of any district facilities or services;

(4) With the prior approval of the city by a resolution of the city council, to borrow money, issue bonds and other types of securities, pledge or otherwise encumber any of the district's property or assets upon terms and conditions to be determined by the district board;

(5) The right to adopt and enforce reasonable rules and regulations or procedures pertaining to the use, acquisition, maintenance, development, operation or disposal of any of the properties, services, facilities, or projects of the district;

(6) The right to do, and to perform all such things separately or in conjunction with a county, municipality, other special districts or other political subdivision of the state whether the same is within or without the territorial limits of the district;

(7) The authority to employ a staff and such other technical assistants and other employees as the district board shall determine to be necessary;

(8) The right to conduct and pay for studies, plans and designs to effectuate the purpose of the district, which action may include, but is not limited to, work plans for expansion, staffing plans and financing plans;

(9) The right to enter into interlocal agreements or other contracts with public or private entities, if necessary, for the purpose of accomplishing the purposes of the district;

(10) The right to enter into contracts with public or private entities for the provision of assistance in planning, financing and constructing any and all facilities and services as determined to be appropriate and desirable by the district board;

(11) The right to contract for appropriate engineering and financial feasibility studies;

(12) The right to maintain an office at such place or places within the territorial boundary of the district as the district board may designate;

(13) The right to employ and compensate such personnel, consultants and technical and professional assistants as the district board shall deem necessary to the exercise of the district powers and to the performance of the duties set forth in this section;

(14) The right to accept and receive, utilize or expend, in furtherance of its functions, funds, grants and services from the federal government or its agencies, from departments, agencies and instrumentalities of state, municipal, county or other local governments, or from private or civic sources;

(15) The right to invest in accordance with applicable state law any surplus money, including such money in any sinking fund or other fund established for the purpose of providing for the payment of the principal or interest of any bonded or other indebtedness or for any other purpose;

(16) The right to levy such tax and special assessments as may be authorized; and to charge, collect, and enforce fees and other user charges;

(17) The right to hold, control, and acquire by donation or purchase, or dispose of, any easements, dedications, platted reservations, or any reservations for those purposes authorized by this article and

to make use of such easements, dedications, or reservations for any of the purposes authorized by this article;

(18) The right to hold, control and acquire by donation or purchase, or dispose of, any district property for those purposes authorized by this article and to make use of such property for any of the purposes authorized by this article;

(19) The right to have and exercise such powers as are reasonably implied in or not inconsistent with this article and which the district board determines are necessary and proper to carry out the objectives and purposes of the district.

Sec. 40-34. Governing board.

(a) The governing body of the district, which shall be designated as the board (the "district board"), shall be appointed by the City Council of the city ("city council"). The district board shall consist of five district board members (individually, "member"). Each member shall hold office for a term of three years. Members shall be residents or property owners within the district. Members shall serve at the pleasure of the city council. Any vacancy in the district board shall be filled by an appointment made by the city council for the balance of the unexpired term within 60 days of the occurrence of such vacancy. The district board shall exercise the powers granted to the district. No member may serve as a representative on the county coastal advisory committee.

(1) Commencing with the 2020 appointments, city council shall appoint Members as follows: Two members for an initial two year term and three members for an initial four year term. Upon expiration of the initial 2020 appointments, the members shall serve three year terms.

(b) A majority of the members of the district board shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. Action taken by the district board shall be upon a vote of a majority of the members present unless general law or a rule of the district requires a greater number. The district board shall keep a permanent record book in which shall be recorded minutes of all meetings, resolutions, proceedings, certificates, bonds given by all employees, and any and all corporate acts. The record book shall at reasonable times be opened to inspection in the same manner as state, county, and municipal records pursuant to F.S. ch. 119. The record book shall be kept at the office or other regular place of business maintained by the district board.

(c) The district board shall elect one supervisor as chairman and one supervisor as vice-chairman. The chairman shall preside at board meetings and execute all contracts and other legal documents on behalf of the district. The chairman shall be elected for the term of one year. If the chairman shall cease to be a supervisor or shall for any reason be unable to serve as chairman, a successor shall be elected by the district board for the unexpired portion of the term. The vice-chairman shall be elected for a term of one year and shall have all of the duties of the chairman in his/her absence. If neither the chairman nor vice chairman is in attendance and willing to chair a meeting at which a quorum is present, the district board may elect a chairman pro-tem for the duration of that meeting.

(d) All powers, privileges and duties vested in or upon the district shall be exercised and performed by and through the district board; provided, however, the exercise of any and all executive, administrative and ministerial powers may be delegated by the district board to any of its officers, staff, employees, agents or designees, which delegation may be re-delegated or withdrawn by the district board. The district board shall fix and publish the time and place or places at which its regular meetings shall be held, and shall provide for the calling and holding of special meetings at the request of any supervisor upon appropriate notice. The district board shall adopt rules, regulations, resolutions, and orders for conducting its business.

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

Sec. 40-35. Financing.

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

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

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

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

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

Sec. 40-38. Budget and approval thereof.

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

Sec. 40-39. Taxes to be levied.

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

Chapter 42 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE I. IN GENERAL

Sec. 42-1. Definitions.

The following words, terms and phrases, when used in articles I and II of 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:

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

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

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

Lot, corner has the meaning ascribed to it in section 30-10 of this code.~~means a lot located at the intersection 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 a 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 and 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~~.

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

(a) The city council is authorized to name and rename city streets.

(b) For new streets, the owner of the property for which a proposed street is to be platted may recommend the name of the street. Following review by the planning board, the city council may accept the name or rename the street.

(c) The procedure to rename streets shall be as follows:

(1) Any person desiring to rename a street shall first circulate a petition among the property owners abutting the street to be renamed.

(2) The petition shall state the proposed name for the street.

(3) Upon receipt of the signatures of 75 percent of the property owners abutting the street, including their local address, the petition shall be submitted to the city manager.

(4) Upon verification of the required number of signatures, the city manager shall submit the petition to rename the street to the planning board.

(5) The planning board shall conduct a public hearing following public notice at least 30 days prior to the public hearing. The planning board shall consider the impact of the name upon the 911 emergency communications system and shall receive input from local law enforcement, emergency medical services, fire departments, and other applicable agencies. The planning board shall receive public comment and shall recommend approval or denial to the city council.

(6) The city council may accept the petition and rename the street or reject the petition.

(d) If the city council desires to initiate the renaming of a street, the city council shall direct the planning board to conduct a public hearing on the proposed name of the new street and to provide a recommendation to the city council. The city council may then act to rename the street by a majority vote.

Secs. 42-3—42-30. Reserved.

ARTICLE II. SIDEWALKS

Sec. 42-31. Penalties~~; additional remedies~~Reserved.

(a) In addition to the remedies set forth in section 42-39, a violation of this article is punishable according to the penalties and procedures set forth in chapter 14 of this code.~~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 distinctive 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. 42-32. Purpose and intent of article.

The purpose and intent of this article is to:

(1) Promote the health, safety and welfare of the residents and visitors of the city by establishing requirements for the installation and maintenance of sidewalks.

(2) Delineate the responsibility between the city and property owners in connection with the installation and maintenance of sidewalks;

(3) Improve transportation safety through the construction and maintenance of pedestrian ways.

(4) Provide physical and psychological benefits to persons desiring to walk within their neighborhoods or to and from commercial areas.

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

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

Sec. 42-34. Requirements for new construction.

(a) *Sidewalk plan required.* Prior to issuance of any preliminary subdivision plat approval, final site development plan approval, or building permit to erect a structure on vacant land, an applicant shall submit a sidewalk plan to the building services division. The sidewalk plan shall be in accordance with the minimum specifications and design requirements adopted by the city. The sidewalk required for single-family dwelling units shall be shown on the building permit plot plan.

(b) *Plan review.* The sidewalk plan shall be reviewed by the building services division, public works department, or as otherwise designated by the city manager. The plan shall be drawn to a suitable scale and shall delineate the location of the sidewalk within the right-of-way. The sidewalk design shall be compatible with the storm drainage flow from private property or within the public right-of-way.

(c) *Installation.* Prior to the issuance of any certificate of occupancy for a use required to provide sidewalks in accordance with this section, all required sidewalks shall be installed ~~and in place as indicated by the plans approved by the building services division~~, inspected and accepted by the city.

Sec. 42-35. Sidewalks at intersections.

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

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

(a) *Generally.* Excluding property owners within Hideaway and Key Marco PUD's and Olde Marco (north of the centerline of Old Marco Lane), it shall be the duty of every owner of abutting property to construct or reconstruct, maintain and keep in good condition and repair, sidewalks in front of or abutting upon each parcel of the owner's property.

(1) *Vacant lots.* Sidewalk construction shall not be required for vacant lots until the lot is developed (or partially developed), unless the city council determines a sidewalk is needed to complete a safe route to school, in which case sidewalk construction shall be required to be properly permitted and completed by the property owner within nine months (or less if so determined by council) from the date of council's determination of need. Where there is no sidewalk abutting several adjacent vacant lots, to complete a safe route to school, the city may design and construct the required sidewalk and assess the abutting properties for the costs in accordance with section 42-39.

(2) *Improved lots.* Upon issuance of a notice of violation pursuant to chapter 14 of this ~~from the C~~code, ~~enforcement division~~ the property owner of an improved lot shall be required to properly permit and construct a sidewalk within 12 months (or less if so determined by the city's ~~code enforcement~~ special magistrate) for residential properties and within 18 months (or less if so determined by the city's ~~code~~ special~~enforcement~~ magistrate) for commercial properties. Sidewalks must comply with the city's current construction standards at the time of permitting. Where there is no sidewalk abutting several adjacent improved lots, the city may design and construct the required sidewalk and assess the abutting properties for the associated costs in accordance with section 42-39.

(b) *Maintenance.* It is unlawful for any property owner~~, occupant or agent of any property~~ to allow a sidewalk in front of or abutting such property to remain in a condition that renders it unsafe, dangerous or detrimental for the purpose for which it is intended.

(1) If more than 50 percent of the total linear footage of sidewalk needs repair (as determined by the city), the property owner must replace the abutting sidewalk in total to the city's current standards at the time of permitting.

(2) If 50 percent or less of the abutting sidewalk needs repair (as determined by the city), the damaged sections may be replaced in kind with similar construction and material. Concrete leveling with a flowable material will be permitted as an alternate to replacement. Sidewalk grinding will be considered on a case by case basis. A property owner may use asphalt to repair an existing asphalt sidewalk, but when a new building is built on the abutting lot, the asphalt sidewalk must be replaced

with a concrete sidewalk in compliance with the city's current construction standards at the time or permitting.

(c) *Damage.* Any sidewalk damage during new construction or renovation is presumed to be caused by the owner or the owner's agent undertaking construction or renovation. It shall be the owner's responsibility to promptly repair or replace any sidewalk damaged during construction or renovation at the owner's expense.

(d) *Duty to inspect.* ~~A~~The property owner is responsible for ensuring the ~~, occupant or agent shall~~ inspection of all sidewalks in front of or abutting upon the owner's property for unsafe conditions. Where a sidewalk is in the public right-of-way, and is in an unsafe condition, the property owner~~, occupant or agent thereof, or third party~~ shall immediately notify the city of any unsafe condition by written notice. Upon investigation and determination by the city that the condition was not caused by action of the owner, occupant or agent thereof, or third party, the city will not charge the owner~~, occupant, agent or third party~~ if the city repairs the condition. If it is determined that the owner, occupant or agent thereof, or third party caused the damage, then the property owner ~~person who caused the damage~~ shall be required to repair or replace the damage in the manner provided in this ~~division~~ article for the construction of new sidewalks at ~~said person's~~ the owner's own cost; or pay the city to make such repairs or replacement. If the property owner~~, occupant or agent thereof~~ fails to notify the city of any unsafe condition caused by a third party, the property owner~~, occupant or agent~~ cannot raise the defense to a claim of liability that the unsafe condition was caused by a third party. If the owner~~, occupant, agent or third party~~ does not repair or replace the damage or otherwise pay the city, the city shall assess the owner of the property for costs incurred by the city for repairs or replacement. ~~Such assessment, if not paid within 30 days, shall become a lien against the property or as provided in this Code or state law~~.

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

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

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

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

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

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

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

~~(b) If the invoice is not paid at the expiration of a 20-day period, the city manager may assess such costs against such parcel. The assessment shall describe the land and show the cost of engineering, construction,~~

~~maintenance, and administrative expenses, and shall include an additional administrative expense of $200.00 per parcel. Such assessment shall be a legal, valid, and binding obligation which shall run with the property until paid. The assessment shall be due and payable 20 days following the mailing of the notice of assessment, after which interest shall accrue at the rate of 12 percent per annum on any unpaid portion thereof.~~

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

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

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

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

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

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

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

~~(g) The liens for delinquent assessments imposed herein 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 herein.~~

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

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

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

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

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

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

Secs. 42-4~~23~~—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.~~

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

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

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. 42-73. Purpose of article.

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

Sec. 42-74. Provisions supplemental.

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

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

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

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.

(b) *Application.* Application for each permit shall be made on forms provided by the city. Such application shall include but not necessarily be limited to the following information:

(1) The precise physical location of the construction.

(2) The type of facility to be constructed.

(3) The method of construction to be used.

(4) The expected time schedule for completion of construction.

(5) Sketches and drawings in duplicate to completely depict the nature of the proposed construction.

(6) Any other information required in the handbook adopted by this article.

(7) Any additional information reasonably required by the city because of unique circumstances of the project.

(c) *Responsibility for compliance; payment of fee.* The permittee shall be responsible for all conditions of the permit and to pay the applicable permit fee then established by resolution of the city council.

(d) *Approval or denial.* The city shall either approve the application and issue the permit or notify the applicant of the reason for delay or denial. If a notice of delay is issued, that notice shall state the time period within

which the city intends to take further action regarding that application. If no such time period is specified in the notice of delay, the permit shall be deemed to be denied if final action is not taken by the city within 30 days after the issuance date of the notice of delay. Expiration of that 30-day period without final action shall constitute a denial of the permit application.

(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~~.

(f) *Standards for issuance.* No permit shall be issued unless the proposed construction conforms with the then-current edition of the following referenced publications. In the case of conflict or inconsistency, the more restrictive rule shall apply:

(1) The handbook adopted by this article.

(2) Construction methods or specifications contained in state department of transportation standard specifications for road and bridge construction, and the state department of transportation road design standards.

(3) The FDOT Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.

(4) The county unified land development code, or the city land development code, whichever is applicable.

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

(g) *Payment of costs of work.* All work performed under any city permit shall be at the expense of the permittee and at no expense to the city.

(h) *Suspension or revocation.* The city may suspend or revoke the permit whenever any stipulation and/or condition of permit is not being fully and promptly complied with, or when deemed necessary by the city to protect the physical safety and welfare of the public.

Sec. 42-77. Removal of offending material.

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

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

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

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

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

~~(5) After the abatement of the nuisance 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.~~

~~(6) 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 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.~~

~~(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 F.S. ch. 173, 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.~~

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.

Sec. 46-33. Violations; penalties.

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

(b) *Notice to cure deficiency.* Upon notice to cure specified deficiencies, the grantee shall have 30 days in which to cure the deficiencies. Failure to cure any deficiency shall constitute a violation of this article. If, during the 30-day notice period, the deficiencies are satisfied, the city shall declare the notice to cure null and void.

However, should the grantee fail to cure any deficiency, the city manager shall issue a notice of intention to impose a penalty for one or more violations.

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

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

a. The violation has been corrected; or

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

(2) A grantee desiring a hearing before the city council shall send a written notice of appeal of the fine by certified mail to the city manager within ten days following the date on which the city sent the notice of intention to impose a penalty. The hearing on the grantee's appeal shall be within 30 days following the date on which the city receives the written notice of appeal. After the hearing, should the city council sustains in whole or in part the city manager's imposition of a penalty, the city manager may thereafter draw upon the performance bond or the letter of credit required by this article at any time. Unless the city council indicates to the contrary, the penalty shall be imposed beginning with the date on which the city sent the notice of the intention to impose a penalty and continuing thereafter until such time as the violation ceases, as determined by the city manager. The penalty shall be paid 30 days after the notice of intention to impose the penalty, if not appealed, or 30 days following the decision of the city council to sustain the penalty in whole or in part.

(3) The city council shall stay or waive the imposition of a penalty as set forth in this section upon a finding that any failure or delay is the result of an act of God or due to circumstances beyond the reasonable control of the grantee.

(d) *Violations.* The following conditions constitute violations for which penalties may be levied pursuant to this article:

(1) For failure to complete construction in accordance with the franchise, up to $500.00 for each offense. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;

(2) For failure to provide, upon written request, data, documents, reports, and/or information, $100.00 per day for each day or part thereof that each violation occurs or continues. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;

(3) For failure to test, analyze and report on the performance of the system following a written request to do so, $250.00 per day for each day or part thereof that such noncompliance continues. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;

(4) For failure to provide in a continuing manner the types of services proposed in the accepted application or renewal proposal, unless the city council specifically approves a delay or change or the franchisee has obtained modification of its obligation pursuant to 47 USC 545 of the Cable Communications Policy Act of 1984, as amended, $500.00 per day for each day or part thereof that each noncompliance continues. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;

(5) For failure of a franchisee to comply with operational, maintenance, or technical standards or consumer protection standards, $500.00 for each day or part thereof that such noncompliance continues. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;

(6) For failure to comply with any material provision in this article for which a penalty is not otherwise specifically provided, up to $100.00 for each offense. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues; and

(7) For any other action or inaction by the franchisee, as agreed upon between the city and the franchisee, and set forth in the franchise agreement. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues.

Sec. 46-34. Purpose of article.

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:

(1) The grant and renewal of nonexclusive cable television franchises for the installation, operation, maintenance and provision of cable television service within the territorial limits of the city.

(2) Protection and control of the use of city-owned easements and public rights-of-way by cable television franchisees.

(3) Authorization of the provision of cable television service by any cable operator who possess a valid, current franchise granted by the county that is in good standing as of the effective date of the ordinance from which this article is derived.

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

(a) *Franchise required.* No person may operate a cable system in the city without first obtaining a franchise as provided in this article, except as provided by subsection (i) of this section.

(b) *Application.* Any person that desires a cable television franchise shall file an application, in a format provided by the city, which shall include not less than:

(1) The identity of the franchise applicant, including all affiliates of the applicant.

(2) A description of the cable service that will be offered or provided by the franchise applicant over its existing or proposed facilities.

(3) A description of the transmission media that will be used by the franchisee to offer or provide such cable service.

(4) A proposed construction plan (two copies) with sufficient detail to identify:

a. The location and area the applicant's proposed cable telecommunications system shall serve; and

b. The routes, if any, for interconnection with cable telecommunications systems of other providers and to PEG access origination facilities.

Subject to plan approval and following construction, the construction drawings shall accurately depict the constructed configuration of the cable system. A computer aided design (CAD) disk of record construction shall be provided to the city in an approved format and layering system.

(5) A preliminary construction schedule, construction completion date and anticipated system activation date.

(6) Acknowledgment that the applicant's traffic control plan shall conform with the state department of transportation's uniform traffic control procedures as related to public safety issues regarding lane closures and construction in the public way.

(7) Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

(8) Information in sufficient detail to establish the applicant's technical qualifications, experience and ability to provide the cable television services described in its application.

(9) Information to establish that the applicant has obtained all other governmental approvals and permits to construct, operate and offer cable television services.

(10) An accurate map showing the location of any existing cable television and/or telecommunication facilities in the city that the applicant intends to lease.

(11) A description of the services or facilities that the applicant will offer the city and other public, educational and governmental institutions.

(12) A description of the applicant's commercial customer and residential subscriber line extension policies.

(13) All fees, deposits or charges required pursuant to section 46-36.

(14) Such other and further information as may be requested by the city manager.

(c) *Determination by city.* Within 150 days following receipt of a completed application, the city shall, upon application of the following standards, issue a written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial.

(1) The legal, character, financial and technical qualifications of the applicant.

(2) The construction arrangements proposed by the applicant.

(3) Whether the services that the applicant proposes to offer satisfy the community's need for cable television services.

(4) The deleterious effect, if any, on public health, safety and welfare if the franchise requested is granted.

(5) Whether the applicant is providing adequate public, educational and governmental access channel capacity, facilities and financial support.

(6) Applicable federal and state telecommunications laws, regulations and policies.

(7) Such other factors as may demonstrate that the grant to use the public ways may or may not serve the community's interest.

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

(d) *Applicability of state and federal law.* Any cable television franchise granted pursuant to this article is subject to the Cable Communications Policy Act of 1984, as amended, F.S. § 166.046, and other applicable state and federal laws.

(e) *Franchise nonexclusive.* No franchise granted under this section shall confer any exclusive right, privilege, or franchise.

(f) *Term of grant.* The term of a franchise granted pursuant to this article shall not be valid for more than 20 years.

(g) *Rights granted.* No franchise granted under this section shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no franchise shall be construed as any warranty of title.

(h) *Authority to grant additional franchises.* The grantor specifically reserves the right to grant such additional franchises as it deems appropriate, subject to applicable state and federal law.

(i) *Existing franchises.* Any cable television operator who possesses a valid, current franchise granted by the county that is in good standing as of the effective date the ordinance from which this article is derived shall not be required to secure a new franchise until such time as its current franchise expires, or is transferred, or

is renewed. Existing franchisees shall be subject to all the provisions of this article unless otherwise exempted in this article. All existing franchisees shall provide copies of all existing agreements between the existing franchisee and the county within 30 days of the effective date of the ordinance from which this article is derived. Any franchise or agreement not so provided shall not be recognized as valid by the city.

Sec. 46-36. Application fee.

Applicants for a franchise under this article shall pay an application fee to the city of $3,000.00, which shall be due and payable to the city upon submission to the city of an application for a franchise. The city council may waive the fee for an incumbent operator seeking a franchise renewal pursuant to the informal rules provided in section 626 of the Cable Communications Policy Act of 1984.

Sec. 46-37. Bonding requirements.

(a) *Construction bond.*

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

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

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

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

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

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

(b) *Permanent performance and payment bond.*

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

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

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

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

(a) *Rights of city.* The city reserves the right to suspend, terminate or cancel a franchise and all rights and privileges of a franchisee thereunder after due process as specified by subsection (c) of this section for just and reasonable cause or if any one of the following occurs:

(1) The franchisee, after 30 days' notice by certified mail by the city, violates any provision of this article or any rule, order or determination of the city made pursuant to this article, except if such violation by the franchisee is without fault or through excusable negligence.

(2) The franchisee becomes insolvent or unable or unwilling to pay its debts, or is adjudged bankrupt.

(3) The franchisee attempts to evade any of the provisions of this article or of the franchise agreement or practices any fraud or deceit upon the city.

(4) The franchisee fails to commence construction within one year from the effective date of the ordinance from which this article is derived.

(5) The franchisee fails to complete construction pursuant to the requirements of this article within the time required by its franchise.

(6) The franchisee fails to provide service to its subscribers as required by the terms of this article, the franchise agreement, or the Cable Communications Policy Act of 1984, as amended, whichever is stricter.

(b) *Suspension.* The city reserves the right to suspend any or all of the rights of a franchisee upon a finding that the franchisee is failing to provide efficient service to its subscribers within the city or for any grounds specified in subsection (a) of this section. This shall include the right of the city to prohibit further expansion of service areas until service in the areas being served is brought up to minimum acceptable standards.

(c) *Procedures for termination.* The franchise may be terminated in accordance with the following procedures:

(1) The city manager shall notify the franchisee in writing of the exact nature of the alleged violation constituting grounds for termination and give the franchisee 30 days, or other greater amount of time as the city manager may specify, to correct such violation or to present facts and argument in refutation of the alleged violation.

(2) If within the designated time the franchisee does not remedy and/or put an end to the alleged violation, the city council, after a public hearing, may direct the termination of the franchise if it determines that such action is warranted.

(d) *Right to hearing on termination.* If the city shall decide to terminate for cause a franchise granted under this article, it shall give the grantee 60 days' written notice of its intention to terminate, and stipulate the cause. If during the 60-day period the cause shall be cured to the satisfaction of the city, the city shall declare the notice to be null and void. In any event, before a franchise may be terminated, the grantee must be provided with an opportunity to be heard before the city council in accordance with due process procedures. If a grantee's franchise is terminated, the decision shall be subject to judicial review as provided by law.

(e) *Sale of system to new franchisee.* If operation of the cable system is discontinued for any reason for a continuous period of 30 days or the franchise held by a grantee to construct, operate, or maintain a cable system is terminated by the city council pursuant to the terms of this article, and all negotiations to settle the

differences between the parties have failed (provided, however, that such negotiations shall not be required), the city council may advertise and seek another to operate the system. If a franchise is granted to another person, the terminated franchisee may be required to sell the cable system to the new franchisee at a price to be determined by three competent independent appraisers, one each appointed by the terminated franchisee, the new franchisee, and the city council. The appraisers to be appointed shall use the then-best methods of appraising to determine this value. The appraisers' fees shall be shared equally by the terminated franchisee and the new franchisee. The terminated franchisee shall execute such deeds, bills of sale and other documents as may be necessary to effectuate this sale. The terminated franchisee shall fully cooperate with these appraisers.

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

(g) *Removal of facilities and equipment.*

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

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

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

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

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

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

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

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

Sec. 46-40. Franchise fee.

(a) *Amount; payment.*

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

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

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

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

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

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

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

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

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

(c) *Annual financial statement; audits.* The grantee shall provide the city an annual financial statement within 60 days of the close of the calendar year, certified by an official of the franchisee responsible for the system's financial statements, reflecting the total amounts of gross revenues and all payments and computations for the previous calendar year. Upon ten days' prior written notice, the city shall have the right to conduct an

independent audit of the franchisee's records. If, after resolving any dispute arising from such audits, the franchisee has made a franchise fee underpayment of three percent or more, the franchisee shall assume all reasonable costs of such audits. In other events, the city shall bear all costs associated with such audits.

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

Sec. 46-41. Limitations on franchise.

(a) In addition to the limitations otherwise appearing in this article, the franchise is subject to the following limitations: Grantees shall at all times during the life of a franchise granted under this article be subject to all lawful exercise of the police power by the city and other duly authorized regulatory state and federal bodies and shall comply with any and all ordinances which the city has adopted or shall adopt applying to the public generally, and shall be subject to all laws of the state and the United States.

(b) Time shall be of the essence of any franchise granted under this article. A grantee shall not be relieved of its obligation to comply promptly with a provision of this article by the failure of the city to enforce prompt compliance. Failure of the city to enforce any breach by the franchisee shall not constitute a waiver by the city.

(c) A franchise granted under this article shall not relieve a franchisee of any obligations under any preexisting pole or conduit use agreements it may have with the city, a utility company, or others maintaining poles or conduits in the streets of the city.

(d) Any poles, cables, electronic equipment or other appurtenances of a franchisee to be installed in, under, over, along, across or upon a street shall be so located so as to cause minimum interference with the public use of the street and to cause minimum interference with the rights of other users of the streets or of property owners who adjoin any of the streets. All such installations in or upon property owned or controlled by the city shall be subject to the prior approval of the city.

(e) In the event of disturbance of any public or private property by a franchisee, it shall at its own expense, and in a manner approved by the city, replace and restore public and private property to no less than the same condition as before the work that caused such disturbance was done.

(f) Grantees shall construct, maintain and operate their cable telecommunications systems so as to cause minimum inconvenience to the general public. All excavations shall be properly guarded and protected. At the franchisee's sole cost and expense, the street shall be restored immediately upon completion of all work.

(g) Grantees shall, upon reasonable notice from any person holding a building moving permit issued by the city, county or state, temporarily alter their facilities to permit the moving of such building. The actual cost of such altering shall be borne by the person requesting the altering, and grantees shall have the right to request payment in advance. For the purposes of this article, reasonable notice shall be construed to mean written notice received by the franchisee at least five business days prior to the move.

(h) If at any time in case of fire or disaster in the city it shall become necessary in the judgment of the city manager or the chief of the fire department or their designee to cut or move any of the wires, cables, amplifiers, appliances, or appurtenances thereto of a franchise, such cutting or moving may be done, and any repairs rendered necessary thereby shall be made by the franchisee at no expense to the city.

Sec. 46-42. Installation of facilities.

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

(1) Without cost to the city, the grantee may be required by the city to locate and identify its cable television facilities within the public rights-of-way.

(2) The city reserves the right, upon 90 days' notice, to require the grantee at its expense to protect, support, temporarily disconnect, relocate or remove from the city's street any property of the grantee by reason of traffic conditions, public safety, street construction or excavation, change or establishment of street grades, or installation of sewers, drains, water pipes, power or communication lines, tracts, or other types of structures or improvements by governmental agencies or any structures of public improvement. In emergencies, no specific notice period shall be required. The city shall endeavor to notify and seek comment from the grantee, with respect to minimizing disruption to the cable system, where public projects may affect the grantee's cable system.

(3) Cable television facilities shall be installed within existing underground duct banks or conduit whenever excess capacity exists.

(4) A franchisee with permission to install overhead facilities shall attach its cable telecommunications facilities on utility poles only when pole space is available and comply with the provisions of the National Electrical Safety Code.

(5) Whenever any existing electric utilities, cable facilities or telecommunications systems are located underground within a public way of the city, a grantee with permission to occupy the same public way must also locate its cable television facilities underground at no cost to the city.

(6) Whenever any new or existing electric utilities, cable or telecommunications systems are located or relocated underground within a public way, a grantee that currently occupies the same public way shall relocate its facilities, without cost to the state or city, underground within a reasonable period of time, which shall not be later than one year from the date of notification. Absent extraordinary circumstances or undue hardship as determined by the cable television administrator, such relocation shall be made concurrently to minimize the disruption of the public ways.

(7) Whenever a public way exists to accommodate the grantee's system, the grantee shall not locate its facilities off the public way, unless to serve customers, and shall make every effort to locate its cable telecommunications facilities within the public way before seeking private easements within the city. The grantee shall, at no cost to the city, relocate its facilities and appliances which are in conflict with city projects to upgrade or construct roadways.

(8) The grantee shall locate, place and construct its cable telecommunications facilities so as not to interfere with the construction, location and maintenance of sewer or water mains, lines or connections. The grantee shall implement preventive measures to protect existing facilities within the public rights-of-way.

(9) The grantee shall restore and replace landscaped areas, pavement, pedestrian lighting, sidewalks, curbs, gutters or other facilities damaged by the grantee or its contractors with like material to their former condition at the grantee's expense, and shall thereafter, from time to time, but no longer than one year from the completion of the job, readjust, fill and finish such facilities as may be necessary due to settling of the earth associated with the grantee's disruption of the public way.

(10) Whenever a new cable system will exhaust the capacity of a public street or utility easement to reasonably accommodate future cable telecommunications carriers or facilities, the grantee shall provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future carriers.

(11) The grantee shall adhere to all federal, state and local regulations regarding the location, construction, and maintenance of its cable telecommunications facilities within the public rights-of-way.

(12) All grantees are required to obtain construction permits for the erection of a cable telecommunications system. Nothing in this section shall prohibit the city and a franchisee from agreeing to an alternative

plan review process or alternate permit and construction procedures. Such alternative procedures must be stated in the franchise agreement.

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

It is understood that the city does not have the unqualified right to authorize a grantee the use of all public rights-of-way. Some rights-of-way may not be under the grantor's control, because of reservations in favor of the dedicators or because of other legal impediments; therefore, in granting a franchise, the city does not warrant or represent as to any particular public right-of-way that it has the right to authorize the grantee to install or maintain portions of its cable system therein. The burden and responsibility for making such determination shall be upon the franchisee.

Sec. 46-44. Additional rights of city.

(a) *Amendment of article; conflicting regulations.* The city may add to or modify or delete provisions of this article as it shall deem necessary in the exercise of its regulatory powers, provided that such additions or revisions are reasonable and in keeping with the public interest and welfare. Such additions or revisions shall be made only after a public hearing for which grantees shall have received written notice at least 15 days prior to such hearing. In the event of a conflict between any provision of this article (or amendment to it) and a franchise granted pursuant to this article, the provisions of the franchise shall control.

(b) *Completion of work by city.* In the event of the failure by the grantee to complete any work required in section 46-42 or any work required by city law or this article within the time established and to the satisfaction of the city, the city may cause such work to be done and the grantee shall reimburse the city the costs thereof within 15 days after receipt of an itemized list of such cost.

(c) *Emergency use of facilities.* The city reserves the right, in the event of an emergency or disaster, to require the grantee to make available to the city manager, or his appointee, at his request, the grantee's facilities, at no cost, for emergency use during such emergencies or disaster period.

(d) *Access to grantee's records.* The city reserves the right, during the life of any franchise granted under this article, to have access at all reasonable hours to the grantee's plans, contracts and engineering, accounting, financial, statistical, customer, and service records relating to the property and the operations of the grantee and to all other records required to be kept under this article upon reasonable request.

(e) *Use of poles and conduits for municipal networks.* The city reserves the right, during the life of any franchise granted under this article, to install and maintain free of charge upon the poles and conduits of the grantee any wire and pole fixture necessary for municipal networks such as police and fire networks, on the condition that such installations and maintenance thereof do not interfere with the operations of the grantee.

(f) *Inspections and tests.* The city reserves the right, during the life of any franchise granted under this article, to reasonably inspect and supervise, at the grantee's cost, all construction or installation work performed subject to the provisions of the article to ensure compliance with the terms of this article. The city may also perform measurements upon and randomly inspect any portion of a grantee's system to ensure compliance with the technical standards under which the grantee is authorized to operate. Upon the city's request, the grantee will perform the tests, submitting the results to the city.

(g) *Performance reviews.* The city reserves the right, during the life of any franchise granted under this article, upon 30 days' notice, to hold a public hearing for the express purpose of reviewing the general and specific performance of the grantee with regard to all franchise provisions contained in this article or in the future adopted by the city.

(h) *Governmental rights and powers generally.* Neither the granting of any franchise nor any governing provision of any franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the city.

(i) *Right of eminent domain.* Nothing in this article shall in any way or to any extent be construed to waive, modify or abridge the city's right of eminent domain in respect to a franchisee.

(j) *Delegation of powers; enumeration not exclusive.* Any right or power in or duty impressed upon any officer, employee, department or board of the city shall be subject to transfer by the city council by law to any other officer, employee, department or board. The city reserves the rights not specifically granted in this article, and the enumeration of the rights in this article shall not be construed to be a limitation of any right or power the city may otherwise have.

(k) *Hearing on provision of additional channel capacity.* The city shall have the authority to order a hearing no less than every three years on the provision of additional channel capacity, if, after a hearing, the city determines that:

(1) A requirement for additional capacity exists; and

(2) Consideration has been made or will be made for adequate rates to allow the company a fair rate of return on its additional investment.

(l) *Use of fiber optic cable.* Any expanding or hybrid fiber and coaxial cable upgrade of the cable system shall use fiber optic cable to the greatest extent possible to provide the highest quality of service and reduce the number of cascaded amplifiers.

(m) *Institutional network capacity.* With respect to institutional network capacity, a minimum of two six-MHz data channels, two forward and two reverse data paths, shall be reserved by the grantee on its cable system for use by the city, unless otherwise provided in the franchise agreement. The grantee shall provide these data channels without charge to the city. These data channel circuits shall be coordinated so as to provide error-free data transmission within and between all fiber optic and coaxial cable segments.

(n) *Service to governmental facilities and public schools.* As a condition of the franchise, the grantee shall provide television and I-Net service to all local governmental facilities and all public school facilities without charge.

(o) *Contracts for exclusive service.* No franchisee or other multichannel video programming distributor shall enter into or enforce an exclusive contract for the provision of cable service or other multichannel video programming with any person, or demand the exclusive right to serve a person or location, as a condition of extending service to that or any other person or location.

(p) *Limiting compensation for provision of cable service.* No franchisee or other multichannel video programming distributor shall engage in acts that have the purpose or effect of limiting compensation for the provision of cable service or services similar to cable service in the city, except for such actions as are expressly authorized by law.

Sec. 46-45. Service area.

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

Sec. 46-46. Emergency alert override system.

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

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

(a) The city shall have the right to establish an authority or commission to administer for the city all community media (access) activities. The city may establish, consistent with federal and state law, requirements in franchises with respect to the designation and use of channel capacity on a franchisee's cable system for public, educational and governmental access television program telecasts on the basic tier.

(b) The city shall have the right to direct the grantee to collect fees from customers to support the annual operating and capital requirements of a community media (access) operation and related access facilities. The fee shall be collected and remitted to the city for deposit in a special revenue fund, designated for this purpose, each month.

Sec. 46-48. Additional capacity; interconnections.

(a) *Authority to order provision of additional capacity.* The city shall have the authority to order a public hearing from time to time on the provision of channel capacity for public bandwidth on the network. If, after a hearing, the city determines that provisions have been made to allow the company a fair rate of return on its investments, the city shall order the company to provide such additional capacity within a reasonable amount of time. If the city finds that additional public channel bandwidth is necessary, the company shall, within three months from receipt of written notice from the city, make additional channel bandwidth available.

(b) *Interconnection requirement.* A grantee shall interconnect PEG access channels and I-Net with any or all other cable systems in contiguous adjacent areas, upon the directive of the city. Interconnection of cable systems may be accomplished by direct cable connection, microwave, satellite, or other appropriate method.

(c) *Interconnection procedure.* Upon receiving the directive of the city to interconnect, a franchisee shall immediately initiate negotiations with the other affected cable systems in order that all costs may be shared equally among cable systems for both construction and operation of the interconnection link.

(d) *Relief from interconnection order.* A grantee may be granted reasonable extensions of time to interconnect or the city may rescind its order to interconnect upon the submission of a petition by the grantee to the city. The city shall grant the request if it finds that a grantee has negotiated in good faith and has failed to obtain an approval from the cable systems of the proposed interconnection or that the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.

(e) *Cooperation with agencies associated with interconnection.* A grantee shall cooperate with any interconnection corporation, regional interconnection authority, or city, county, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems within the boundaries of the city.

Sec. 46-49. Rate regulation.

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

Sec. 46-50. Rights of subscribers.

(a) Grantees shall not deny service to or otherwise discriminate against subscribers or citizens on the basis of race, color, religion, national origin, age, gender, disability, family status, marital status, veteran status, or sexual orientation.

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(b) Grantees shall not exclude any high-cost area, any rural location or any person based on that person's income.

(c) Grantees shall comply at all times with all other applicable federal, state and local laws relating to nondiscrimination with respect to the provision of goods and services.

(d) Grantees shall adhere to applicable equal employment opportunity requirements of federal and state law.

(e) In the course of providing their services, grantees shall take reasonable steps to prevent the invasion of a subscriber's right of privacy as such right is defined by applicable federal and state law.

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

It shall be unlawful for any person to attach or maintain an electronic, mechanical or other connection to any cable, wire, decoder, converter, descrambler, device or equipment of a cable system or to remove, tamper with, modify or alter any cable, wire, decoder, converter, descrambler, device or equipment of a cable system for the purpose of intercepting or receiving any programming or service transmitted by such cable system which such person has not been authorized by the cable system to receive.

Sec. 46-52. Indemnification of city.

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

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

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

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

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

Any person aggrieved by any nonlegislative order or decision of the city council shall have the right to petition the city council for a rehearing and reconsideration of any order, regulation or decision. Such a petition must be filed within ten days following the rendition of such order, regulation or decision. The effect of the filing of a petition for rehearing shall operate to stay the order or decision sought to be reviewed until the petition is disposed of. If a petition for rehearing has been denied, such aggrieved party may have such order or decision reviewed by certiorari to the county circuit court or by other proceedings as may be prescribed by court rules,

within 30 days after the disposition of their petition for rehearing. The proceedings before the city council shall be deemed quasijudicial in nature, and such review shall be limited to the record made before the city council.

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

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

Sec. 46-56. Amendment of article.

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

Sec. 46-57. Compliance with applicable laws.

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

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

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

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

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

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

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

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

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

Sec. 46-62. Operation without franchise prohibited.

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

Secs. 46-63—46-90. Reserved.

ARTICLE III. COMMUNICATION TOWERS

Sec. 46-91. Intent and purpose.

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

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

(a) The ~~public safety~~ police department, under the direction of the city manager, shall have full power and be charged with all duties in relation to the direction of vehicle traffic and enforcement of all laws governing vehicle traffic.

(b) The public works department, under the direction of the city manager, shall have full power and be charged with all duties in relation to the planning, engineering, and management of vehicular and pedestrian traffic.

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

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

Secs. 50-5—50-30. Reserved.

ARTICLE II. STOPPING, STANDING AND PARKING

Sec. 50-31. Findings and purpose.

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

(1) The improper and nonregulated parking is detrimental to the health, safety and welfare of the citizens of Marco Island.

(2) The maintenance and control of access to buildings, both public and private, for handicapped persons is important to citizens of Marco Island.

(3) The clear passage of public roadways and streets, including parking lots, business access, city and county parks, and all other facilities is vital to the citizens of Marco Island.

(4) The protection of the quality of life and economy for the City of Marco Island, its businesses and its citizens can be accomplished by controlling parking and access to facilities.

Sec. 50-32. Title and citation.

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

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

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

Sec. 50-34. 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.~~:~~

Bicycle means any device propelled by human power, or any moped propelled by a pedal-activated helper motor with a manufacturer's certified maximum rating of 1½ brake horsepower, upon which any person may ride,

having two tandem wheels, either of which is 20 inches or more in diameter, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.

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

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

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

Crosswalk means:

(1) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway, measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

(2) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossings by lines or other markings on the surface.

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

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~~or~~ *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. 50-35. Jurisdiction.

The provisions of this article prohibiting the stopping, standing or parking of a vehicle shall be in effect upon all streets and highways within the incorporated area of the City of Marco Island and shall apply at all times or as indicated on official signs, except when it is necessary to stop a vehicle to avoid conflict with other traffic or is in compliance with the directions of a law enforcement officer or traffic-control device.

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:

(1) All night parking;

(2) Angle parking;

(3) Parking on the left side of one-way streets or highways;

(4) Parking on one-way streets;

(5) Parking in hazardous places;

(6) Curb loading zones;

(7) Bus stops, taxi stands, etc.;

(8) Prohibited parking;

(9) Limited parking;

(10) Determined and designated meter parking zones; and

(11) Tow-away zone.

Upon the order of the city manager enacting restrictions or prohibiting parking, standing, or stopping in certain areas along city streets or alleys, such streets or alleys may be posted with signs specifying the restrictions or prohibitions of parking, standing, or stopping.

Sec. 50-37. Prohibited parking.

Except when necessary to avoid conflict with other traffic, or in compliance with law or the direction of a law enforcement officer or official traffic control device, no person shall:

(1) Stop, stand or park a vehicle:

(a) Upon a street in such a manner or under such conditions as to obstruct or interfere with the free movement of traffic;

(b) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(c) On a sidewalk, bike path, or bike lane; if any portion of a vehicle obstructs or projects over the edge of the sidewalk, bike path, or bike lane, the vehicle is in violation of this section;

(d) Within an intersection;

(e) On a crosswalk;

(f) Alongside or opposite any street, or obstruction when stopping, standing or parking would obstruct traffic;

(g) Upon any bridge or other elevated structure upon a highway, where parking is not provided for;

(h) Within any appropriately signed or marked fire lane;

(i) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the city manager or the state department of transportation indicates a different length by signs or marking;

(j) Within 50 feet of a driveway entrance to any fire station and on the side of a street or highway opposite the entrance to any fire station within 75 feet of said entrance;

(k) In the median area between traffic lanes;

(l) At any place where official signs prohibit standing;

(m) On any improved surface adjacent to a roadway designed and marked for parking for a period longer than 72 consecutive hours;

(n) On any improved surface in a city parking lot designed and marked for parking for a period longer than 72 consecutive hours;

(o) On any improved surface meeting the criteria of (m) and (n) of this section: outside of the marked parking space;

(p) Excluding on private property, next to a curb line painted yellow designating a no-parking zone;

(q) With expired or unregistered license plates on any street, street right-of-way, swale or public access parking area, except as provided for in section 30-1007.

(2) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(a) In front of a public or private driveway;

(b) Within 15 feet of a fire hydrant;

(c) Within 20 feet of a crosswalk at an intersection;

(d) Within 30 feet upon the approach to any flashing signal, stop sign or traffic control signal located at the side of a roadway;

(e) Within 100 feet of intersecting road right-of-way;

(f) On any roadway pavement maintained by the city on other than duly designated parking lanes;

(g) At any place where official signs prohibit or restrict parking, or in excess of time periods authorized by such signs;

(h) Along or adjacent to any curb painted red or yellow, or across the delineated boundaries of a public parking place;

(i) Seaward of the coastal construction setback line.

(3) Stand or park a vehicle on a swale, or in a swale area, whether the vehicle is occupied or not, except momentarily to pick up or discharge a passenger, or passengers, or property, under the following circumstances:

(a) Between the hours of 2:00 a.m. and 6:00 a.m., except this prohibition shall not apply in residential districts between November 15 and January 15 of each calendar year, unless otherwise temporarily modified by council resolution, as deemed in the best interest of the city, or unless the record owner of the property adjacent to a swale or swale area has requested specific enforcement of this provision in writing during the relevant time period each year;

(b) When prohibited by an official sign;

(c) On any curbed swale;

(d) At any time within 500 feet of the entrance to Resident's Beach;

(e) At any time within 500 feet of the entrance to the South Beach pedestrian access;

(f) At any time within 500 feet of the entrance to the Tigertail Beach;

(g) At any time within 500 feet of the entrance to the Madeira beach access path;

(h) At any time within 500 feet of the entrance to the Marriott's Crystal Shores beach access path;

(i) Facing against the direction or flow of traffic for that side of the roadway;

(j) Angled parking unless posted as authorized;

(k) If the vehicle is a trailer; parking is prohibited at any time except when attached to a vehicle and being used in conjunction with an ongoing maintenance or repair operation such as utility repairs, public works and landscape maintenance.

(l) Except between the hours of 7:00 a.m. and midnight for vehicles parking in swales and alleys adjacent to commercially zoned districts, unless otherwise temporarily modified by council by resolution, as deemed in the best interest of the city.

(4) Willfully obstruct the free, convenient, and normal use of any public street, highway or road, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon, or by endangering the safe movement of vehicles or pedestrians travelling thereon:

(a) Nor shall any person stop, stand or park a vehicle within an alley in a business district in such a manner as to obstruct the free movement of emergency vehicles or vehicular traffic except when otherwise noted by street signage or while the driver remains with the vehicle and is actually engaged in the expeditious loading or unloading of material, and in no event for a period of more than 20 minutes;

(b) Nor shall any person stop, stand or park a vehicle within an alley in such position as to block the driveway or entrance to any abutting property.

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.

(2) Whenever any parking enforcement officer finds a vehicle in violation of F.S. § 316.1955, the officer shall:

(a) Have the vehicle in violation removed to any lawful parking space or facility or require the operator or other person in charge of the vehicle immediately to remove the unauthorized vehicle from the parking space. Whenever any vehicle is removed by a parking enforcement officer or agency to a storage lot, garage, or other safe parking space, the cost of such removal and parking shall be a lien against the vehicle; or

(b) Charge the operator or other person in charge of the vehicle in violation with a noncriminal traffic infraction, punishable as provided in section 50-39.

(3) Violation of F.S. § 316.1955 shall be punishable as provided in section 50-39.

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. 50-40. Issuance of city parking citations.

(1) When any parking enforcement officer finds a vehicle in violation of the provisions of this article or signs erected pursuant to the provisions of this article, they shall issue a parking citation to the vehicle by placing said citation in a conspicuous place on the vehicle. Such parking citation form shall contain language providing notice of the following:

(a) The type of violation and amount of penalty imposed by this article.

(b) The procedures to be followed in either paying said penalty or electing not to pay such penalty and requesting a hearing before a county judge concerning the parking violation.

(c) The penalty for failure to comply with directions contained on the citation.

(2) The parking enforcement officer shall determine the registered owner of the vehicle for which a citation was issued and shall complete the citation form. The original copy of the citation form shall be forwarded to the city police department when completed for processing.

Sec. 50-41. Payment of civil penalties and proceedings to enforce payment violations.

(a) Any person issued a city parking citation, pursuant to sections 50-37 or 50-38, shall answer the citation by either of the following procedures within ten days after the date of issuance of the citation.

(1) Payment of the penalty indicated on the citation may be remitted to the City of Marco Island, pursuant to the directions on such citation; or

(2) A hearing may be requested by the person receiving such citation or the cited vehicle's registered owner for the purpose of presenting evidence before a county judge concerning a parking violation.

Any person requesting a hearing shall execute a statement on a hearing request form indicating his/her willingness to appear at such hearing at a time and place specified thereon. This hearing request will be filed with the police department, who will schedule a hearing through the clerk of the courts.

Any person who requests a hearing and does not appear in accordance with said statement shall be subject to contempt proceedings or to other such penalties as the court may, in its discretion, impose to require compliance with this article.

(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. 50-42. Owner's liability for parking violations.

(1) The owner of a vehicle is responsible and liable for payment of any parking ticket violation unless the owner can furnish evidence that the vehicle was, at the time of the parking violation, in the care, custody or control of another person. In such instances, the owner of the vehicle is required, within a reasonable time after notification of the parking violation, to furnish to the appropriate law enforcement authorities the name and address of the person or company who leased, rented or otherwise had the care, custody or control of the vehicle. The owner of a vehicle is not responsible for parking ticket violations if the vehicle was, at the time, stolen or in the care, custody or control of some person who did not have permission of the owner to use the vehicle.

(2) At any hearing of the case involving illegal parking in which the owner of said vehicle is being tried under this article, it shall be sufficient evidence upon which the court may rely to establish the name of the registered owner of such vehicle if a law enforcement officer shall state under oath that he has made inquiry of the department of highway safety and motor vehicles or office of the county tax collector and has been advised by them of the identity of such registered owner. Otherwise, the court may defer the final determination of such case until a certified record or appropriate certificate can be obtained from the office of the department of highway safety and motor vehicles or the county tax collector's office indicating the registered owner of the vehicle on the date in question.

Sec. 50-43. Disposition of fines and forfeitures for parking violations; authorized costs.

Except as otherwise provided in this section, all moneys received by the clerk of the county court as a result of parking citation issued by a municipality shall be paid to that municipality as provided by Florida State Statute.

Sec. 50-44. Impoundment.

(a) The police chief or any police officer is authorized to provide for the removal of a vehicle to a vehicle storage lot (or other place designated by the police chief):

(1) Where such vehicle is parked in a posted tow away zone;

(2) Where such vehicle constitutes an obstruction of traffic;

(3) Where such vehicle has been parked or stored without moving for a period exceeding 24 hours;

(4) Where such vehicle has been involved in an accident and the driver is unable to remove the vehicle;

(5) Where such vehicle is wrecked, dismantled, inoperative or in an obvious state of disrepair;

(6) When the driver of a vehicle is taken into custody by the police department and the vehicle would thereby be left unattended upon a street;

(7) When removal is necessary in the interest of public safety because of fire, flood, storm or other emergency reason;

(8) When any vehicle has been stolen or operated without the consent of the owner and located on public or private property;

(9) When any vehicle displays illegal license plates or fails to display the current lawfully required plates and is located upon any public street or other property open to the public for the purpose of vehicular travel or parking;

(10) When any vehicle has been operated by a person, known or otherwise, who has failed to stop in the case of a vehicle crash involving personal injury, impaired driving, or property damage in excess of $1,000.00;

(11) When the vehicle's owner is found to have three or more unpaid parking or traffic citations and is located upon any public street or other property open to the public for the purpose of vehicular travel or parking;

(12) When the vehicle is parked continuously in the same place for more than the permitted amount of time as defined in section 50-37 and the vehicle remains in place for 12 consecutive hours after issuance of a parking citation describing said violation;

(13) The vehicle is parked upon any public street or other property open to the public for the purpose of vehicular travel or parking which has been declared a temporary or no parking zone due to a state of the emergency proclamation issued by the City of Marco Island;

(14) Where such vehicle is parked in a fire lane;

(15) If a vehicle is removed pursuant to this section, the registered owner will be notified in writing within five business days that the vehicle was towed and the procedure for reclaiming the vehicle. An inventory receipt will be suitable for this purpose. The notification will be sent to the address on record with the state department of highway safety and motor vehicles.

(16) The police department will provide the Collier County Communications Center with a full description of the towed vehicle within 12 hours of impoundment. This information will be made available to the applicable storage area upon their request.

(17) No vehicle impounded in an authorized storage area pursuant to this section shall be released there from until the charges for towing the vehicle into the storage area and storage and administrative charges have been paid. The charge for the towing or removal of any impounded vehicle and storage charges shall be set by the city manager, which charges are to be based upon the actual cost of the removal and storage of the vehicle, as may be set forth in the city's contract with the authorized towing service, as well as an administrative fee set by the city manager.

(18) Any person seeking to release an impounded vehicle shall appear at the police department to furnish satisfactory evidence of identity and ownership or right to possess. Proof of current insurance status must also be shown. No vehicle may be released if there is an administrative, evidentiary or judicial hold placed on said vehicle.

(19) No owner or operator shall remove an impounded vehicle from the place of storage without complying with the above procedures. Possession of the vehicle which has been impounded and unlawfully taken from the place of storage, by the owner or operator, shall constitute prima facie evidence that it was removed by the owner or operator.

(20) No vehicle storage facility may release an impounded vehicle without written authorization by the Marco Island Police Department to do so.

(b) The administrative fees to be charged by the municipality relative to the impoundment of vehicles as authorized by this section are to be set by the city manager.

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 handicapfees 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. 52-31. Findings.

It is hereby ascertained, determined and declared that:

(1) The City of Marco Island, Florida, in November, 2003, acquired all potable and nonpotable water supply, treatment, storage and distribution systems and wastewater collection, transmission, treatment, disposal, reuse and reclaimed water systems located in the city and adjacent unincorporated areas of Collier County and owned by Florida Water Services Corporation ("FWSC"), together with any future extensions or expansions thereof (the "FWSC System").

(2) The City of Marco Island, Florida, possesses and/or will contract for the technical and professional capacity to own, operate, maintain and administer the FWSC System and is capable of providing other services set forth in F.S. § 180.06.

(3) The City of Marco Island desires to avail itself of the provisions and benefits of F.S. ch. 180, and to create a zone or area and prescribe reasonable regulations requiring all persons or entities living or doing business within said area to connect, when available, with any water, wastewater, or re-use water system or alternative water supply system, including, but not limited to, reclaimed water; aquifer storage and recovery, and desalination systems.

(4) The service area created includes the property lying within the corporate boundaries of the city and areas in adjacent unincorporated areas of Collier County previously served directly by the FWSC system. The Key Marco (CDD) area, a certificated area, is served potable water by the county pursuant to a bulk purchase agreement with FWSC and is now incorporated within the city's limits. The service area also includes adjacent areas currently with systems owned and operated by Collier County, including parts of the Goodland Area, that is provided by the city upon the execution of an interlocal agreement(s) between the city and Collier County. The areas lying beyond the corporate limits of the city are described on figures "1A" and "1B" and shall be generally referred to herein as "adjacent service area." This article does not amend any boundary of any utility service area, nor affect any utility service agreement. The city shall not provide any utility service listed in subsection (a), above, into any Collier County Water-Sewer District area except to the extent authorized by the county.

(5) The service area described herein possesses long-range capital improvements adequate to protect the health, safety and welfare of the persons or corporations, living or doing business therein in the following respects, among others:

a. The cleaning or environmental improvement of bodies of water for sanitary purposes;

b. The providing of a water supply for domestic, municipal or industrial uses;

c. The collection and disposal of sewage including wastewater reuse and other liquid wastes;

d. The construction of reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works incidental;

e. The construction of such other buildings and facilities as may be required to properly and economically operate and maintain the foregoing facilities and utility systems for the fulfillment of the purposes of F.S. ch. 180.

(6) There exists a need for the provision and enhancement of the services and facilities described in subsection e. above to the residents, landowners and other persons and entities living in and conducting business within the city and in the adjacent service area.

(7) It is in the best interest of the citizens of the City of Marco Island, Florida, and adjacent service area for the city to provide the above enumerated services for the orderly growth of the city and the adjacent service area in an efficient manner for their collective health, safety and welfare both now and in the future.

Sec. 52-32. Declaration.

The City of Marco Island hereby declares there to exist an urban service area within which the city is engaged in certain activities authorized by F.S. § 180.06, such activities shall specifically include the duty, obligation, power and authority to acquire, obtain, construct, maintain, provide, collect, distribute, dispose of, regulate, finance and charge for the supply of potable and nonpotable water, treatment, storage, or distribution systems, facilities and associated services and wastewater collection, transmission, treatment, disposal, reuse or nonpotable water systems, facilities, and associated services to customers and land served by the FWSC system, or any future expansion thereof. Such urban service area shall be composed of and include the area located within the city's corporate limits and the adjacent service area. By declaring the existence of this urban service area, the city proposes and intends to exert its influence and control as the general purpose local government regarding the services to be provided through the enactment of this article to the exclusion of the control of any other local government. This declaration is provided in conformance with F.S. ch. 180 and is necessary for the promotion of the health, safety and welfare of the public. For those systems currently owned and operated by Collier County, such control and ownership shall remain with Collier County unless such control and/or ownership is transferred to the city through an interlocal agreement.

Sec. 52-33. Amendment of the urban service area boundary.

It is recognized that future conditions may exist from time to time, which would necessitate amending the boundaries of the urban service area to include more or less area. Such amendments shall be made by the city council in accordance with F.S. § 180.02.

Sec. 52-34. Provision of reasonable regulations.

The city may prescribe by subsequent ordinance or amendment hereto, adopted in accordance with F.S. ch. 180, reasonable regulations regarding all persons or entities living or doing business within the urban service area regarding their connection, when available, with any service or utility facilities constructed, provided, operated or to be constructed, provided or operated under provisions of F.S. ch. 180.

Sec. 52-35. Reservation.

The city reserves the right to determine the manner, location, degree and extent of any utility service extensions within the urban service area by subsequent ordinance or resolution adopted in accordance with the procedures set forth in F.S. ch. 180.

Sec. 52-36. Purpose.

The purposes of declaring an urban service area for the City of Marco Island and the surrounding area by this article are as follows:

(1) To prepare for the city's proposed acquisition of the FWSC system and to provide for long-range capital improvements for the betterment of the health, safety and welfare of the public as a part of the city's long-range planning activities within the city and adjacent service area.

(2) To clearly identify an area for long range capital improvements relating to water and wastewater utility facilities and services.

(3) To provide for the efficient extension of municipal or urban services upon acquisition by the city of the FWSC system.

(4) To work with Collier County as the adjacent service provider and clearly identify that, upon acquisition of the FWSC system, the city will provide water and wastewater related services and facilities within the urban service area defined herein and avoid the duplication of such services, and to provide opportunities for the transfer of ownership and/or operation of systems between Collier County and the city upon execution of an interlocal agreement between Collier County and the city.

Sec. 52-37. Absence of mortgage revenue certificates or debentures.

There are currently no mortgage revenue certificates or debentures issued by the city to finance any water or wastewater related project within the urban service area; and, upon the city's acquisition of the FWSC system, the lien of any indebtedness owed by FWSC relating to the FWSC system will be paid, defeased or released as it relates to the FWSC system and the urban service area defined herein.

Sec. 52-38. Annual rate adjustment by index.

Effective and commencing on October 1, 2004, and for each annual anniversary thereafter, there shall be an automatic rate adjustment for monthly water and wastewater usage fees, provided that, initially, such adjustment shall be subject to customer notice and council meeting as required by law. Rate adjustment shall be based upon and equal to the then-current percentage increase of the Florida Public Service Commission Deflator Index (the "deflator index"). In the event that the deflator index exceeds three percent, the proposed increase in water and

wastewater rates shall be presented to city council of the city (the "city council") for approval by resolution. The automatic rate adjustment provided herein shall not preclude the city council from increasing or decreasing rates as deemed necessary or appropriate at any time by resolution.

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. 52-40. General provisions.

(a) *Compliance.* All water, wastewater, and/or reclaimed water service users are required to comply with all regulations and ordinances of the city governing such use.

(b) *Responsibility of city.* The city shall only be responsible for a good faith effort to provide reasonable water, wastewater, and reclaimed water service. Water service is subject to the continuing availability of raw water supply, and water, wastewater, and reclaimed water service is subject to the availability of the respective treatment plants capacity and all requirements of the law.

(c) *Service not guaranteed.* Location within the service areas of the city does not guarantee water or wastewater service. In the event that service or service capacity is not available for any reason, the property affected may be removed by ordinance from the service area without any liability attaching to the city.

(d) *Promulgation and enforcement of procedures and regulations.* The city manager shall have the power to promulgate procedures and regulations relative to the water, wastewater, and reclaimed water system. Such procedures and regulations shall be provided in the utilities department manual of standards and specifications. Said manual will be adopted by city council and amended when necessary, by resolution. Water, wastewater, and reclaimed water construction improvements, rehabilitation, and repairs shall meet or exceed the requirements of the manual.

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.

Cross connection means any physical arrangement whereby a public water supply is connected directly or indirectly with any other water supply system, wastewater, drain, conduit, pool, storage reservoir, plumbing fixture, or any other device, facility or system which contains or may contain contaminated water, sewage, waste material, or other material or substance of unknown or potentially unsafe quality which may be capable of imparting contamination to the public water supply as a result of backflow. Bypass arrangements, jumper connections, changeable devices, or other devices through which or because of which backflow could occur are deemed to constitute cross connections.

Customer means any person, firm, corporation, or government entity, using or receiving water, reclaimed water, or wastewater collection services from the city.

Department means the city ~~Marco Island~~ u~~U~~tilities d~~D~~epartment ~~of the City of Marco Island~~.

Director means the director~~, or designated representative,~~ in charge of the department, who is hereby invested with the authority and responsibility to administer and operate the water, wastewater, and reclaimed water systems of the city, and implement and enforce the provisions of this article.

Discontinuation of service means the cessation of a service.

Engineering manager means the individual or firm who approves technical specifications and drawings relating to the installation, construction, and rehabilitation of city utilities.

Equivalency factor means a factor used to represent the relative relationship between service connections based on water meter size. The equivalency factor is determined by dividing the continuous flow criteria per meter size by the continuous flow criteria of a five-eighths-inch meter as published by the American Water Works Association, and incorporated in F.A.C. 25-30.055.

Existing landscaping means any landscaping which has been planted and in the ground for more than 90 days.

Grease means a material either liquid or solid, composed primarily of fat or oil from animal or vegetable sources and is synonymous for the intent of this article with the terms fats, oils and grease.

Landscaping means shrubbery, trees, lawns, sod, grass, groundcovers, plants, vines, ornamental gardens, and such other flora, not intended for resale, which are situated in such diverse locations as residential landscapes, recreation areas, cemeteries, public, commercial, and industrial establishments, public medians, and rights-of-way except athletic play areas as defined in F.A.C. 40E-24.101(2).

Living unit means any place of abode, which is suitable for permanent or transient family or individual residential use. Each such living unit shall be considered as single and separate.

Lot means any place, division or parcel of land.~~'~~'

Master control valve means the manually operated valve, located immediately downstream after the meter, which controls total flow to the customer's property.

Multifamily residence means all places of dwelling other than single-family residences and duplexes having three or more living units.

New landscaping means any landscaping which has been planted and in the ground for 90 days or less.

Person~~s~~ has the meaning ascribed to it in section 1-2 of this code ~~means any individual, firm, company, association, society, partnership, corporation, or group.~~

Public wastewater systems means a central sanitary sewer collection system owned and operated by the City of Marco Island or owned and operated by a private utility company that has a franchise granted by the Collier

County Water and Wastewater Authority to provide and operate a sewer collection and transmission system within the legal boundaries of the City of Marco Island.

Reclaimed water means water, treated wastewater or wastewater effluent that has been appropriately 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.

(a) It shall be unlawful to make or cause to be made any connection with the city water, wastewater, and/or reclaimed water system for providing water, wastewater, or reclaimed water service to users; to use or be supplied with water or reclaimed water from the city without the water passing through a meter provided by the city; or in a manner so as to serve or connect any existing or additional dwelling units or commercial developments without paying all systems development charges, connection user fees, and all other required charges for said additional dwelling units or commercial development; in a manner so as to enable a user to discharge into the wastewater collection system of the city without paying all system development charges, connection fees, user fees, and all other required charges for said wastewater service; or to make a connection in a manner that bypasses the proper recording of water usage passing through a meter or series of meters provided by the city or the user whether the meter(s) is (are) located within the easement or on the user's property.

(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 Code for violation of the above, to pay the following to the city:

(1) An amount equal to three times the unpaid plant capacity fees, connection fees and utility service charges imposed by the city for such connection and water and/or wastewater service provided. Said fees and charges shall be computed using the rates in effect at the time of the discovery of said illegal connection. For residential connections, the utility service charges shall be estimated by using the average water, wastewater, and/or reclaimed water use for similar types and sizes of residential users during the entire period from the date a certificate of occupancy was issued for any dwelling unit found illegally connected to the system until the date of collection. For commercial connections, water, wastewater, and/or reclaimed water service charges shall be estimated by using the average water and/or wastewater use for similar types and sizes of commercial users during the entire period from the date a certificate of occupancy was issued for any portion of the project served until the date of collection.

(2) All costs of investigation and collection, including time, labor, material, attorneys' fees, court costs, and professional fees of any kind necessitated to determine that such illegal connection existed.

(c) All persons making or causing said connection to be made and/or receiving the benefit of the utility services shall be jointly and severally liable for the payment of the above-described amounts to the city. Water service shall be discontinued to such persons, firms, contractors, corporations, associations or partnerships until said amount is paid in full. In the event that any corporation is found to be liable for such sums and is not solvent or is without assets to make appropriate payment, the individual officers, directors and shareholders of such corporation shall be liable for such payment to the city.

Sec. 52-43. Easements, planting shrubbery therein.

Any persons planting shrubbery, trees, or other plants in dedicated utility easements within the city does so at their own peril. Tree plantings or shrubbery shall not be placed so as to destroy any water, reclaimed water, or wastewater utility lines. Whenever plantings obstruct the ingress and/or egress for the purposes of the easement they shall be removed upon request by the city, and in the event of failure by the owner to so move them, the city shall do so and the expense of same charged to the property owner. When plantings placed over utility lines cause damage to the utilities systems, the property owner shall bear the cost of repair or replacement of the damaged utilities.

Sec. 52-44. Connections.

(a) The owner of each lot or parcel of land within the city's exclusive urban service area or legal boundaries, upon which lot or parcel of land any improvement is now situated or shall hereafter be situated, shall

connect or cause such improvement to be connected with the public water, wastewater, and/or reclaimed water facilities and use such facilities within 90 days following notification to do so. All such connections shall be made in accordance with the utilities department manual of standards and specifications.

(b) All connections to the water, wastewater, and reclaimed water system shall be approved by the city manager, or his designee. The fee to connect for utility services shall consist of the capital facilities fee (impact fee), tapping fee, meter or delivery box cost, connection charges, hydrants, lift stations, equipment, and when required, plan review fee, and line extensions. Such fees shall be paid upon issuance of a building permit unless otherwise provided by a utility agreement.

(c) No person, unless expressly authorized by the city manager or designee, shall tamper with, work on, or in any way alter or damage any part of the utility system. Tampering or work shall include, but is not limited to, opening or closing of valves, turning on hydrants, or causing of any water to flow from the system.

(d) Connections to the city's water, wastewater, and/or reclaimed water system for any purpose whatsoever are to be made only by city employees or contractors in full approval of the director. No connection of any description, temporary or otherwise, is permitted on the customer's installation between that portion of the customer's installation for domestic water and reclaimed water service and that portion of the customer's installation for fire protection purposes. That portion of the customer's installation for domestic water and reclaimed water service shall be metered. The customer's fire protection service shall be installed with a detector check type of meter or any metering device approved by the director. No temporary pipes, nipples, or connections are permitted except during construction as authorized by the director, and under no circumstances are connections allowed which may permit water to by-pass the meter or metering equipment.

Sec. 52-45. Utility agreements.

The city manager ~~shall be~~is 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. 52-46. Extensions.

The city manager is authorized to extend utility mains and provide utility service to customers within the boundary of the urban service area.

Sec. 52-47. Powers and authority of inspectors.

(a) Duly-authorized employees of the city bearing proper credentials and identification shall be admitted with permission from proper authorities to all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the wastewater system or to distribution of the water system in accordance with the provisions of these regulations.

(b) While performing the necessary work on private properties referred to herein, the authorized employees of the city shall observe all safety rules applicable to the premises established by the company, and the company shall, to the extent permitted by law, be held harmless for injury or death to the employees, and the city shall, to the extent permitted by law, indemnify the company against loss or damage to its property by city employees and against liability claims and demand for personal injury or property damage asserted against the company, except as such may be caused by negligence or failure of the company to maintain safe conditions as required by these regulations.

(c) Duly-authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds an easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the water and/or wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

Sec. 52-48. Authority to disconnect service.

The city reserves the right to terminate water and wastewater disposal services and disconnect a customer from the system when:

(1) Acids, grease, oil, or chemicals damaging to the wastewater lines or treatment process are released into the wastewater causing rapid deterioration of these structures or interfering with proper conveyance and treatment of wastewater;

(2) A governmental agency informs the city that the effluent from the wastewater treatment plant is no longer of a quality permitted for discharge into a watercourse, and it is found that the customer is delivering wastewater to the city's system that cannot be sufficiently treated or requires treatment that is not provided by the city as normal domestic treatment; or

(3) The customer:

a. Discharges industrial waste or wastewater that is in violation of the permit issued by the approving authority;

b. Discharges wastewater at an uncontrolled, variable rate in sufficient quantity to cause an imbalance in the wastewater treatment systems;

c. Fails to pay monthly bills for water and sanitary wastewater services when due; or

d. Repeats a discharge of prohibited wastes into the public wastewater system.

Sec. 52-49. Meters.

(a) All new connections to the water and reclaimed water system shall be individually metered to include all residential, business, and industrial premises. Master meters (serving more than one residential, business, or industrial premises) may be permitted upon the expressed approval of the city manager.

(b) Meters shall be placed just within the property line at the right or left boundary at the nearest point to the tap-in main or as otherwise may be designated in the utilities department manual of standards and specifications or authorized by a utility agreement. The meter and service valve shall always remain accessible to utilities personnel for reading, inspection, testing, and maintenance. Landscape plants and trees shall not hinder visual identification or direct physical access to the meter. Landscape shrubs and groundcover shall remain at least 18 inches from the edges of the meter box. Trees shall not be planted within four feet of the meter. The property owner shall ensure that the meter is accessible.

(c) If a customer requests a test of the meter to determine accuracy, the city will charge a testing fee as provided in the utility rate ordinance. Whenever a tested meter is found to register fast, in excess of tolerance provided in the utilities department manual of standards and specifications, the director shall return the fee, replace the meter at no cost to the customer, and issue a credit for volume charges for the amount billed in error for the most recent billing cycle.

(d) In no event shall a refund or credit for utility service overcharges be granted for a period in excess of six months preceding.

(e) The property owner and/or customer shall be responsible for the installation and maintenance of a master control valve immediately downstream of the meter to isolate the customer's water system.

Sec. 52-50. Rates; security deposits.

(a) Rate schedules for water, wastewater, reclaimed water usage, fees, and charges shall be adopted by city council through a utility rate ordinance. Such ordinance may be amended by the adoption of a resolution by city council.

(b) The city reserves the right to establish differential rate structures for customers within the urban service area, in which case there shall not be imposed an additional surcharge of 25 percent as provided for in F.S. ch. 180. The city reserves the right to use the same rate structure for all customers within the urban service area and reserves the right to impose an additional surcharge as provided for in F.S. ch. 180.

(c) Security deposits. For utility accounts, security deposits are required as follows:

Meter Size	Deposit Amount
⅝″ × ¾″	$125.00
¾″	150.00
1″	200.00
1½″	300.00
2″	450.00
3″ and larger	As determined by the director

(1) For accounts in which the name of the account is the same as the owner, the deposit may, at the discretion of the city, be waived upon presentation by the customer of a statement from a previous utility verifying a history of timely payments by the customer.

(2) For accounts in which the name of the account is the same as the owner, and who make a deposit prior to receiving service, the deposit may be refunded after 12 months without a delinquent payment.

(3) Whenever service is discontinued, said deposit shall be returned to the customer after first deducting all outstanding charges for service. Where any outstanding charges exceed the amount of the deposit the customer is liable for settlement of said charges under all applicable codes, statutes, laws, and ordinances, and payment of all costs incident to the enforcement thereof.

(4) At the discretion of the director, the city may require a deposit or increase the deposit for any customer who is delinquent three or more times.

(5) All deposits shall accrue interest as required by Florida Statutes.

(d) Water rate structure. The rate structure for water service as set forth in the utility rate ordinance is comprised of two distinct elements. Those elements and their definitions are:

(1) *Monthly base charge.* This is the cost of having the system in place and prepared to serve the customer. This charge is designed to recover all those capital expenses that are not recovered from separate charges and the debt service to pay the bond issues.

(2) *Monthly consumption charges.* This is the cost of providing the water, such as chemicals, electricity, labor and other related costs. This cost is variable and depends on consumption.

(e) Wastewater rate structure. The rate structure for wastewater service is comprised of two distinct elements. Those elements and their definitions are:

(1) *Monthly base charge.* This is the cost of having the system in place and prepared to serve the customer. This charge is designed to recover all those capital expenses that are not recovered from separate charges and the debt service to pay the bond issues.

(2) *Monthly consumption charge.* This is the cost of providing for the collection and treatment of sewage such as chemicals, electricity, labor and other related expenses. This charge is variable and depends on consumption.

(3) *Fees.* The city may adopt charges and fees which may include:

a. Fees for reimbursement of costs of setting up and operating the city's pretreatment program;

b. Fees for monitoring, inspection, and surveillance procedures;

c. Fees for reviewing accidental discharge procedures and construction;

d. Fees for permit applications;

e. Fees for filing appeals;

f. Fees for consistent removal (by the city) of pollutants otherwise subject to federal pretreatment standards; and

g. Other fees as the city may deem necessary to carry out the requirements contained herein.

(4) *Surcharge for abnormal strength waste discharge.* Abnormal strength wastes are those that do not meet the limitations set forth in this article.

a. Computation. The surcharge in dollars shall be computed by multiplying the total milligrams per liter (mg/L) of biochemical oxygen demand (BOD) and suspended solids above 500 mg/L times the metered water used during the billing period in millions of gallons times a treatment surcharge factor. The surcharge factor shall be derived annually from the following formula:

Surcharge factor = Cost of treatment per million gallons ° multiplied by 500.

Where cost of treatment per million gallons equals operational costs of the city sewage treatment plant(s) for the preceding fiscal year (including pro rata administrative costs) divided by the total sewage flow through all plants in millions of gallons. Five hundred equals maximum normal BOD plus suspended solids content expressed in milligrams per liter. The surcharge in dollars for fats, waxes, grease, oil and solvent-soluble substances shall be computed by multiplying the total fats, waxes, grease, oil, and solvent-soluble substances above the legal limits as set forth in this section times the metered water used during the billing period in millions of gallons times the treatment surcharge factor.

b. These fees relate solely to the matters covered by these regulations and are separate from all other fees chargeable by the city.

(f) Customer charge. The rate structure as set forth in the utility rate ordinance is comprised of one element with the following definition:

Monthly customer charge base fee. This monthly base charge recovers the costs associated with meter readings, billings, postage and related expenses and is charged on every bill issued by the city.

For accounts in which both metered water service and wastewater service is obtained directly from the city, and at the discretion of the director, this customer charge base fee may be reduced upon verification that the same name is used on both the water service and wastewater service accounts and that both services are issued on the same billing statement created and sent by the city.

(g) Reclaimed water rate structure. The rates for use of the city's reclaimed water system shall be based on a charge per 1,000 gallons as provided in the utility rate ordinance.

(h) Bulk or wholesale water, wastewater, or reclaimed water agreements and rate structure. Agreements and/or rate structures may provide for the provision or receipt of bulk or wholesale water, wastewater, or reclaimed water services to or from private utilities, governments, or private entities.

Sec. 52-51. Billing for water, wastewater, and reclaimed water service.

(a) Billing shall begin upon installation of the water meter, reclaimed water meter, connection to the wastewater system, or 90 days following notification of the availability of wastewater or reclaimed water service, whichever occurs first.

(b) All accounts shall be billed on a monthly basis. Bills are due when rendered and delinquent 21 days thereafter. Bills unpaid after 30 days of being rendered shall be assessed a delinquent fee equal to five percent of the unpaid balance. Service may be discontinued when delinquent for nonpayment of bills. The city reserves the right to place liens on property due to nonpayment of bills.

(c) Errors in billing or meter reading should be reported promptly to the customer service office, so as to facilitate the immediate correction of such bill.

(d) When water, wastewater, and/or reclaimed water services are provided or made available, payment of the services shall be made concurrently. In the event partial payment is received, such partial payment shall be applied first to penalty, interest and miscellaneous fees component of the total amount due (if any), next to the wastewater component of the total amount due, next to the reclaimed water component (if any), and lastly to the water component. The city may discontinue service for nonpayment of any portion of the service bill.

(e) Whether occupied or unoccupied, all existing structures, at the earlier of connection to the city's water, wastewater, and/or reclaimed water system or 90 days following notification of the availability of wastewater service, shall incur a monthly base charge unless such building is destroyed, condemned, or demolished.

(f) Whenever a customer discontinues service or vacates a dwelling or structure, the account will automatically revert to property owner of record and billing will resume.

Sec. 52-52. Reinstatement following discontinued service.

(a) When service has been discontinued for nonpayment of bills, service will be restored upon payment of unpaid bills, plus a service fee as set forth in the rate ordinance. Said service fees shall also be payable in the event the city attempts to restore service but is unable to do so due to meter obstruction.

(b) The service line gate valve or curb stop valve may be locked in the off position or the meter removed from the premises. The monthly base facility charges shall continue. Should an applicant at a later time request renewal of service to said premises, service will be restored upon full payment of all bills due for service to the premises at the time of discontinuance and a reinstatement charge.

(c) Where service has been disconnected for a violation of an ordinance or regulation, such service shall not be reconnected until the city manager, or his designee, receives adequate assurances and guarantees that such a violation will not recur.

Secs. 52-53—52-63. Reserved.

DIVISION 2. WATER

Subdivision A. In General

Sec. 52-64. Water service.

(a) *Private water systems.* It shall be unlawful for any person to connect directly or indirectly any private water supply or system of pipes or connections thereof, with any part or pipes or other connection to the city water system which will permit directly or indirectly any intermingling of water from any other source with that of the city water system.

(b) *Public water system connection required.* Any lot within 200 feet of the city water system and within the city's urban service area shall be required to connect to the city water system.

Sec. 52-65. Materials for water transmission and distribution.

The materials and construction of water transmission and distribution systems shall be in accordance with the established design criteria and procedures, required material specifications, and construction procedures as described in the utilities department manual of standards and specifications.

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.

Irrigation systems means equipment and/or devices which deliver water to landscaping being irrigated, including, but not limited to, pumping stations and controls, control structures, ditches, public or private wells, piping, hoses, valves, fittings, and emitters.

Landscape has the meaning ascribed to it in section 522-41 of this code.~~means all residential, commercial, institutional, industrial, and governmental areas which are considered as lawns or ornamentally planted, including, but not limited to, sod, grasses, turf, ground covers, flowers, shrubs, trees, mulch, hedges, and other similar plant materials.~~

Low volume hand-watering means watering by one hose attended by one person, fitted with a self-canceling or automatic shutoff nozzle.

Low volume irrigation systems means the use of equipment and devices specifically designed to deliver a volume of water consistent with the water requirement of the plant being irrigated and which delivers the water with a high degree of efficiency directly to the root zone of the plant.

Low volume mobile equipment washing means the washing of mobile equipment with a bucket and sponge, a single hose with a self-canceling or automatic shutoff nozzle, low volume pressure cleaning equipment, or any combination of the preceding methods of washing.

Low volume pressure cleaning means pressure cleaning by means of equipment that is specifically designed to reduce the inflow volume as accepted by industry standards.

Pervious surface means every improved or unimproved surface that allows water to readily soak into or recharge the water aquifer under such surface.

Water resource means any and all water on or beneath the surface of the ground, including without limitation natural or artificial watercourses, lakes, ponds, or diffused surface water; and water percolating, standing or flowing beneath the surface of the ground.

Water shortage occurs when sufficient water is not available to meet present or anticipated needs, or when conditions are such as to require temporary reduction in total water usage within a particular area.

Water shortage emergency means that situation when the powers which can be exercised under F.A.C. ch. 40E-21 pt. II are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish or aquatic life, or a public water supply, or commercial, industrial, agricultural, recreational or other reasonable uses.

Sec. 52-67. Same—Applicability.

This section shall be in full force and effect throughout the city urban service area. The provisions of this section shall apply to all persons using the water resource, whether from public or privately owned water utility systems, private wells, or private connections with surface water bodies. This section shall not apply to persons using treated effluent or salt water. This section shall apply to all such persons using the water resource within the geographical areas subject to the water shortage or water shortage emergency as determined by the district.

Sec. 52-68. Chapter 40E-21, Florida Administrative Code, adopted by reference.

F.A.C. ch. 40E-21, as amended from time to time, is incorporated herein by reference as a part of this section.

Sec. 52-69. Declaration of water shortage; water shortage emergency.

(a) The declaration of a water shortage or water shortage emergency within all or any part of the city by the city manager or the executive director of the South Florida Water Management District shall invoke the provisions of this section. The district shall determine the appropriate phase of water shortage or water shortage emergency and the duration of the water shortage or water shortage emergency. Upon such declaration, all water use restrictions or other measures contained in F.A.C. ch. 40E-21, which chapter constitutes the water shortage plan, shall be subject to enforcement action pursuant to the enforcement and penalties set forth in this subdivision~~article~~. Any violation of the provisions of F.A.C. ch. 40E-21~~, as may be amended from time to time,~~ or any order issued pursuant thereto, shall be a violation of this section.

(b) F.A.C. ch. 40E-21 establishes four phases of water shortage as a function of the estimated percent reduction in overall demand required to reduce estimated present and anticipated demand to estimated present and anticipated available water supply. The water shortage phase determines the type of water use restrictions which will be ordered in a declared water shortage. The following are the four phases as established by the district:

(1) Moderate;

(2) Severe;

(3) Extreme;

(4) Critical.

(c) The district may, from time to time, issue a "warning" which is an alert that water restrictions are imminent if existing conditions do not change. When a warning is issued, the city manager may implement specific restrictions governing the use of potable water from the city's water system for lawn and landscape irrigation.

(d) Specific restrictions. Upon declaration of a water shortage or water shortage emergency it shall be prohibited to use water in a manner inconsistent with the restrictions specified in F.A.C. ch. 40E-21, pts. II and V. The restrictions shall apply based on the level of phase declared by the district and described in ch. 40E-21, pt. V.

Sec. 52-70. Mechanical failure; inadequate facilities.

(a) The following rules and regulations are hereby established governing the use of potable water from the city's water system in the event of mechanical failure or inadequate facilities. The city manager may implement water restrictions when a mechanical failure exists or facilities are inadequate to meet demands, which necessitates the implementation of said rules and regulations. Said implementation shall be predicated upon a finding by the city manager that said mechanical failure or inadequate facilities may affect the health, safety, welfare or comfort of the customers of the city water system.

(b) The city manager will evaluate each incident of mechanical failure or inadequate facilities to determine the specific restrictions to be implemented. To assure equitable distribution of available water resources among all city water customers during the affected period F.A.C. ch 40E-21, pt. V, will be used as a guideline to establish specific restrictions. Upon such declaration, all water use restrictions or other measures shall be subject to enforcement action pursuant to ~~{~~this~~}~~ ~~article~~subdivision.

Sec. 52-71. Year-round landscape irrigation restrictions.

(a) *Purpose and applicability.*

(1) The primary purpose of this section is to provide the regulatory framework to assist in conservation of water resources through consistent and uniform application of restrictions on use of water for irrigation in the city.

(2) This section shall be applicable notwithstanding any other city ordinance.

(b) *Irrigation; operational requirements.*

(1) All water irrigation activities within the city, which are not exempted by section 52-71(c), shall be restricted to the days and hours specified as follows:

City of Marco Island Water Irrigation Restrictions	
Landscaping Irrigation—Established	
Odd numbered addresses	3 days each week; Monday, Wednesday, Saturday; 12:01 a.m. to 8:00 a.m. for irrigation systems
Even numbered addresses	3 days each week; Tuesday, Thursday, Sunday, 12:01 a.m. to 8:00 a.m. for irrigation systems
Landscaping Irrigation—New (in place less than 90 days)	
All addresses	First 30 days every day, except Friday, 12:01 a.m. to 8:00 a.m. for irrigation systems; In place between 31 to 90 days, Monday, Wednesday, Thursday, and Saturday, 12:01 a.m. to 8:00 a.m. for irrigation systems
Irrigation System Maintenance	
Existing systems	10 minutes per zone per week; person must be present in zone and working on the system during each such operation
New systems	30 minutes per zone, one time only; person must be present in zone and working on the system during such operation
Pesticide, Fungicide, Herbicide, Fertilizer Application	
All addresses	Application shall be coordinated with the scheduled day/time for landscaping irrigation; if applied outside of the allowed hours, and

	"watering in" is specified by the manufacturer of the applied material, a licensed application technician must be on the premises
Other Outdoor Water Uses	
All other outdoor water uses	Other outdoor water uses, including low volume hand watering, car, truck, and boat washing and the washing of exterior home surfaces and roofs, shall be allowed anytime with the use of low volume pressure cleaning equipment, low volume mobile equipment washing and/or water hose equipped with an automatic self-canceling or automatic shutoff nozzle; in all cases, the water used must drain to a pervious surface or to a water recycling/reuse system

(2) All wasteful and unnecessary water use, as defined in section 52-41, shall be prohibited. All water irrigation activities must and shall be operated in an efficient manner so as to not allow water to be applied to travel lanes on adjacent roadways, parking lots, sidewalks and other paved surfaces.

(3) All water irrigation systems shall be equipped with a properly installed rain sensor switch.

a. A rain sensor switch shall be required on all new installations of irrigation systems.

b. A rain sensor switch shall be retrofitted on existing systems, installed after May 1, 1991, within one year of the effective date of the ordinance from which this section derives.

c. The rain sensor switch shall be maintained in fully-operational condition at all times by the owner/operator of the irrigation system.

(c) *Exemptions; variances.*

(1) The following are exempt from all provisions of this section:

a. Landscaping irrigation from which the source of the water is 100 percent reclaimed water.

b. Landscaping irrigation from which the source of the water is 100 percent saltwater.

c. Irrigation wholly from a low volume irrigation system.

d. Use of low volume mobile equipment washing, provided all unused water drains into only a pervious ground surface.

(2) A variance from specific day or days identified in subsection (b)(1) may be granted if strict application of the restrictions would lead to unreasonable or unfair result in particular instances, provided that the applicant demonstrates with particularity that compliance with the schedule will result in substantial economic, health, or other hardship on the applicant requiring a variance or those served by the applicant. Where a contiguous property is divided into different zones a variance may be granted hereunder so that each zone may be irrigated on days different than other zones of the property. However, no single zone may be irrigated more than three days per week.

a. The city manager~~, or designee,~~ shall be the only individual(s) authorized to grant or deny variances pursuant to this subsection. A decision to grant or deny the variance should be made within ten days after actual receipt of a complete application for the variance.

b. Any individual or entity aggrieved by the denial of a variance from this section shall have the right of appeal to the city council in accordance with section 1-15 of this code~~. Such appeal shall be taken by filing with the city manager, within 14 days after notice of the denial of the variance has been delivered to such person or entity's last known address, a written statement setting forth fully the grounds for the appeal. The city manager shall set a hearing on such appeal for the next available city council meeting. Notice of such hearing shall be given to the appellant at least ten days before the date of said hearing. The decision and order of the city council on such appeal shall be final~~.

c. An application for variance and/or the granting of a variance shall operate prospectively and shall not affect any then pending enforcement action pursuant to this ~~section~~ subdivision or otherwise.

d. The city hereby recognizes any and all variances issued by the South Florida Water Management District to those users who operate and maintain smart irrigation systems which meet the requirements of F.S. § 373.62(7).

(d) *Penalties.* Violation of this article is punishable according to the penalties and procedures set forth in chapter 14 of this code. ~~Violators of the landscape irrigation requirements of this section, including requirements as authorized under subsection (b)(1), shall be issued a verbal or written warning, or a "notice of violation" with a special period to correct violation. Persons who violate this section after receiving a warning or notice, or refuse to comply with such warning or notice, shall be issued a citation and fine of $75.00. Persons who commit repeat violations may also be punished pursuant to F.S. § 162.21, as a civil infraction with a maximum civil penalty not to exceed $500.00. Any person who violates any provision of this section shall also be subject to the city's remedies as authorized the city's Code of Ordinances, or as otherwise then allowed by law. The applicable penalties shall be determined by the forum selected to enforce the violation.~~

~~Each day, or part thereof commencing at noon of the respective day, that a violation of this section occurs by the same individual or entity may be deemed by the finder of fact to constitute a separate violation.~~

Subdivision C. Cross Connection Control

Sec. 52-72. Cross connections.

Cross connections shall be governed by the utilities department manual of standards and specifications.

Secs. 52-73—52-83. Reserved.

DIVISION 3. WASTEWATER

Sec. 52-84. Wastewater collection in general.

The part of a wastewater sewage system that receives and transports sewage is referred to as a wastewater collection system.

Sec. 52-85. Owner's responsibility for wastewater lines.

(a) All sanitary sewer lines from the wastewater collection main to the building are the property and responsibility of the property owner.

(b) All stoppage in the sanitary sewer line from the wastewater collection main to the building are the responsibility of the property owner.

(c) No stoppage complaint will be accepted for investigation by the department, unless all sanitary sewer lines between the gravity main and the building have been examined by a licensed plumber.

Sec. 52-86. Use of public wastewater system required.

(a) All premises shall be provided, by the owner thereof, with at least one toilet. All toilets shall be kept clean and in a sanitary working condition.

(b) No person shall dispose of human excrement except in a toilet.

(c) It shall be unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of said city, any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provision of these regulations.

(d) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.

(e) All structures used for human occupancy, and all sinks, dish washing machines, lavatories, basins, shower baths, bathtubs, laundry tubs, washing machines, and similar plumbing fixtures or appliances shall be connected to a public or private wastewater system.

Sec. 52-87. Public wastewater system.

At such time as a public wastewater becomes available to a property served by a private wastewater disposal system, a direct connection shall be made to the public wastewater within 365 days after notice. Any septic tanks, cesspools, and similar private wastewater disposal facilities shall then be cleaned of sludge and filled with suitable materials, according to the closure procedures described in Rule 64E-6.001, F.A.C., or latest revision thereof, of the department of health.

(1) Wastewater system shall be considered available to an existing single-family dwelling when the dwelling can be connected to a sanitary sewer line in any public right-of-way or easement which passes the property at any point.

(2) Wastewater system shall be considered available to any new single-family dwelling when the dwelling can be connected by the installation of 200 linear feet of gravity flow sanitary sewer line from the nearest point of the property.

(3) The monthly base charge component of the wastewater rate structure shall be in effect 90 days following notification of the availability of wastewater service.

(4) Notwithstanding the foregoing, after proper connection to the city central sewer system, a septic tank serving a single-family residence may be converted to a cistern consistent with the requirements of Rule 64E-6.011, part (4), effective June 25, 2009. Homeowners opting to convert the septic tank to cistern shall acquire the proper city and county health department permits prior to initiating the sewer connection and any septic tank conversion activities.

(5) Any property owner who, prior to October 20, 2005, was permitted to connect to the city's wastewater collection system by means of an on-site wastewater pump station (grinder system) shall have the option to continue to send domestic sewage to the city's wastewater system through that grinder system or to convert to a gravity system connection. If such conversion is opted, the property owner shall pay to the city the per ERC construction cost (the "Neighborhood Construction Cost") for the installation of its respective district septic tank replacement program ("STRP") collection system, but shall not be required to pay an additional wastewater impact fee. The property owner shall acquire the proper city and county health department permits prior to initiating the conversion. No new private grinder systems will be permitted to connect to the wastewater system.

Any owner of a private grinder system who opts to continue the use of that system shall be responsible for the maintenance of the system both on its property and in the city's right-of-way through the connection to the city's wastewater collection system. Such owner shall be responsible for relocating the system if it comes in conflict with other city utilities located, now or in the future, in the right-of-way. Such owner shall also be responsible for the cost of any cleanup resulting from the failure of the system in the city's right-of-way.

Sec. 52-88. Private wastewater disposal.

(a) Where a public sanitary sewer is not available under the provisions of this subsection, the building sewerage shall be connected to a private wastewater disposal system complying with the provisions of this subsection.

No person shall construct a septic tank or other wastewater disposal facility without prior approval from the director and city manager.

(b) Septic tanks shall be constructed, repaired, altered, enlarged, and maintained in accordance with F.A.C. ch. 10D-6 and plans and specifications approved by the state health department.

(c) No person shall construct, repair, alter, or enlarge any septic tank unless he receives approval by the director or designee and shall hold a valid permit for such work issued by the state health department.

(d) The type, capacities, location, and layout of a private wastewater disposal system shall comply with all regulations of the state department of environmental protection (FDEP) and the State of Florida. No septic tank shall be permitted to discharge to any natural resource.

(e) No septic tank or other subsurface disposal facility shall be installed where a public wastewater is accessible to the premises involved.

(f) The owner(s) shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the city.

(g) No pit privy shall be installed.

(h) Discharge of septic tanks into wastewater system:

(1) *Restricted.* It shall be unlawful to empty, dump, throw or otherwise discharge, into any manhole, catch basin or other opening, into the city wastewater system, or any system connected with and discharging into the wastewater system, the contents of any septic tank, sludge, sewage or other similar matter or material, except as provided in the paragraph below.

(2) *Permits.* The director is hereby authorized to grant permits to discharge the contents of septic tanks (from domestic sources only) at locations specified by him and under his supervision. Such permits may be revoked at any time if, in the opinion of the director, continued dumping of such matter into the sewers will be injurious to the wastewater system or treatment or treatment processes.

(3) *Charges.* A charge shall be made for the privilege of dumping contents of septic tanks, as provided in separate rules. A record shall be kept of such dumping and statements shall be payable within ten days after rendition. Failure to pay the amounts due within such ten-day period shall be cause for revoking the permit and employing all penalties, as described in this article.

(i) Any premises that has a septic tank, privy or any other sewage, industrial waste or liquid waste disposal system, located thereon that does not function in a sanitary manner shall be corrected within 30 days from the receipt of written notification from the state health department that said system is not functioning in a sanitary manner, and order that said system be corrected.

(j) Premises with private water systems shall not be connected to the public wastewater system unless approved by the city manager or designee.

(k) No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the state health department.

Sec. 52-89. Building sewers and connections.

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public wastewater or appurtenance thereof without first obtaining a written permit from the utilities permit coordinator as provided in the utilities department manual of standards and specifications.

Sec. 52-90. Restricted use of public sanitary sewers.

No person shall discharge or cause to be discharged any unpolluted waters such as stormwater, groundwater, roof runoff, subsurface drainage, swimming pool drains and filter discharge, or cooling water to any sanitary sewer unless otherwise provided in the utilities department manual of standards and specifications.

Sec. 52-91. Malicious damage.

No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the wastewater facilities. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct and shall be responsible for any loss of revenue or monetary expenditures needed for repairs brought about by their actions.

Sec. 52-92. Pretreatment of industrial wastewater.

There shall be pretreatment of wastewater by industrial users discharging into the city wastewater collection and treatment systems and enables the city to comply with all applicable state and federal laws required by the Clean Water Act of 1977 and the General Pretreatment Regulations (40 CFR, Part 403) and shall be regulated by the utilities department manual of standards and specifications.

Sec. 52-93. Compliance with regulatory requirements.

The provisions of these regulations shall not be deemed as alleviating compliance with applicable state and federal regulations. Specific user charge and industrial cost recovery requirements, promulgated pursuant to Public Law 92-500, shall be considered as a part of these regulations upon official adoption. All nonresidential users will be required to comply with pretreatment standards as outlined in Title 40 of the Code of Federal Regulations, Part 403, as provided in the utilities department manual of standards and specifications.

Sec. 52-94. Violations.

(a) Violation of this division is punishable according to the penalties and procedures set forth in chapter 14 of this code in addition to the other actions authorized in this section . ~~these regulations shall be a misdemeanor punishable under the laws of the state.~~

(b) The director may suspend the wastewater treatment service and/or a wastewater contribution permit when such suspension is necessary, in the opinion of the director, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, causes interference to the wastewater system or causes the city to violate any federal, state or local laws.

(c) Any person notified of a suspension of the wastewater treatment service and/or the wastewater contribution permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the director shall take such steps as deemed necessary including initiation of legal action by the city attorney and immediate severance of the wastewater connection, to prevent or minimize damage to the wastewater system or endangerment to any individuals. The director shall reinstate the wastewater contribution permit and/or the wastewater treatment service upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the utility director or designee within 15 calendar days of the date of occurrence.

(d) Any user who violates the following conditions of these regulations, or applicable state and federal regulations, is subject to having his permit revoked in accordance with the procedures of this subsection:

(1) Failure of a user to report factually the wastewater constituents and characteristics of his discharge.

(2) Failure of the user to report significant changes in operations, or wastewater constituents and characteristics.

(3) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring.

(4) Violation of conditions of the permit.

~~(e) Whenever the department finds that any user has violated or is violating these regulations, wastewater contribution permit, or any prohibition, limitation or requirements contained herein, the department may serve upon such person a written notice stating the nature of the violation. Within 30 days of the date of the notice, a plan for satisfactory correction thereof shall be submitted to the department by the user.~~

~~(f) In the event of violation of these regulations, the authorized employees may verbally instruct the owner as to the necessary corrective action. If the owner fails to carry out verbal instructions in a timely manner or if a serious violation or hazard to public health exists, the director may issue to the owner a written order stating the nature of the violation, the corrective action, and the time limit for completing the corrective action. This time limit will be not less than 24 hours nor more than 120 days depending upon the type and severity of the violation. The offender shall, within the period of time stated in such notice, permanently cease all violations. The record of the mailing of said notice or order shall be prima facie evidence thereof and failure of said owner or owners to receive same shall in no way affect the validity of any proceedings conducted pursuant to these regulations.~~

~~(g) If any person discharges sewage, industrial wastes or other wastes into the city's wastewater disposal system 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~~h~~) 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.

Sec. 52-95. Compliance by dischargers.

It shall be unlawful to discharge without a city permit to the wastewater system any wastewater except as authorized by the director in accordance with the provisions of these regulations.

Sec. 52-96. Wastewater contribution permits.

(a) All significant industrial users proposing to connect to or to contribute to the wastewater system shall obtain a wastewater discharge permit before connecting to or contributing to the utility system.

(b) All existing significant industrial users connected to or contributing to the wastewater system shall obtain a wastewater contribution permit within 180 days after the effective date of these regulations.

Sec. 52-97. Materials.

The materials and construction of wastewater collection and treatment systems shall be in accordance with the established design criteria and procedures, required material specifications, and construction procedures as described in the utilities department manual of standards and specifications.

Secs. 52-98—52-108. Reserved.

DIVISION 4. RECLAIMED WATER

Sec. 52-109. Generally.

(a) *Generally.* When an application is received for connection to the city's water and/or wastewater systems and where the city offers to extend a reclaimed water transmission line to the applicant's parcel for purposes of irrigation, the applicant shall be required to connect to the reclaimed water system as a condition of connection to either the city's potable water or wastewater system. Reclaimed water service charges shall become effective and begin to accrue once the meter is installed.

(b) *Cross connections.* No cross connection between the reclaimed water system and any potable water system shall be permitted. Cross connections between the reclaimed water system and other sources of irrigation water, including but not limited to, surface water and wells, shall be subject to approval by the director after review of the construction plans for such connection.

(c) *Materials for reclaimed water system.* The materials and construction of reclaimed water systems shall be in accordance with the established design criteria and procedures, required material specifications, and construction procedures as described in the utilities department manual of standards and specifications.

(d) *[Availability.]* At such time as public reclaimed water becomes available to a multifamily or hotel/timeshare property, a direct connection shall be made to the reclaimed water line within 90 days following notice of availability, and reclaimed water shall be used for the purpose of irrigation. Following connection to the reclaimed water system, the rate structure applicable to potable water may be charged for the use of reclaimed water for the time required to allow the difference between the potable water rate and the reclaimed water rate to pay the capital investment required to install the reclaimed water system.

Sec. 52-110. Discontinuance of service.

The city may suspend or discontinue reclaimed water service to any customer who violates the provisions of this article, including delinquency of any amounts owed the city.

Secs. 52-111—52-121. Reserved.

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.~~:~~

CMD shall mean the city manager's designee.

FSF shall mean a food service facility.

GDP shall mean a grease discharge permit.

GHR shall mean a grease hauler registration.

GMP shall mean a grease management program.

Mg/L shall mean milligrams per liter.

NONC shall mean a notice of non-compliance.

PDI shall mean a plumbing and drainage institute.

RWPF shall mean the city's reclaimed water production facility.

Sec. 52-123. Purpose and applicability.

(a) *Purpose.* This division establishes uniform permitting, maintenance and monitoring requirements for controlling the discharge of grease from a FSF discharging into the city's wastewater collection system and for regulation of commercial grease haulers operating within the city limits. The objectives of this ordinance are:

(1) To prevent the introduction of excessive amounts of grease into the city's wastewater collection system.

(2) To prevent clogging or blocking of the city's sewer lines due to grease build-up causing backup and flooding of streets, residences and commercial buildings and surrounding waters, resulting in potential liability to the city.

(3) To implement a procedure to recover the costs incurred in cleaning and maintaining sewer lines and disposing of grease blockages.

(4) To implement a procedure to recover costs for any liability incurred by the city for damage caused by grease blockages resulting in the flooding of streets, residences or commercial buildings.

(5) To issue "grease discharge permits" (GDP) to FSF required to install a grease trap or interceptor pursuant to the Florida Building Code, Fla. Admin. Code R. 64E-6 and Marco Island Utilities Manual of Standards requiring maintenance, monitoring, compliance and enforcement activities.

(6) To establish administrative review procedures and reporting requirements.

(7) To establish fees for the recovery of costs resulting from the program established herein.

(8) To register "grease haulers" operating within the city's boundaries.

(9) To establish enforcement procedures for violations of any part or requirement of this division.

(10) To prevent maintenance and odor problems in the city's sewage collection and treatment system.

(b) *Applicability.* The provisions of this division shall apply to all FSFs located within the sewer service areas of the city. The provisions of this division shall also apply to all grease haulers providing service to any FSF located within the city sewer service areas.

Sec. 52-124. Grease traps and interceptors.

(a) *Requirements.* All FSFs are required to have a grease trap or grease interceptor properly installed in accordance with any and all applicable requirements of the Florida Building Code and this division and shall be in a location that is readily and easily accessible for cleaning and inspection.

(1) *New facilities.* FSFs which are newly proposed or constructed, or existing facilities which will be expanded or renovated to include a FSF, where such facility did not previously exist, shall be required to install a grease interceptor or grease trap(s) according to the requirements of the Florida Building Code/Marco Island Utilities Department Manual of Standards and Specifications and to operate and maintain the grease trap(s) or interceptor according to the requirements contained in this division.

(2) *Existing facilities.* FSFs shall be permitted to operate and maintain existing grease interceptors or grease traps provided their grease interceptors or grease traps are in efficient operating condition. A FSF that applies for any type of permit shall conform to current code requirements.

Existing FSFs without a grease interceptor or trap shall install a new grease interceptor or trap that complies with the requirements of the Florida Building Code/Marco Island Utilities Manual of Standards and Specifications or to modify or repair any noncompliant plumbing or existing interceptor or trap. This requirement must be met within two years of the adoption of the ordinance from which this section is derived.

(b) *Plumbing connections.* Grease interceptors or traps shall be installed in accordance with the Florida Building Code. The city manager or his designee (CMD) will make the final decision when conflicts between rules occur.

(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.

(1) *Inspection, cleaning and maintenance.* Each FSF shall be solely responsible for the cost of trap installation, inspection, cleaning and maintenance. Each FSF may contract with a registered grease hauler, who has been permitted by the city for cleaning services and maintenance procedures. Cleaning and maintenance must be performed when the total volume of captured grease and solid material displaces more than 25 percent of the total volume of the trap. Grease Traps are required by the FSF owner, business owner or designee to be inspected weekly and be cleaned at a minimum of once every 30 days or as often as needed not to exceed 25 percent of the total volume. Disposal of FOG must be according to Collier County's solid waste requirements.

(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 of $75.00 to verify that all conditions of this division are in compliance.

(3) *Inspection.* Grease traps shall be inspected by the CMD, as necessary to assure compliance with the GMP and to assure proper cleaning and maintenance schedules are being adhered to.

(4) *Repairs and replacement.* The FSF shall be responsible for the cost and scheduling of all repairs or replacement to its grease trap(s). Permits for repairs or replacement required by the CMD shall be completed within 30 calendar days after the date of written notice of required repairs or replacement. The city may authorize an extension of time to achieve compliance for an additional 30 days. If additional time is necessary to come into compliance, the FSF may enter into an administrative order establishing a schedule for bringing the FSF into compliance within 120 days from the date of the original notice.

(5) *Disposal.* Grease and solid materials removed from a grease trap shall be disposed of in the solid waste disposal system.

(6) *Recordkeeping.* The FSF shall maintain records of all interceptor maintenance. These records will include: inspection/pump outs, details of maintenance, repairs, repair completion date(s) and any other records pertaining to the interceptor. These records shall be maintained in an organized system by month and made available for review upon request by the GMP official at all times.

(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.

(1) *Inspection, pumping and maintenance.* Each FSF shall be responsible for the costs of installing, inspecting, pumping, cleaning and maintaining its grease interceptor. All FSFs that have grease interceptors shall utilize a registered grease hauler, who has been registered by the city for pumping services. Pumping services shall include the initial complete removal of all contents, including floating materials, wastewater, bottom sludge and solids from the interceptor.

Grease interceptor cleaning shall include scraping excessive solids from the walls, floors, baffles and all pipe work. It shall be the responsibility of each FSF to inspect its grease interceptor during the pumping procedure to ensure that the interceptor is properly cleaned out and that all fittings and fixtures inside the interceptor are in working condition and functioning properly.

(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 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 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:

a. When the floatable grease layer exceeds six inches in depth as measured by an approved dipping method;

b. When the settled solids layer exceeds eight inches in depth as measured by an approved dipping method;

c. When the total volume of captured grease and solid material displaces more than 25 percent of the capacity of the interceptor as calculated using an approved dipping method; or

d. When the interceptor is not retaining/capturing oils and greases.

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 of $75.00 to verify that all conditions of this division are in compliance.

(4) *Inspection.* Grease interceptors shall be inspected by the CMD as necessary to assure compliance with the GMP and to determine if proper cleaning and maintenance schedules are being adhered to. If, upon inspection, an interceptor is found to have six inches or more of grease or eight inches or more of solids, the FSF shall be required to have the interceptor pumped out within 48 hours of the inspection date. Failure to pump-out the interceptor shall constitute a violation of this division.

(5) *Repairs and replacement.* Each FSF shall be responsible for the cost and scheduling of all repairs to or replacement of its grease interceptor(s). Permits for repairs or replacement required by the CMD shall be completed within 30 calendar days after the date of written notice of required repairs or replacement. The city may authorize an extension of time to achieve compliance for an additional 30 days. If additional time is necessary to come into compliance, the FSF may enter into an administrative order establishing a schedule for bringing the FSF into compliance within 120 days from the date of the original notice.

(6) *Disposal.* Wastes removed from each grease interceptor shall be disposed of at a facility permitted to receive such wastes in accordance with applicable federal, state, local laws or regulations. Neither grease nor solid materials removed from interceptors shall be returned to any grease interceptor, private sewer line, the city's wastewater collection system or water reclamation facilities.

(7) *Recordkeeping.* Each FSF shall maintain records of all interceptor maintenance. These records will include: inspection/pump outs, details of maintenance, repairs, repair completion date(s) and any other records pertaining to the interceptor. These records shall be maintained in an organized system by month and made available for review upon request by the GMP official at all times.

Each FSF shall also maintain a file on-site which contains the following information:

a. The (as-built) drawings of the plumbing system, if available. If as-built drawings are not available, other drawings of sufficient detail to depict the plumbing layout of the FSF.

b. A copy of the current grease disposal permit.

c. Receipts from grease pumpers, plumbers, parts suppliers, etc.

d. Log of pumping or cleaning activities.

e. Log of maintenance activities.

f. Completed disposal manifest.

g. Seating charts depicting the number of indoor and outdoor seating and identify which seats are bar seats and which seats are dining.

h. Hauler information.

The file shall be available at all times for inspection and review by the CMD. The failure to maintain complete records or to provide such records to the CMD upon request constitutes a violation of this division.

(e) *Additives.* The use of biological degreasers, enzymes, or chemicals to prevent build up in a property owner's wastewater system is prohibited.

(f) *Alternative grease removal devices and methods.* Alternative devices and methods, such as automatic grease removal systems shall be subject to written approval by the building official and the CMD.

(g) *FSF located outside city limits.* All FSFs not within the city limits and connected to the city's wastewater and sewer collection system shall abide by the requirements of the GMP as set forth in this division.

Sec. 52-125. FSF permitting program.

(a) *Permitting requirements for FSF.* All FSFs shall be required to obtain a "grease discharge permit" (GDP), from the city starting August 1 through November 1. This permit will be valid for a one-year period. The city shall approve, deny, or approve with special conditions all applications for GDPs in accordance with the policies and regulations established in this division. The GDP shall be in addition to any other permits, registrations, or occupational licenses which may be required by federal, state, or local law. It shall be a violation of this division for any FSF identified by the city to discharge wastewater containing fats, oils, grease and solids to the city's wastewater collection system without a current GDP.

(b) *Application form.* The city shall provide an application form for a GDP. The appropriate form shall be issued to all FSF owners identified by the city. Each application form shall include the following information:

(1) Name, address, telephone number and location, (if different from the mailing address) of applicant, owner of the premises (if different from the tenant when property is leased) from which fats, oils and grease are discharged, and the name of a representative duly authorized to act on behalf of the FSF.

(2) A drawing in sufficient detail to show the location of all kitchen equipment that produces wastewater, and all sewers, floor drains, sewer connections, grease interceptors and appurtenances in the user's premises if known or it may be readily ascertained.

(3) Maximum hours of operations in one day and maximum meals produced per day.

(4) Individual's name or business name on utility water bill.

(5) Details of all grease interceptor or grease trap maintenance within the past year.

(6) A signed statement from the FSF owner that the information provided is accurate, and that the applicant agrees to abide by the regulations contained in this division, as well as any other applicable federal, state or local regulations governing the FSF.

(7) Any other information determined by the CMD to be necessary in order to evaluate the GDP application.

(8) A current seating chart of the facility depicting the number of indoor and outdoor seats.

(c) *Facilities with shared interceptor.* In addition, the owner of the shared interceptor used by multiple FSF shall be issued a separate permit requiring compliance with this division and the Florida Administrative Code.

(d) *Pre-permit inspection procedure.*

(1) *Individual FSF.* Once a completed application form has been reviewed by the CMD, the FSF will be inspected prior to the issuance of the GDP beginning August 1 through November 1 every year. During the pre-permit inspection, the information contained in the application form will be verified and the grease interceptor or trap will be inspected during a scheduled cleaning when the trap or interceptor is empty and owner or designee present. If all information is verified and the grease interceptor or trap is in proper working condition, a GDP will be issued. If the grease interceptor or trap requires any maintenance/repairs or incorrect information has been given, the GMP official shall provide a written notice of noncompliance to correct any deficiencies, including a required time schedule for repairs to be corrected prior to a second pre-permit inspection. Second pre-permit inspections shall be performed after a minimum of ten calendar days have elapsed to allow for corrective action by the FSF to occur. If the facility is not in compliance at the second pre-permit inspection, a noncompliance fee will be levied. An application for a permit shall be granted with conditions or denied within 30 days after the date of the last pre-permit inspection.

(e) *Grease discharge permit.* The following criteria apply to all GDPs:

(1) Each GDP shall be effective for a one-year period and shall have an effective and an expiration date. GDPs will be issued from August 1 through November 1 every year.

(2) The GDP must be displayed in a conspicuous place where it can be seen by the staff of the FSF and a copy of the GDP must be kept in the records file.

(3) The GDP shall be issued to a specific user for a specific operation. GDPs will vary in content and requirements depending on the class of the FSF and the type of grease removal devices(s) installed. A GDP shall not be transferred or sold to a new owner under any circumstances. A new owner is required to apply for a new GDP at the time of zoning permit application. The new GDP will be issued on a prorated basis and will expire at the end of the current permit period.

(4) Issuance of GDP will be 60 days prior to the expiration date of the existing GDP.

(5) The terms and conditions of the GDP are subject to modification by the City during the term of the permit, if limitations or requirements in this program are modified. The user shall be informed of any proposed changes in the issued permit at least 60 days prior to the effective date of the change(s). Any changes or new conditions in the GDP shall include a reasonable schedule for achieving compliance.

(f) *Entry.* Each FSF shall allow the CMD at all reasonable hours to all parts of the premises for the purpose of inspection, observation, records examination, measurement, sampling and testing in accordance with the provisions of this division. The refusal of any FSF to allow the CMD entry to or upon the facility's premises for purposes of inspection, sampling effluents, inspecting and copying records or performing such other duties as shall be required by this division shall constitute a violation of this division. The CMD may seek a warrant or use such other legal procedures as may be advisable and reasonably necessary to discharge his duties pursuant to this division.

(g) *Inspection.* All FSFs shall be inspected as follows:

(1) *Pre-permit inspections.* Pre-permit inspections shall be conducted by GMP officials as outlined in section 52-125(d).

(2) *Inspections.* The GMP official shall inspect FSFs on both an unscheduled and unannounced basis or on a scheduled basis after a GDP has been issued to verify continued compliance with the requirements of

this division. The GMP official shall also determine if the practices contained in the "Fats, Oil and Grease Best Management Practices Manual" issued to the facility have been implemented. All FSFs with current GDPs shall be inspected. Inspections shall include all equipment, food processing and storage areas and shall include a review of the processes that produce wastewater discharged from the facility through the grease interceptor/trap. The GMP official shall also inspect the interceptor/trap maintenance logbook and file, other pertinent data, the grease interceptor/trap and may check the level of the interceptor/trap contents and/or take samples as necessary. The GMP official shall record all observations in a written report. Any deficiencies shall be noted, including but not be limited to:

a. Failure to properly maintain the grease interceptor or trap in accordance with the provisions of the grease discharge permit and this chapter.

b. Failure to report changes in operations, or wastewater constituents and characteristics.

c. Failure to report pumping activities or keep copies of manifest forms or receipts.

d. Failure to maintain logs, files, records or access for inspection or monitoring activities.

e. Failure to obtain or renew the oil and grease discharge permit in a timely manner.

f. Any other inconsistency with the program that requires correction by the FSF concerned.

g. Inability of existing grease interceptor or grease traps to prevent discharge of grease into sewer system as evidence by build-up of grease downstream of the grease interceptor or trap. If any deficiencies are recorded by the GMP during an inspection, the GMP official shall provide the FSF a written notice to correct the deficiency within ten calendar days, and a tentative date for a first reinspection.

h. Addition of indoor or outdoor seating that exceeds the operating permit.

i. Any significant changes to menu from last permit period. This does not include daily specials; however it does include hours of operations, addition of breakfast, lunch and/or dinner menus.

(3) *Reinspections.* The CMD shall reinspect food service facilities which received noncompliance notice(s) after the original inspection. The CMD shall inspect any repairs or other deficiencies and shall provide written notice of noncompliance. In the event that the FSF has returned to compliance with all of the deficiencies, there shall be no fees for the reinspection.

In the event of continuing noncompliance, successive reinspections will be scheduled and appropriate fees shall be charged to the FSF concerned for the first and all successive reinspections. A first reinspection shall be performed after a minimum of ten calendar days have elapsed to allow for corrective action by the FSF to be completed.

(h) *Administrative order.* Upon written request of a FSF, the city may enter into consent agreements, compliance agreements, assurances of voluntary compliance or other similar documents (each referred to as "administrative order") establishing an agreement with any person responsible for noncompliance. Such documents will include specific actions to be taken by the person to correct the noncompliance within a time period not to exceed 24 months, as specified by the document. Such administrative order shall be judicially enforceable. Failure to comply with the provisions of an administrative order shall constitute a violation of the city code. An administrative order may include, but shall not be limited to, the following items:

(1) Required corrective actions, including, but not limited to, submittal of records for interceptor maintenance, immediate pump-out of the grease interceptor, or establishment of an ongoing contract with a permitted grease hauler.

(2) Requirements for submittal of plans for installation or upgrade of grease interceptors, including time frames for preparation of plans, acquisition of necessary equipment, initiation of construction (including time for permit approval, where required), completion of construction, and a date for achievement of final compliance with the provisions of the administrative order and of this division.

Sec. 52-126. Grease hauler regulation program.

(a) *Administration and permitting of grease haulers.* Any person or business desirous of collecting, pumping or hauling grease interceptor wastes from businesses located within the municipal limits of the city utilities service territories shall be required to register with the city. The CMD shall approve, deny or approve with special conditions all applications for GHRs in accordance with the policies and regulations established in this division.

It shall be unlawful for any identified grease hauler to clean or pump out grease interceptors within the city limits without either a current GHR or a Collier County pollution control "grease waste hauler permit."

(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 ~~to~~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:

(1) Name of applicant. If the applicant is a partnership, corporation or other business entity, the name of an individual who legally is able to act on behalf of the organization must be provided.

(2) Applicant address and phone number, including information for person(s) to contact at times other than regular business hours.

(3) The type, license, tag number, and capacity of each vehicle which will be used to pump or haul liquid wastes from grease interceptors. New or replacement tanker truck(s) acquired subsequent to the application shall be reported to the city prior to use.

(4) Financial assurance in the amount of $10,000.00 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.

(5) A list of the disposal facilities that the applicant intends to use.

(6) A signed statement that the information provided is accurate and that the applicant agrees to abide by the regulations contained in this division, as well as any other applicable federal, state or local regulations governing their activities.

(7) Any other information determined by the GMP to be necessary to evaluate the GHR application.

(c) *Grease hauler registration (GHR).* Each GHR approved by the city shall be effective for a period of three years, and may include special conditions as required by the city. The GHR required by the city shall be in addition to any other permits, registrations, or occupational licenses which may be required by federal, state, and local agencies having lawful jurisdiction. The GHR is not transferable.

(1) *Permit contents.* All approved GHRs shall include a statement of the duration of the permit, including the effective and expiration dates; identification of all approved vehicles and the liquid wastes which may be hauled by each; standard conditions relating to permit renewal and permit revision; a list of definitions; reporting requirements, spill procedures, and any other applicable special conditions. Special conditions may include, but are not limited to:

a. A statement that: all grease interceptors shall initially be pumped completely empty. Excessive solids shall be scraped from the walls and baffles, and inlet, outlet and baffle ports shall be cleared. No grease or solids may be reintroduced into the interceptor.

b. A statement indicating that no grease or gray water will be accepted at any city-owned facility and that the registrant should contract with other private or public facilities to properly dispose of the grease and food solids.

c. A statement that the grease hauler is required to comply with all federal, state and local regulations concerning the pumping of grease interceptors and the hauling and disposal of their contents.

d. Any other statement or requirement that the city believes to be necessary to meet the intent of this division.

(2) *Registration renewal.* An application for GHR renewal shall be submitted on the appropriate renewal form together with the renewal fee at least 60 days prior to the expiration date of the existing GHR by each applicant wishing to provide grease hauling services to a permitted FSF located in the city's wastewater collection service area.

(d) *Collier County pollution control "grease waste hauler permit."* All grease haulers holding and maintaining a valid "grease waste hauler permit" issued by Collier County shall be required to obtain a GHR from the city. The city shall issue a GHR to provide grease hauling and interceptor pumping services within the city wastewater collection system service area to grease haulers holding Collier County permits. Grease haulers shall renew the Collier County permit if they wish to continue to operate in the city.

(e) Grease haulers holding a permit from another county must have a current county permit from that county prior to obtaining a city GHR.

(f) *Spill reporting.* Any accident, spill, or other discharge of grease or gray water which occurs within the city shall be reported to the city at 239-389-5000 or 239-394-3168 by the grease hauler immediately. A written report shall be required from the hauler within 48 hours to the collections and distribution manager of Marco Island Utilities. The grease hauler shall comply with all procedures contained in federal, state and local regulations. The grease hauler shall be responsible for all cleanup procedures and costs.

(g) *Recordkeeping.* Grease haulers shall retain and make available for inspection and copying, all records related to grease interceptor pumping and grease disposal from businesses located in the city wastewater collection service area. These records shall remain available for a period of at least three years. The failure to provide information to the city within ten days of a written request is a violation of this ordinance and may result in revocation of a permit. The city may require additional recordkeeping and reporting, as necessary, to ensure compliance with the terms of this division.

(h) *Vehicle inspection.* Grease haulers shall permit the city to inspect grease hauler's registered vehicles to verify the displayed name and telephone number of the hauler, the Collier County pollution control permit number and the vehicle registration and tag number.

(i) *Disposal.* The grease disposal haulers will be accountable for the proper disposal of the waste removed from the grease interceptor. The grease hauler is responsible to maintain a hauling manifest. The city will provide and make forms available to all registered grease haulers. All waste removed from each grease interceptor shall be disposed of at a facility permitted to receive such waste. Neither grease nor solid materials removed from interceptors shall be returned to any grease interceptor, private sewer line, or to any portion of the city's wastewater collection system or water reclamation facilities. A violation of this section shall result in an immediate revocation of the GHR in addition to any other enforcement action taken.

(j) *Removal from registered hauler list.* Repeated failure of a registered hauler to submit reports in a timely manner or the repeated submission of incomplete reports will result in the removal of that hauler from the registered hauler list.

Sec. 5~~2~~25-127. 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~~d~~) *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 have violated any provision of this division or any condition of a permit issued pursuant to this division, shall be, upon conviction, subject to a penalty in an amount not to exceed $500.00 or by imprisonment for not more than 60 days, or by both, for each offense as provided for in F.S. § 162.22. Each separate violation shall constitute a separate offense, and upon conviction of a specified ordinance violation, each day of violation shall constitute a separate violation. In addition to the penalties provided herein, the city may recover reasonable attorney's fees, court costs, court reporter's fees and other expenses of litigation by appropriate suit at law against the person found to have violated this division or the orders, rules, regulations and permits issued hereunder.~~

(b) *Falsifying information.* It is a violation of this division for any~~Any~~ person ~~who~~ to knowingly make~~s~~ any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this division, or ~~who~~ to ~~falsifies~~falsify, tamper~~s~~ with or knowingly render~~s~~ inaccurate any monitoring device or method required under this division~~, shall, upon conviction, be subject to a penalty in an amount not to exceed $500.00 or by imprisonment for not more than 60 days, or by both. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense~~.

~~Sec. 52-131. Administrative enforcement and abatement.~~

(c~~a~~) *FSF enforcement.* ~~Enforcement actions against FSFs in violation of this division shall be as follows:~~

(1) ~~*Notice of noncompliance.* A notice of noncompliance shall be issued to a FSF for any one or more of the following reasons~~The following are violations of this division:

a. Failure to properly maintain the oil and grease interceptor or trap in accordance with the provisions of the oil/grease discharge certificate and this division.

b. Failure to report significant changes in operations, or wastewater constituents and characteristics.

c. Failure to maintain a file of records on-site at all times.

d. Failure to maintain a record of pumping activities.

e. Failure to provide logs, files, records, or access for inspection or monitoring activities.

f. Failing to obtain or renew a GDP in a timely manner.

g. Any other failure to comply with the requirements of this division or conditions of a permit, or failure to obtain a GDP as required by this division.

(2) ~~*Notice of noncompliance response.* Any FSF issued an notice of noncompliance shall respond to the city in writing within ten calendar days of receipt of the notice of noncompliance describing how the noncompliance will be corrected and what steps will be taken to prevent the reoccurrence of the noncompliance. Escalating enforcement procedures, demand monitoring and other penalties will be applied~~In addition to the penalties in this section, when continuing noncompliance is detected, ~~including, but not limited to, revocation of the GDP, citation or notice to appear in county court or before the special magistrate for violations of this division. If a FSF violates or continues to violate the provisions set forth in this division or fails to initiate/complete corrective action in response to a notice of noncompliance, then~~ the city may pursue one or more of the following options:

a. Contract with a permitted grease hauler to pump the grease interceptor and bill the appropriate charge plus administrative fees to the FSF concerned.

b. Enter into an administrative order.

c. Revoke the GDP.

~~d. Citation or notice to appear in county court.~~

~~e. Special magistrate hearing.~~

df. Termination of water and/or sewer service.

(3) *Permit revocation.* Any GDP issued under the provisions of this division is subject to 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:

a. Falsification of any information submitted as part of the application for the GDP.

b. Failure to comply with any requirements or regulations concerning discharges to the city's wastewater collection system.

c. Failure to comply with any requirements or regulations concerning grease interceptors as provided for in sections 52-122 through 52-130 (or any amendments thereto), of this division.

d. Failure to pay required fees, or any assessed surcharges in a timely manner.

e. Failure to attend required BMP training courses as itemized in subsection (3) above.

f. When necessary to protect the public health, safety and welfare in accordance with the terms set forth in chapter 1 of this Code.

(d~~b~~) *Grease hauler enforcement.* Failure of any grease hauler to comply with the requirements of this division or 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:

a. Falsification of any information submitted as part of the application for the GHR.

b. Falsifying information regarding collection and disposal of wastewater.

c. Discharging any grease, liquid, or solid waste into a nonauthorized location.

d. Failure to maintain financial assurance as required by section 52-126(b)(5) of this division.

e. Failure to comply with any other permit conditions.

(2c) *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. 00+-

~~52~~-133. Findings.

It is hereby ascertained, determined and declared:

(1) The Florida Legislature has adopted growth management legislation which requires local governments to plan for and provide for capital infrastructure facilities and services.

(2) Development necessitates additional water and wastewater facilities and such development must contribute its fair share toward the costs of funding improvements and additions to such facilities.

(3) Implementation of an impact fee to require future development to contribute its fair share of the cost of improvements and additions to the water and wastewater facilities is an integral and vital element of the regulatory plan of growth management by the city.

(4) The level of service standards for the water and wastewater facilities as adopted in the City of Marco Island Comprehensive Plan and Utility Master Plans, as may hereafter be adopted and amended from time to time, are controlling upon this division and are incorporated throughout this division.

(5) Capital planning is an evolving process and the level of service standards for the water and wastewater facilities constitutes a projection of anticipated need for water and wastewater facilities, based upon present knowledge and judgment. Therefore, in recognition of changing growth patterns and the dynamic nature of population growth, it is the intent of the city that the level of service standards, system capacity, and required capacity expansions for the water and wastewater facilities and the impact fee imposed should be reviewed and adjusted periodically to try to ensure that the impact fees are imposed equitably and lawfully and are based upon actual and anticipated growth at the time of their imposition.

(6) The imposition of the impact fee is to provide a source of revenue to fund the construction or improvement of the water and wastewater facilities necessitated by growth.

(7) The city council finds that water and wastewater facilities benefit all residents of the urban service area and, therefore, the impact fee shall be imposed in all areas of the urban service area.

(8) This division is not intended to, and shall not be construed to, permit the collection of impact fees from development in excess of the amount reasonably anticipated to offset the reasonably allocated demand on each of the water and wastewater facilities generated by the respective development.

(9) The revenue derived from the impact fee shall be utilized only for capital improvements and additions to the water and wastewater facilities which are reasonably determined to be caused by the impacts of new development.

Sec. 52-134. Purpose.

It is the purpose of this division to:

(1) Plan for the necessary capacity expansion of the water and wastewater facilities;

(2) Provide for the health, safety, welfare and economic well-being of the residents and visitors of the city;

(3) Implement and be consistent with the City of Marco Island Comprehensive Plan and the Florida Local Government Comprehensive Planning and Land Development Regulation Act, F.S. § 163.3161 et seq.;

(4) Require all development that places additional demand on the water and wastewater facilities to contribute its proportionate share of the funds, land or water and wastewater facilities to accommodate any impacts having a rational nexus to the proposed development and for which the need is reasonably attributable to the proposed development; and

(5) Ensure that no funds, land or water and wastewater facilities are collected from new development in excess of the actual amount reasonably determined necessary to offset the demand on the water and wastewater facilities generated by new development.

This division is intended to be consistent with the principles applied to allocate a fair share of the cost of new water and wastewater facilities to new users and new development as established in Florida Statutes or applicable judicial decisions, or both.

Sec. 52-135. Adoption of impact fee studies.

The city council hereby adopts and incorporates by reference the following studies with regard to the respective water and wastewater facilities:

(1) "City of Marco Island Comprehensive Plan," as amended; "Water and Wastewater Capital Facilities Fees Study" prepared by Public Resources Management Group (September 28, 2006).

(2) The foregoing studies are hereby adopted in their entirety, as well as any updates or supplements thereto, including the assumptions, conclusions, and findings in such studies and their amendments.

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.

Bedroom means any room in a single-family residence, which is other than a kitchen, bathroom, living room, or great room (Florida room) which may be used for sleeping quarters.

Building means any tangible thing, with or without walls, constructed on the site, installed on the site, or placed on the site, to support, shelter or enclose persons and/or support, shelter or enclose tangible property, and the use of the "building" is deemed to create demand upon, or increase demand upon, one or more of the water and wastewater facilities. "Building" includes parking lots and other foundations, permanent and semi permanent tents, sheds, trailers, mobile homes, and vehicles that shall in any way function as a building. "Building" includes additions to a building, such as adding a new room, or enlargement of a then existing room. "Building" excludes tents erected for less than approximately 60 days for the temporary selling of seasonal items.

Building permit means an official document issued by the city or county which authorizes placing a building on the site, including, but not limited to, by construction or installation occurring on the site and including, but not limited to, an item that is complete or substantially complete prior to its being placed on the site, such as a manufactured home or a communications tower that was substantially constructed elsewhere. For purposes of this division, "building permit" shall include tie-down permits for buildings, such as for a mobile home, or other approvals that do not require any other type of permit before the respective item may lawfully be occupied, used, or operated. "Building permit" when used in the context of the use of land (or water) and in situations where a typical, conventional permit is not issued by the city or county for the respective improvement or use means whatever is the last written approval or permission issued by the city or county to authorize the respective improvement.

Capital recovery fee or impact fee means the fee imposed by the city pursuant to section 52-137 or, if applicable, the alternative impact fee.

City ~~means the City of Marco Island, a political subdivision of the State of Florida, and~~ shall include the ~~Marco Island~~ city ~~U~~utilities ~~D~~department ~~of the City~~, the utilities department director, and the city manager.

~~*City attorney* means the individual appointed by the city council to serve as its counsel, or the designee of such attorney.~~

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

Commercial development means a development where commercial activity occurs. A commercial development may include one or more "building"(s) and may or may not include any "residential" units.

~~*Comprehensive plan* means the comprehensive plan of the city adopted and amended pursuant to the Local Government Comprehensive Planning and Land Development Act as contained in F.S. ch. 163, pt. II, or its successor in function~~.

~~*Condominium* means a single-family or time-sharing ownership unit that has at least one other similar unit within the same building structure. The term condominium includes all fee simple or title multiunit structures, including townhouses and duplexes.~~

Contribution means the actual construction, installation, or improvement of a water or wastewater facility or portion thereof or addition thereto for the benefit of the city.

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

~~*County* means Collier County, a political subdivision of the State of Florida.~~

Date of value means, for purposes of determining a developer contribution credit, the market value of the contribution as of the date of the contribution; date of commencement of construction; date of land dedication; or, for dedications, the day before the development order approval (zoning amendment, site plan approval, PUD approval, or other development order approval) wherein the contribution, construction or land dedication was proffered or required; whichever occurs first.

Dedication means the conveyance or donation of an interest in land or water and wastewater facilities to the city.

Development means any installation, siting, construction, use of land, or other activity or improvement, or any additional square footage (area) of a then existing building or use, or any net increase in the size or use of a then existing building or land, in a manner that is deemed to increase the demand for, or impact upon, any water and wastewater facility.

Dwelling unit has the meaning ascribed to in in section 30-10 of this code.~~means a building or portion of a building designated for or whose primary purpose is for residential occupancy, and which consists of one or more rooms which are arranged, designed or used as living quarters for one or more persons. A dwelling unit must contain, as an integral part therein, sleeping quarters, toilet/bathing facilities, and a primary kitchen~~.

Equivalent residential connection or *ERC* generally represents the equivalent usage requirements of a single-family residential customer. The term "equivalent residential unit" or "ERU", often used instead of ERC, and has the same definition as an ERC. One ERC is deemed to be equal to a flow of 440 gallons per day (GPD) for water; and one ERC is deemed to be equal to a flow of 220 gallons per day (GPD) for wastewater. The assumed ERC gallonage has been based on statistical data establishing an average residential use, and it is recognized that the uses for some types of residential units may be greater or smaller than the average assumed for this calculation.

Equivalent residential unit or *ERU* generally represents the equivalent usage requirements of a single-family residential customer. For the purpose of this division, an ERU will have an assigned value of 1.0. One ERU is 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 of 220 gallons per day (GPD) for wastewater. The assumed ERU gallonage has been based on statistical data establishing an average residential use, and it is recognized that the uses for some types of residential units may be greater or smaller than the average assumed for this calculation.

Guesthouse or *cottage* has the meaning ascribed to it in section 30-10 of this code~~means a dwelling unit as defined in the city's land development code~~. For the purpose of assessing water and wastewater impact fees, guesthouses or cottages shall be considered as additional square footage to the primary residential building.

Impact fee or *capital recovery fee* means the fee imposed by the city pursuant to section 52-137 or, if applicable, the alternative impact fee.

Impact fee rate means the formula or calculation that when applied to the respective development determines the applicable impact fee that results because of the impacts deemed by this division to be applicable to the respective water and wastewater facility caused by particular development.

Impact fee study means a report of the findings of research and analysis conducted to develop fees assessed on new development that represent the fair share cost of the expansion of the water and wastewater facility infrastructure made necessary by that new development. The report describes the methodology used to develop the fees and presents the formulas, variables, and data used as the basis of the fees.

Living area means actual square footage, which could be air-conditioned or heated spaces contained under roof, or areas under roof, except garages, that are normally protected against exterior elements. When calculating the required impact fee on a square foot criteria, the calculation shall be based on the living area.

~~*Local Government Comprehensive Planning and Land Development Regulation Act* means the provisions of F.S. ch. 163, pt. II, as amended or supplemented, or its successor in function.~~

Market value means the most probable price for which a given property would sell, given adequate exposure in an open and competitive market, where both buyer and seller were knowledgeable, prudent and acting in their own self-interests, with neither party being under undue stimulus to act, nor having an affiliation with one another, where payment is made in terms of cash in United States dollars (or in terms of financial arrangements comparable thereto), and where the price is unaffected by special or creative financing or sales concessions granted by any party associated with the sale.

~~*Marco Island Utilities* means the city department responsible for the management and operation of the Marco Island water and wastewater and reuse water utility system.~~

Marco Island utilities director or *utilities director* means the individual appointed by the city manager to manage and operate the Marco Island utility system, including the systems within the urban service area, which now or in the future assess any water and wastewater impact fee.

Meter size means the water meter size as determined pursuant to any city ordinance, resolution, or policy.

Mixed use development means a development in which more than one impact fee land use category is contemplated with each category constituting a separate and identifiable enterprise not subordinate to, or dependent on, other enterprises within the development.

Mobile home means a detached dwelling unit with all of the following characteristics:

(1) Designed for occupancy and containing sleeping accommodations, a flush toilet, a tub or shower and kitchen facilities with plumbing and electrical connections provided for attachment to outside systems;

(2) Designed for transportation after fabrication on streets or highways on its own wheels; and

(3) Arriving at the site where it is to be occupied as a dwelling complete, including major appliances and furniture, and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connection to utilities and the like.

Although a travel trailer, recreational vehicle, or park model is not generally considered a mobile home, the applicable impact fee in some instances may be the same as for a mobile home. For the purposes of computing the impact fee, a mobile home on a single-family lot (i.e., not located in a mobile home or similar park) shall be considered a single-family detached house.

Multiple-family dwelling units means a group of two or more dwelling units within a single conventional building, attached side by side or one above the other, or both, and wherein each dwelling unit may be individually owned or leased mutually on land which is under common or single ownership. For purposes of determining whether a lot is in multiple-family uses, the following considerations shall apply:

(1) Multiple-family dwelling uses may involve dwelling units intended to be rented and maintained under central ownership and management, or cooperative apartments. It may include the fee ownership of land beneath each dwelling unit following development from a common base of ownership.

(2) Any multiple-family dwelling in which dwelling units are available for rental for periods of less than one week shall be considered a tourist home, a motel, motor hotel, or hotel, as the case may be.

Off-site improvements means improvements located outside of the boundaries of a development, except for those water and wastewater facilities that are located within the boundaries of the development that are owned and maintained by the city, which may be required by the city.

Owner has the meaning ascribed to it in sec. 1-2 of this code.~~means the person(s) who, or that, owns legal title to the real property upon which development is proposed to occur. Owner includes every co-owner; such as property owned in tenancy by the entireties, joint tenancy, tenants in common, or by more than one trustee.~~

Professional engineer means one who is licensed by the State of Florida as a professional engineer.

Reuse system means the reuse or reclaimed water system directly connected to treatment facilities operated by the city.

Residential means any dwelling unit~~apartments, condominiums, duplex dwellings, garden apartment dwellings, modular home dwellings, multiple-family dwellings, townhouse dwellings, mobile homes, single-family attached houses, single-family detached houses~~, including adult congregate living facilities (ACLF), ~~or~~ and assisted living facilities (ALF) as that term is defined in F.S. § 400.402~~, unless treated otherwise by the adopted rate schedules.~~

Single-family detached house means a ~~home~~ dwelling unit located on ~~an individual~~ its own exclusive lot or parcel of land that is not attached to any other dwelling unit. ~~intended, designed, used and/or occupied by no more than one family~~.

Square footage means the gross area measured in feet from the exterior faces or exterior walls or other exterior boundaries of the building. For the calculation of the impact fees, square footage shall be the square foot measurement of the "living area" and excludes areas within the interior of the building which are utilized for parking.

Urban service area has the meaning ascribed to it in section 52-41~~means the boundaries of the area lying within the city and certain areas lying in unincorporated Collier County for which water and/or wastewater services are provided by the city, pursuant to Ordinance No. 2003-13, as amended by ordinance or interlocal agreement~~.

Wastewater or sewer systems means the wastewater or sewer and reuse (reclaimed) utility system, including collection, treatment, and distribution facilities directly connected to treatment facilities operated by the city.

Water system means the potable water utility system directly connected to treatment facilities operated by the city.

Sec. 52-137. Imposition of impact fees.

(a) *General requirements.* All development within the city and the urban service area shall pay all assessed impact fees unless such impact fees, in whole or in part, have been exempted, waived, or deferred pursuant to this division. The impact fee shall be assessed based on a calculation of the impact of the proposed development on the water and wastewater facilities.

(b) *Impact fee rates.* The city council hereby adopts the impact fee rates as set forth in appendix A to Ordinance No. 04-06~~, appended hereto~~, which shall be imposed upon all development occurring within the city and the urban service area. These rates may be changed from time-to-time by resolution of the city council.

(c) *Change of size or use.* Impact fees shall be imposed and calculated for net increase, alteration, expansion, or replacement of a use or a commercial development, or a building, or part of a building (including dwelling unit), and each accessory or non-accessory building, provided such net increase, alteration, expansion, or replacement of the use, building, or part thereof or therein, by applying this ~~chapter~~ division, results in: a net increase in the number of dwelling units; a net increase in the size or square footage of a commercial development or building; a net increase in the size of the use; or intensification of the use so as to constitute an expansion of the same use category or result in a change to a higher impact fee land use category; or otherwise create additional demand or additional impacts on the water and wastewater facilities. The impact fee imposed under the applicable impact fee rate shall be calculated as follows:

(1) In the event only the square footage of a use or building is increased, the impact fee shall be calculated only for the net increased square footage.

(2) The impact fee imposed for any accessory buildings shall be that applicable under the impact fee rate for the land use for the primary building unless the accessory building has its own impact fee rate.

(3) In the event that a change in use creates additional demand or impacts on the water and wastewater facilities, the impact fee imposed shall be the impact fee due for the new use minus the impact fee that would be paid at the current impact fee rate for the most recent lawful use that exists or existed on the commercial development unless previously unused credits can be documented and used. The commercial development may consist of a single parcel or adjacent parcels with one or more buildings.

It is the responsibility of the current owner of the commercial development to provide the documentation that impact fees were paid for the number of ERCs for the facility before the change in use. If no documentation is provided to the city for previous ERCs then no credit will be given for those ERCs. There shall be no adjustment, off-set or credit for subsequent change of building or use that result in lower net impacts upon the water and wastewater facilities.

(4) A building that has been condemned, demolished, deemed unsafe, or abandoned more than two years before the date that the respective building permit application is first submitted to the city for approval shall not be entitled to any impact fee credit for any impact fee previously paid to the city.

(d) *Exemptions.* The following development or change in use shall be exempted from paying additional impact fees:

(1) New building(s) or addition to a building(s) or an accessory building that will not create additional net demand upon on the water and wastewater facility for which the exemption is sought over and above the then existing development impacts deemed to be created by the then lawfully existing building(s) or use(s).

(2) Lots, pads, sites, foundations or spaces for a single mobile home, recreational vehicle, travel trailer, or park model, when evidence is provided that the applicable impact fee has been previously paid.

(3) Development for which the respective impact fee is then expressly prohibited by Florida law, rule, or regulation, or by federal law, rule, or regulation.

(e) Impact fee reductions. Development within the service area of another utility provider that is connected to the Marco Island Utilities may be eligible for a reduction from the impact fee rate if such reduction is provided in a written agreement between the other utility provider and the city.

Sec. 52-138. Payment.

(a) Unless deferred or waived by a written agreement with the city as a party thereto, or unless exempted, the impact fee shall be:

(1) Paid in full prior to the issuance of a building permit for the development or any other authorization to use the land included in the development;

(2) Whenever any building or use, which has not previously paid the applicable impact fees under this division is issued a permit to connect to the water and wastewater system;

(3) Whenever a person is issued a building permit to alter an existing building, use or applicable improvement then connected to the water and wastewater system, if such alterations increase the demand or the potential demand on the water and wastewater system.

(b) If the issuance of a conventional building permit for the development is not required (e.g., golf course, park, change of use, etc.), then an applicant shall pay the impact fee prior to the occurrence of any one of the following events, whichever occurs first:

(1) The date when the first building permit has been issued for any building or structure accessory to the principle use or structure of the development;

(2) The date when the first building permit is issued for the first nonaccessory building or nonaccessory structure to be used by any part of the development;

(3) The date when a final development order, final development permit or other final authorization is issued for a parking facility for any portion of the development;

(4) Upon the issuance of a permit to connect to the water or wastewater facility;

(5) The date when a final development order, final development permit or other final approval is issued for any part of the development in instances where no further building permit is required for that part of the development;

(6) The date when the development first commences construction;

(7) The date when any part of the development opens for business or goes into use; or

(8) Prior to date of execution of FDEP permit application.

Sec. 52-139. Installment payments.

(a) Subject to availability of funds, the city may enter into agreements to extend payment (offer installment payments) of impact fees and associated costs with owners of then-existing buildings, structures or applicable improvements which are mandated to connect to the water and wastewater systems. Prior to the city entering into any agreement to extend payments, and from time to time thereafter, the city council shall identify a specific source of funds to be used relative to providing extended payment and the cost of such funds, including all expenses and costs incidental to obtaining or providing same, including interest at the interest rate that the city will employ in offering extended payment with interest, and a reasonable estimation of the administrative costs of expenses associated with administering the extended payment alternative to the respective land(s).

(1) The city shall only enter into agreements to extend installment payment of the impact fees and associated costs with owners of then-existing buildings, structures or applicable improvements, mandated to connect to the water and wastewater systems.

(2) The amount of payment, including any title verification expenses and a reasonable estimation of the cost and expense associated with providing an extended payment alternative, shall be paid in equal monthly payments with an annual interest rate as determined by the city. State document stamp and recording fees will be upfront costs borne by the owner and shall be paid in full at the time the extended payment agreement is executed. The interest rate charged shall be representative of the city's cost of funds, including all expenses or costs incidental to obtaining or providing same, if any. The interest charged should be adjusted during January of any calendar year and shall be based on the city's cost of funds for the immediately preceding fiscal year. Failure to make such an adjustment in any given January shall not preclude retroactive adjustments of such interest rates.

(3) The city council hereby delegates to the city manager the power and authority to enter into, modify, and release such extended payment agreements in conformance with the provisions of this division.

(4) Upon satisfactory payment of all principal, interest, and associated costs under an extended payment agreement, the city shall execute a satisfaction of lien and record same in the official records of Collier County.

(b) In the event a building permit issued for a development expires prior to commencement of any part of the development for which the building permit was issued, the applicant may, within 90 days of the expiration of the building permit, apply for a refund of the entire impact fee. Failure to timely apply for a refund of the impact fee shall result in the waiver of any right to a refund.

(c) The obligation for payment of the impact fee shall run with the land. Assignment of impact fee credits from one parcel of land to another parcel of land shall not be permitted except in accordance with the requirements of section 52-62 142

(1) The application for refund shall be filed with the city manager and shall include: the name and address of the applicant; the location of the property; the date the impact fee was paid; a copy of the receipt of payment for the impact fee; and the date the building permit was issued and the date of expiration.

(2) After verifying that the building permit has expired before the development had commenced, the city manager shall refund the impact fee.

(3) If a building permit is subsequently issued for a development on the same property, which was the subject of a refund, the impact fee in effect at the time the building permit is issued must be paid.

(d) In the event the city issues separate building permits for a commercial development or building or part of a building within a development which by design contemplates phased (delayed) occupancy, the city and the applicant may enter into an agreement for the phased (installment) payment of the impact fee applicable to that portion of the development represented by such unoccupied units or space; provided, however, that all impact fees due shall be paid in full prior to issuance of a certificate of occupancy for occupancy of any delayed occupancy portion of the building.

(e) The impact fee shall be paid in addition to all other fees, charges, and assessments due for the issuance of a building permit.

Sec. 52-140. Use of funds.

(a) The city council hereby establishes or reaffirms the establishment of two separate accounts, one entitled "water impact fee account" for water and a second entitled "wastewater impact fee account" for wastewater.

(b) The funds deposited into each impact fee account shall be used solely for the purpose of providing growth necessitated improvements and additions to the water and wastewater facility for which the impact fee was assessed including, but not limited to the following:

(1) Design and construction plan preparation;

(2) Permitting and fees;

(3) Design, construction, management, and inspection of water and wastewater facilities;

(4) Land and materials acquisition, surveying, soil samples, material testing, including costs of acquisition and condemnation;

(5) Aquifer storage facilities;

(6) Right-of-way acquisition, including costs of acquisition and condemnation;

(7) Development of raw water sources;

(8) Acquisition of capital equipment and apparatus;

(9) Debt service;

(10) Update to impact fee studies;

(11) Any other expenses as then allowed by law.

(c) The moneys deposited into the impact fee account shall be used solely to finance water and wastewater facilities required by growth as projected in the impact fee studies, the comprehensive plan, on in the city's then current utility master plan and/or capital improvement program.

(d) The impact fee collected pursuant to this division 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 when the respective impact fee was paid. Refunds shall be made only in accordance with the following procedure:

(1) The then current owner shall 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 respective impact fee.

(2) Submittal 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 clearly 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 90 days from the date of receipt of a complete petition for refund, the city manager will advise the owner 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 then current owner. For the purposes of this section, fees collected shall be deemed to be spent or encumbered on the basis of the first fee in shall be the first fee out. Such funds may be encumbered by contract, bond, resolution, ordinance, or otherwise.

(4) Impact fee moneys refunded by the city manager in accordance with this paragraph (d) shall be paid with interest accrued to the principal being refunded but not to exceed the rate of five percent simple interest.

(e) Failure to file a timely petition for a refund upon becoming eligible to do so shall be deemed to have waived any claim for a refund, and the city shall be entitled to retain and apply the impact fee for growth necessitated capital improvements and additions to the respective public facilities.

Sec. 52-141. Alternative fee calculation.

(a) The impact fee may be determined by an alternative fee calculation of the fiscal impact of the development on the water and wastewater facilities if:

(1) Any person commencing a development which increases demand on the water and wastewater facility chooses to have the impact fee determined by the alternative fee calculation; pays to the city in full the impact fee calculated pursuant to the applicable impact fee rate schedule; pays a nonrefundable alternative fee calculation review fee of $2,500.00 initially, and the actual cost upon completed review if in excess of $2,500.00; or any other review fee amount then established by the city council by ordinance or resolution; and

(2) The applicant believes that the nature, timing or location of the proposed development makes it likely to generate impacts costing less than the amount of the impact fee rate calculations in appendix "A", as applicable for the water and wastewater facilities at issue; and

(3) The applicant commences the alternative fee calculation process by requesting in writing to the city manager, and attends a pre-application meeting within 180 days of the issuance of the building permit for the development.

(b) The alternative fee calculation shall be undertaken through the submission of an impact analysis for the water and wastewater facilities, which shall be based on data, information, methodology and assumptions contained in this division and/or the impact fee studies incorporated herein, or an independent source, including local studies for alternative impact fee calculations performed by others within the immediately preceding three years, provided that the independent source is a local study supported by a data base adequate for the conclusions contained in such study performed pursuant to a methodology generally accepted by professionals in the field of expertise for the water and wastewater facilities and based upon standard sources of information relating to facilities planning, cost analysis and demographics and generally accepted by professionals in the field of expertise for the water and wastewater facilities. Technical details of approach, methodology, procedures, and other matters relating to the alternative fee calculation may be addressed in an administrative procedures manual.

(c) The alternative fee calculation shall be submitted by the applicant for the proposed development and shall be prepared and certified as accurate by persons accepted by the city as qualified professionals in the field of expertise for the water and wastewater facilities, and shall be submitted to the city manager.

(d) If the city manager determines that the alternative fee calculation is acceptable, and the city's cost to accommodate the proposed development is substantially different than the impact fee established pursuant to section 52-137, the amount of the impact fee shall be reduced to a dollar amount consistent with the amount determined by the alternative fee calculation and presented to city council for review and approval.

(e) In the event the applicant disagrees with a decision of the city manager that effectively results in a denial of the alternative fee calculation, the applicant may file a written appeal petition with the city council not later than 30 days after receipt of notice of such a decision by the city manager. In reviewing the decision, the city council shall use the standards established herein. The appeal petition must advise the city council of all issues and shall explain the precise basis the applicant asserts that the decision(s) of the city manager is/are alleged to be incorrect.

Sec. 52-142. Developer contribution credit.

(a) A person may apply for a credit against any impact fee owed, pursuant to section 52-137, for a water and wastewater facility for any contribution, construction, or land dedication conveyed to, accepted, and received by the city for the water and wastewater facility. The city may grant a credit against the impact fee imposed against a development for the construction, installation or contribution of water and wastewater facilities, or improvements and additions thereto, or land dedication related thereto, required pursuant to a development order for the development, or not required by such development order. Such construction, contribution or land dedication shall be subject to the approval of the city council as described herein and shall be an integral part of, and a necessary accommodation to, existing or contemplated water and wastewater facilities.

(b) A credit granted against the impact fee for certain dedications of land, contributions of construction or installation of water and/or wastewater systems, buildings, facilities and/or improvements and/or additions thereto, made to the water and wastewater systems, whether required to be made pursuant to a development order by the city or not, shall be subject to the following standards:

(1) The dedicated land shall be an integral part of, and a necessary accommodation to, contemplated off-site improvements to the water and wastewater system needs, whether on site or off site.

(2) The credit for a dedication of land shall not exceed the fair market value of the land dedication as based upon a written appraisal by a qualified and professional appraiser acceptable to the city, based upon comparable sales of similar property between unrelated parties in a bargaining transaction as of the date of the contribution; the date of the commencement of the construction; the date of the land dedication; or for dedications, the day before the date of the issuance of the development order approval (zoning amendment, site plan approval, PUD approval, or other development order approval) wherein the contribution, construction or land dedication was proffered or required; whichever occurs first.

(3) In the case of contributions of construction or installation of improvements, the value of the proposed contribution shall be adjusted upon completion of the construction to reflect the actual costs of construction or installation of improvements contributed by the developer. The actual cost of construction for the contribution shall be based upon costs certified by a professional engineer or architect, as appropriate. However, in no event shall any upward adjustment in the credit amount as set forth in the developer contribution agreement between the owner and the city exceed 15 percent above the initial certified estimate of costs for contributions as provided by the professional engineer or architect, as appropriate. Upon adjustment of the value of the developer's contribution, the contribution credit shall be adjusted accordingly.

(4) Until the contribution credit is finally adjusted upon completion of construction, no more than 75 percent of the initial estimate of costs for contributions to the water and wastewater systems identified in the contribution agreement shall be actually applied or used in the calculations of available credit against water and wastewater systems impact fees.

(5) No credit whatsoever for lands, easements, construction or infrastructure otherwise required to be built or transferred to the city shall be considered or included in the determination of any value of any developer's contribution.

(6) All construction cost estimates shall be based upon, and all construction plans, specifications, and conveyances shall be in conformity with, the construction standards and procedures of the city. All plans, specifications, or designs must be approved by the city manager prior to commencement of construction.

(7) No credit for a water and wastewater facility shall exceed the impact fee imposed by this division, unless a credit (developer's) agreement has been completed pursuant to the requirements of this section.

(8) No credit shall be issued when such plan, viewed in conjunction with other existing or proposed plans, will adversely impact the cash flow or liquidity of the impact fee account in such a way as to frustrate or interfere with other planned or ongoing growth necessitated capital improvements and additions to such waster and wastewater systems; and the proposed time schedule for completion of the plan is consistent with the then most recently adopted five-year capital improvement program for the water and wastewater facility.

(9) Except as provided in this section, no other dedications of land, contributions of off-site improvements, contributions of construction or installation of improvements shall be entitled to developer contribution credit from the impact fee.

(c) An applicant who desires to make a dedication of land or contribution for impact fee credits shall, prior to issuance of a building permit, submit to the city a proposed plan for the dedication of land or for the contribution.

(d) Upon approval of a proposed plan of dedication or contribution, the city manager shall determine the amount of developer credit and shall approve the timetable for completion of construction.

(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 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.

(f) Impact fee credits shall not be assigned or otherwise transferred from one commercial development to another commercial development except by written agreement executed by the city, and then, shall only be transferable from one commercial development to another commercial development owned by the same developer. No such assignment or transfer of impact fee credits shall be allowed until the original commercial development has been completed. Impact fee credits will be accomplished only through the operation of a credit agreement. Should an assignment of credit be approved by the city through execution of such an agreement, the assignee shall take the agreement as is and shall be bound by all of the terms and conditions of the agreement as originally executed by the assignor and other parties. No assignee (or transferee) of any such agreement shall have the right to any review procedure under this chapter except to the extent expressly granted in the agreement. The provisions of this paragraph shall apply to subsequent purchasers or successors in title to the owner.

(g) Any applicant who submits a proposed credit agreement pursuant to this division and desires the immediate issuance of a building permit shall pay the impact fee prior to or at the time of the application for the building permit. Said payment shall be deemed paid "under protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due, as determined by the city manager, shall be refunded to the applicant or owner.

(h) In the event the amount of impact fee credit, pursuant to an approved contribution or dedication, exceeds the total amount of impact fee imposed upon the development, the contribution agreement may provide for the future reimbursement to the owner of the excess of such contribution credit from future receipts by the city of impact fees. However, no reimbursement shall be paid until such time as all development at the

location that was subject to the credit has been completed. Such reimbursement shall be made over a period of five years from the date of completion of the development as determined by the city.

Sec. 52-143. Collection of impact fees in default.

Whenever the city determines that an impact fee was not paid prior to the issuance of a building permit for the affected development, or connection to the water or wastewater system, the city shall proceed to collect the impact fee as follows:

(1) The city shall serve a "notice of impact fee statement" upon the applicant at the address set forth in the application for building permit, and the owner at the address appearing on the most recent records maintained by the property appraiser of the county. The city shall also attach a copy of the "notice of impact fee statement" to the building permit posted at the affected development site if the building is under construction. Service shall be deemed effective on the date the return receipt indicates the notice was received by either the applicant or the owner or the date said notice was attached to the building permit, whichever occurs first, or by any other evidence of the date that the "notice" was received by the addressee. The "notice of impact fee statement" shall contain a description of the property and shall advise the applicant and the owner as follows:

a. The amounts due, the date that the impact fee became delinquent, and that as of that date the unpaid impact fee became subject to the delinquency fee, and that interest began to accrue on that date, and that such interest will continue to accrue thereafter until all amounts due are paid in full; that in the event the impact fee and the delinquency fee are paid in full within 30 days after receipt of the "notice," all interest that would have otherwise accrued will be waived; that in the event the impact fee is not paid in full within 30 days after receipt of the "notice", a lien against the property for which the building permit was secured may be recorded in the official records book of the county for all amounts then due after approval by the city manager.

(2) Upon becoming delinquent, a delinquency fee equal to ten percent of the total impact fee imposed shall be assessed. Once delinquent, the total impact fee, plus delinquency fee, shall bear interest at the then applicable statutory rate for final judgments calculated on a calendar day basis, until paid in full.

(3) Should the impact fee not be paid promptly, the city shall serve a "notice of lien" upon the delinquent applicant, if the building is under construction at the address indicated in the application for the building permit, and upon the delinquent owner at the address appearing on the most recent records maintained by the property appraiser of the county. The notice of lien shall notify the delinquent applicant and delinquent owner that due to their failure to pay the impact fee, the city may file a claim of lien with the clerk of the circuit court.

(4) The collection and enforcement procedures set forth in this section shall be cumulative with, supplemental to and in addition to, all other applicable procedures provided in any other ordinances or administrative regulations of the city or any applicable law or administrative regulation of the State of Florida. Failure of the city to follow the procedure set forth in this section shall not constitute a waiver of its rights to proceed under any other ordinances or administrative regulations of the city or any applicable law or administrative regulation of the State of Florida.

(5) If the total impact fees have not been received by the city within 30 days of the posting of the notice of claim of lien (or receipt of the notice by the owner or trustee), the city manager may then, regardless of the filing of any appeal petition, file a claim of lien with the clerk of the circuit court and record same in the Official Records of Collier County. The recorded claim of lien shall contain the legal description of the property, the amount of the delinquent impact fee, plus the delinquency fee and interest, and the date the impact fee became due. Once recorded, the claim of lien shall constitute a lien against the property described therein. The city manager may proceed expeditiously to collect, foreclose, or otherwise enforce said lien.

(6) After the expiration of 30 days from the date of recording of the claim of lien, as provided herein, a suit may be filed to foreclose said 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, as then amended, which provisions are hereby incorporated herein in their entirety to the same extent as if such provisions were set forth herein verbatim.

(7) The liens for delinquent impact fees imposed hereunder 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 herein.

(8) The foregoing paragraphs of this section notwithstanding, all impact fees not paid to the city in full when due shall automatically become "delinquent." Moreover, when any impact fees become delinquent anywhere throughout the unified whole of the respective development, the city is authorized to withhold every then unissued development order(s) and permits applied for by, or on behalf of, the landowner or the developer, and in addition apply any and all of the civil penalties and remedies set forth in the land development code until all such delinquent impact fees have been paid to the city in full.

Sec. 52-144. Update requirement.

(a) This division and the impact fee studies shall be reviewed by the city council initially in connection with its approval of the capital improvements element of its comprehensive plan as then, and to the extent, required by F.S. § 163.3177. This division and the impact fee studies should be reviewed at least every five years. All reviews shall consider new estimates of population and other socioeconomic data; changes in construction, land acquisition and related costs and adjustments to the assumptions, conclusions or findings set forth in the studies adopted by section 52-135. The purpose of this review is to evaluate and revise impact fees to assure that they do not exceed the reasonably anticipated costs associated with the improvements and additions necessary to offset the demand on the water and wastewater facilities generated by development. In the event the review of this division alters or changes the assumptions, conclusions and findings of the studies adopted by reference in section 52-135, revises or changes the water and wastewater facilities, or alters or changes the amount of impact fees, the studies adopted by reference in section 52-135 shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews.

(b) Simultaneous with the review of the impact fee studies required in subsection (a), the city council shall review the capital improvements element to determine the availability and adequacy of revenue sources to construct improvements and additions to the water and wastewater facilities determined in the impact fee study to be required to accommodate existing development.

Sec. 52-145. Incorporation of administrative procedures manual.

The currently existing administrative procedures manual(s) for the Marco Island Utilities Department are incorporated and referenced herein except to the extent that it conflicts or varies the terms of this division.

ARTICLE III. RESERVED

Chapter 54 WATERWAYS AND BEACHES

ARTICLE I. IN GENERAL

Secs. 54-1—54-30. Reserved.

ARTICLE II. BEACH MANAGEMENT AND VESSEL CONTROL

Sec. 54-31. Title of article.

This article shall be known and be cited as the "Marco Island Beach Management and Vessel Control Ordinance."

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) *Sailcraftmeans 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.~~

(a~~b~~) Violation~~s~~ 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~~.

(b~~c~~) In addition, as a supplemental means of obtaining compliance with ~~local~~ this code~~s~~, 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 ~~C~~code ~~of Ordinances~~, including but not limited to chapter 30 (~~L~~land ~~D~~development ~~C~~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 c~~C~~ity ~~of Marco Island~~, by providing reasonable regulation of the public's use and conduct on the beach and adjoining waters of the ~~C~~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~~ l~~L~~and ~~D~~development ~~C~~code, and section 38-1, adopting by reference the City of Marco Island Comprehensive Plan.

Sec. 54-35. Applicability of Article.

This article shall apply to and be enforced within the corporate limits of the City of Marco Island including all beaches, the Gulf of Mexico, and those islands within the defined city limits of the city. Employees of, and vessels operated by, or under the direction of, federal, state, county or city governments, or their contractors, when authorized by the city, are exempt from these provisions.

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.

(a) *Possession of glass containers prohibited.* It shall be unlawful for any person while on the beach or beach access areas to possess or utilize any glass bottle or container.

(b) *Restrictions on animals on the beach.* It shall be unlawful for any person owning or having under their control any animal, to permit such animal upon the beach, except service dogs accompanying persons with special needs shall be allowed on the beach at all times.

(c) *Storage of equipment on the beach.* It shall be unlawful for any person to store equipment, recreational motorized or non-motorized vehicles, chairs, umbrellas, etc. on the beach or in the dunes. A licensed holder of a beach permit is authorized to store equipment at the permitted operations office, storage area or headquarters, which shall be located at the dune vegetation line.

(d) *Wheeled vehicles.* The use of wheeled vehicles other than emergency safety vehicles, turtle nest monitoring, ATVs and similar wheeled vehicles used for vendor operation, baby stroller, or equipment for mobility impaired persons, is prohibited except by a beach permit.

(e) *Open fires prohibited.* Heated objects to be disposed of properly. It shall be unlawful for any person to have open fires, barbecue grills, including portable type grills, or other incendiary devices on the beach. However, designated areas may be provided for use of stoves or grills as posted by the city solely for this purpose. It shall be unlawful for any person to dispose of any coals, briquettes, ember or other heated object except in city designated receptacles in designated areas.

(f) *Overnight camping prohibited.* It shall be unlawful to camp overnight on the beach.

(g) *Fishing.* Except as provided in F.S. 379.2412, ~~I~~it shall be unlawful for any person while on the beach or within 1,000 feet from shore to fish for sharks or to fish by those methods commonly known as chumming or blood baiting. Nothing herein shall be construed to create a duty of any sort on the part of any law enforcement officer or city employee to prevent fishing or to warn of the presence or sharks in the Gulf of Mexico.

(h) *Swimming.* The public may swim at its own risk in the beach area between the two jetties adjacent to the Cape Marco property. Otherwise, no person except a person actually engaged in a rescue attempt shall:

(1) Swim or bath within 150 feet, measured in any direction, of a pier, jetty or breakwater;

(2) Swim or bath in any area posted exclusively for vessel and/or sail craft use.

(i) ~~[~~*Aircraft on beach prohibited.*~~]~~ Use of aircraft on beach or adjoining water is prohibited. No person, other than emergency, public safety, or mosquito control personnel, shall operate an aircraft, including seaplanes, ultra-lights or helicopters, on or from the beach or the water within 750 feet from the beach.

(j) ~~[~~*Soliciting, canvassing, advertising, prohibited.*~~]~~ Soliciting, canvassing, advertising, and/or engaging in commercial operations other than permitted beach operations is prohibited. There shall be no solicitation or canvassing for commercial purposes of the public on the beach other than as permitted in this article.

Permitted beach vendors, who hold valid beach permits, may solicit or canvass for the sale or rental of any merchandise, services, goods or property of any kind or character from within ten feet of their permitted operational area.

(k) *Removal of Beach sand.* No person shall remove sand from the ~~B~~beach.

(l) *Litter.* It shall be unlawful for any person to discard or otherwise dispose of or abandon any trash, garbage, bottles, containers, cans, dead fish or part thereof, charcoal briquettes or ashes, or any other litter, except in containers designated for the purpose. It is further unlawful to dispose of any household garbage on the beach.

(m) ~~[~~*Compliance.]* Beach permittees shall comply with all applicable requirements of this 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 Permits~~Reserved.

~~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

(a) *Operation of vessel in excess of idle speed regulated.* The operation of any vessel, in excess of idle speed, as defined herein, in or on all waters of the Gulf of Mexico within 750 feet offshore of all beaches and within 300 feet of the beach adjacent to the S.R. 951/Jolley Bridge is hereby prohibited. Said prohibition shall be effective and enforceable regardless of whether or not such area is designated by appropriate sign, buoy or other public notice.

(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 C~~city ~~C~~council as being used exclusively for vessel use between dawn and dusk.

(c) *Beach launch of vessels regulated.* No person except a law enforcement officer, the holder of a beach permit, authorized emergency personnel, or other person actually engaged in a rescue attempt shall traverse the beach adjacent to the Gulf of Mexico with a motorized boat or personal watercraft to launch or retrieve such vessel from the beach from an unauthorized launching area. A licensed beach vendor's location is an authorized launch site for that vendor's equipment.

(d) *Water skiing.* No person(s) including the skier(s) and the vessel operator(s) shall water-ski closer than 750 feet from the edge of the beach.

(e) *Regulated areas.* No person shall operate a motorized vessel or sailcraft within an area which has been clearly marked by buoys or some other distinguishing device for bathing, swimming or which has been otherwise restricted by the city.

Sec. 54-38. Beach Permits; Concession Operations, Equipment Rentals and Vendors on the Beach and Adjoining Waters.

All beach permitees 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:

(1) The applicant must have a physical location of business, office or headquarters at the beach location where the permitted service will be rendered. If the applicant is providing equipment, boats, or vessels for public use, the applicant must have an operation, or headquarters office located at an upland improved facility immediately adjacent to the area where vessels, goods and services are being offered by a vendor for public use with direct access to the beach areas. For the purposes of this article, the term "immediately adjacent" means the applicant owns a building, leases space within an upland improved facility, or has contractual right to operate on the land adjacent to the water.

(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 Ppolice Ddepartment~~ 30 days prior to issuance of a ~~Cc~~city ~~of Marco Island Bb~~each vendor permit. A copy of the inspection shall be submitted with the permit application to the city.

(5) The applicant must have and maintain comprehensive general liability insurance with coverage not less than the amount of $1,000,000.00 combined single limits, and the City of Marco Island must be named as additional insured. An endorsement certificate must be received by the city from the insuring company indicating such coverage and endorsement.

(6) The applicant shall provide a list describing and indicating the vessel registration number of each motorized vessel the applicant shall place in service. Any motorized vessel placed in service for public use after a beach permit has been issued shall have a valid state vessel registration number affixed.

(7) The applicant who proposes to rent recreational equipment, or vessel(s) for the use by the public on the beach or adjoining waters of Marco Island, shall be required to provide and maintain a buoy line of one or more buoys, designating the 750-foot offshore measurement from the area of operation of the beach vendor. The buoy(s) shall be placed 750 feet offshore upon the start of the business operations and pulled in and out of the Gulf waters when business operations ends.

(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.*

(1) A livery, beach permittee, or marina may not knowingly lease, hire, or rent a vessel to any person:

a. When the number of persons intending to use the vessel exceeds the number considered to constitute the maximum safety load for the vessel as specified on the authorized persons capacity plate of the vessel.

b. When the vessel does not contain the required 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 Ppolice Ddepartment~~.

a. The pre-operation instruction briefing shall be documented on a form approved by the ~~Marco Island Ppolice Ddepartment~~ 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~~ Ppolice ~~Dd~~epartment 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~~ pPolice ~~Dd~~epartment, 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 P~~police ~~Dd~~epartment 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.

(d) Each rental personal watercraft must conspicuously display the special speed limit instructions that apply within all the respective distances from the shore. The speed instructions must be easily visible to the operator of the rental personal watercraft when the operator is in the operating position on the person watercraft.

(e) Each rental personal watercraft must always operate with stock mufflers or with mufflers that are quieter than stock mufflers.

(f) Each rental personal watercraft must display identifying letters and/or numbers that identify the specific personal watercraft vendor. Each identification number and/or letter, trademark, logo, and/or company name must be at least four inches in height and must contrast with its background color so as to be easily visible at a distance of 250 feet by a person with 20/20 vision.

(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) *B*~~*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~~ 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.

(b) Amortization. Any business, restaurant, including, but not limited to, hotels, motels and time-shares, cafeteria, ~~cafe~~l, bar; any other establishment at which food or drink is served or purchased, and any school cafeteria, which is located directly adjacent to city beaches as defined and as depicted in the figure below, and, other than a school cafeteria, that possesses an active county local business tax receipt on the adoption date of the ordinance from which this section is derived, shall be permitted to continue to use, serve or distribute plastic drinking straws for a period of time not to exceed three months from the date of the ordinance creating this section, even if it is not in compliance with this sectio~~n.~~ l

(c) Exemptions. This section does not apply to:

(1) Food grade paper straws.

(2) Straws made of compostable plant material.

(3) Reusable non-plastic straws.

Secs. 54-40—54-60. Reserved.

ARTICLE III. VEHICLES ON BEACH

DIVISION 1. GENERALLY

Sec. 54-61. Title of article.

This article shall be known and may be cited as the "City of Marco Island Vehicles on the Beach Regulations."

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)~~ Violation~~s~~ 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. 54-63. Intent and purpose of article.

It is the intent and purpose of this article to protect and promote the health, safety and welfare of the public at large, including residents and visitors to the city, by providing reasonable regulation of vehicles that may be allowed to operate on the beach, including limitations and restrictions during sea turtle nesting season. It is further intended that this article shall be liberally construed to effect such intent and purpose.

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 a~~s ~~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. 54-81. Exemptions.

(a) City, sheriff, state and federal public safety vehicles are exempt from permits required by this article and may be operated on the beach as long as they are operated or authorized by officers of these departments under orders in the normal course of their duties. Vehicles used for emergency environmental cleaning and turtle monitoring are also exempt.

(b) Baby buggies (perambulators), toy vehicles, toy wagons, wheelchairs or similar devices to aid mobility challenged or nonambulatory persons shall be exempt.

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. 54-84. Conditions.

All vehicles requiring a permit under this article shall have wide, low footprint pressure tires. Except for emergency vehicles, all vehicles will be limited to ten miles per hour.

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. 54-86. Expiration.

All permits to allow operation of vehicles on city beaches, other than temporary permits, shall expire on April 30 of each year, to coincide with the beginning of sea turtle nesting season.

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. 54-100. Intent and purpose.

It is the intent and purpose of this article to provide for the adequate securing of moored vessels and to provide safe access by users for routine maintenance and use while minimizing the impact on the navigability of

the waterway, native marine habitat, manatees, and the use and view of the waterway by surrounding property owners. It is further the intent of this article to provide reasonable access for vessel, seawall, and dock maintenance.

It is recognized that specific waterway locations warrant special consideration due to severe access and navigational challenges, and community character and aesthetic impacts. City council may authorize the establishment of overlay districts, with district specific dimensional standards and regulations, to address boat docking facilities within the overlay area(s).

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.

Mooring cover means a tailored canvas covering which is affixed to the vessel for the purpose of protecting the vessel.

Mooring cover assist system means a system that supports the full weight of a tailored mooring cover as it is removed or installed on a vessel. The mooring cover assist-'system's mooring cover is attached directly to the vessel when in the covered position and does not act as a boat canopy when not attached to the vessel.

Multifamily residential zoning district means any real property located within the following ~~residential multiple family~~zoning districts: ~~6 (~~RMF-6,~~) zoning district as described in section 30-101 et seq. of this Ccode, the residential multiple family-12 (~~RMF-12,~~) zoning district as described in section 30-121 et seq., the residential multiple family-16 (~~RMF-16,~~) zoning district as described in section 30-141 et seq., the residential tourist (~~R-T~~) zoning district as described in section 30-161 et seq.~~, or the any portion of the a planned unit development zoning district set forth in section 30-381 et seq. devoted to multiple-family dwellings as defined in section 30-10 of this code~~residential development~~.

Nautical garage is defined in section 30-10 of this ~~C~~code.

Newspaper of general circulation is defined in section 30-10 of this ~~C~~code.

Permanent structure means a structure erected for 180 days or more.

Personal watercraft (PWC) means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of power and which is designed to be operated by a person sitting, standing or kneeling on, rather than the conventional manner of sitting or standing inside the vessel.

Personal watercraft (PWC) lift means any mechanical structure capable of lifting or raising a PWC clear of the water.

*Rendered and ~~. See "~~"Rendition~~."~~ have the meaning ascribed to them in section 1-2 of this code.

~~*Rendition* means the issuance of a written order, including approval, approval with conditions, or denial of a determination by the city council, planning board, director, 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 planning board, or said director or other administrative official.~~

Riparian line means an imaginary line beginning at the point at which property lines intersect the mean high water line of a waterway and continuing into the waterway indefinitely. The purpose of the riparian line, as employed by this article, is to provide a point of reference from which to measure setbacks for docking facilities. Riparian lines shall be established according to the following unless contradicted or approved by the state board of trustees of the internal improvement trust fund:

(1) Lots at the end or side end of a waterway with a regular shoreline are established by a line extending from the corner of an end lot and side end lot into the waterway bisecting equidistantly the angle created by the two intersecting lots.

(2) Riparian lines for all other lots should be established by generally accepted methods, taking into consideration the configuration of the shoreline, and allowing for the equitable apportionment of riparian rights. Included, but not limited to, are lines drawn perpendicular to the shoreline for regular (linear) shorelines, or lines drawn perpendicular to the centerline (thread) of the waterway, or perpendicular to the line of deep water (line of navigability or edge of navigable channel) as appropriate for irregular shorelines. No boat docking facility shall be constructed so as to encroach upon the riparian rights of other property owners.

Riparian rights shall have the same meaning as used in F.S. § 253.141~~, as may be subsequently modified or amended from time to time. This term is currently defined as follows: Riparian rights are those incidental to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing, and fishing and such others as may be or have been defined by law. Such rights are not of a proprietary nature. They are rights inuring to the owner of the riparian land but are not owned by him or her. They are appurtenant to and are inseparable from the 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

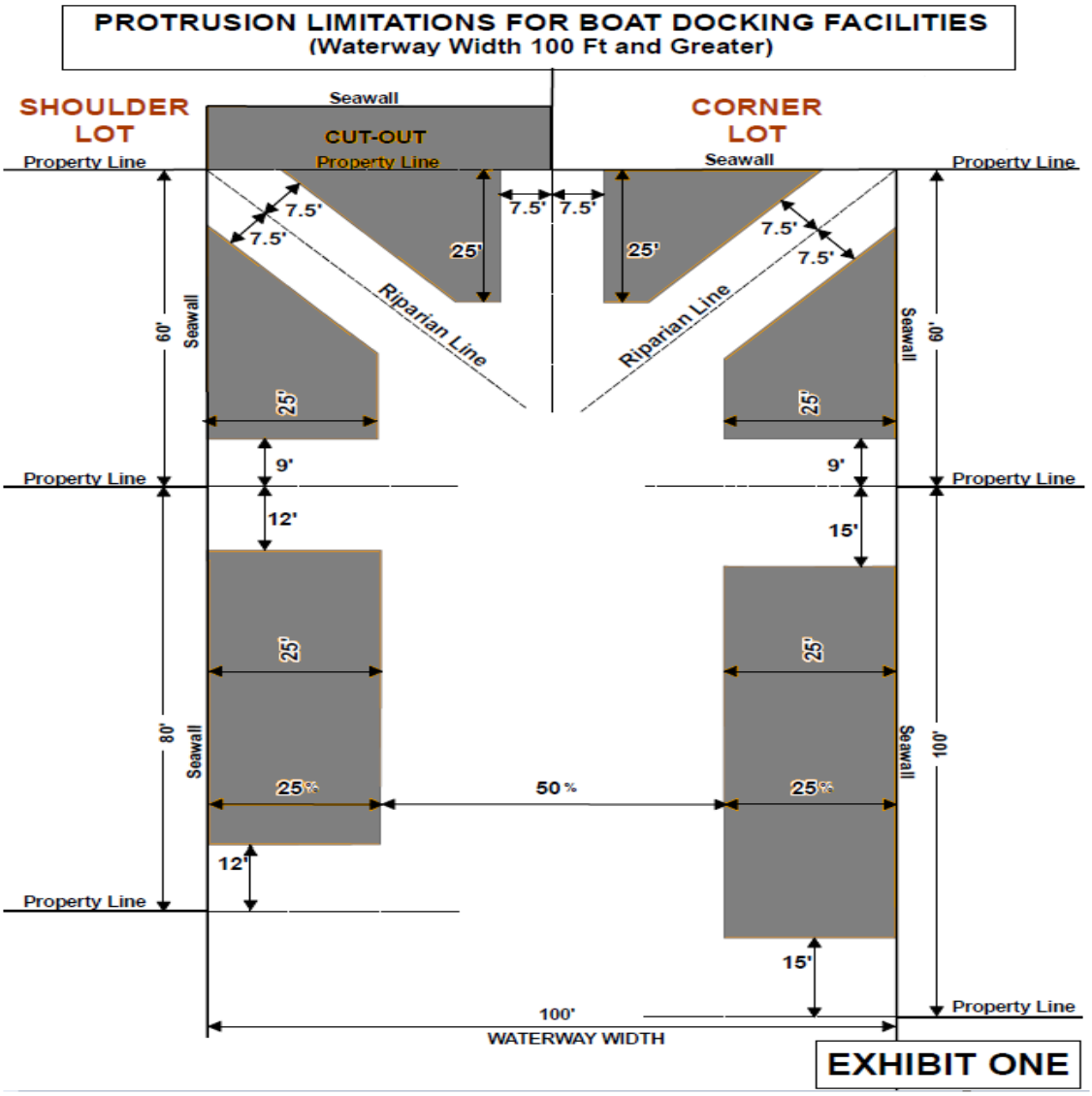
Sec. 54-110. Permitted accessory use.

Boat docking facility(s) shall be permitted as an accessory use on any waterway lot in any single-family residential zoning district, except as otherwise provided, subject to the criteria set forth in this article. Boat docking facility(s) shall be permitted as an accessory use on any waterway lot in any multifamily residential zoning district subject to the criteria set forth in this article. Boat docking facility(s) shall be permitted as an accessory use on any waterway lot in any commercial zoning district for which the boat dock facility is customary and incidental to the established principle use of the property. All boat docking facilities are subject to, and shall comply with, all federal and state requirements and permits, including but not limited to the requirements and permits of the state department of environmental protection, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency.

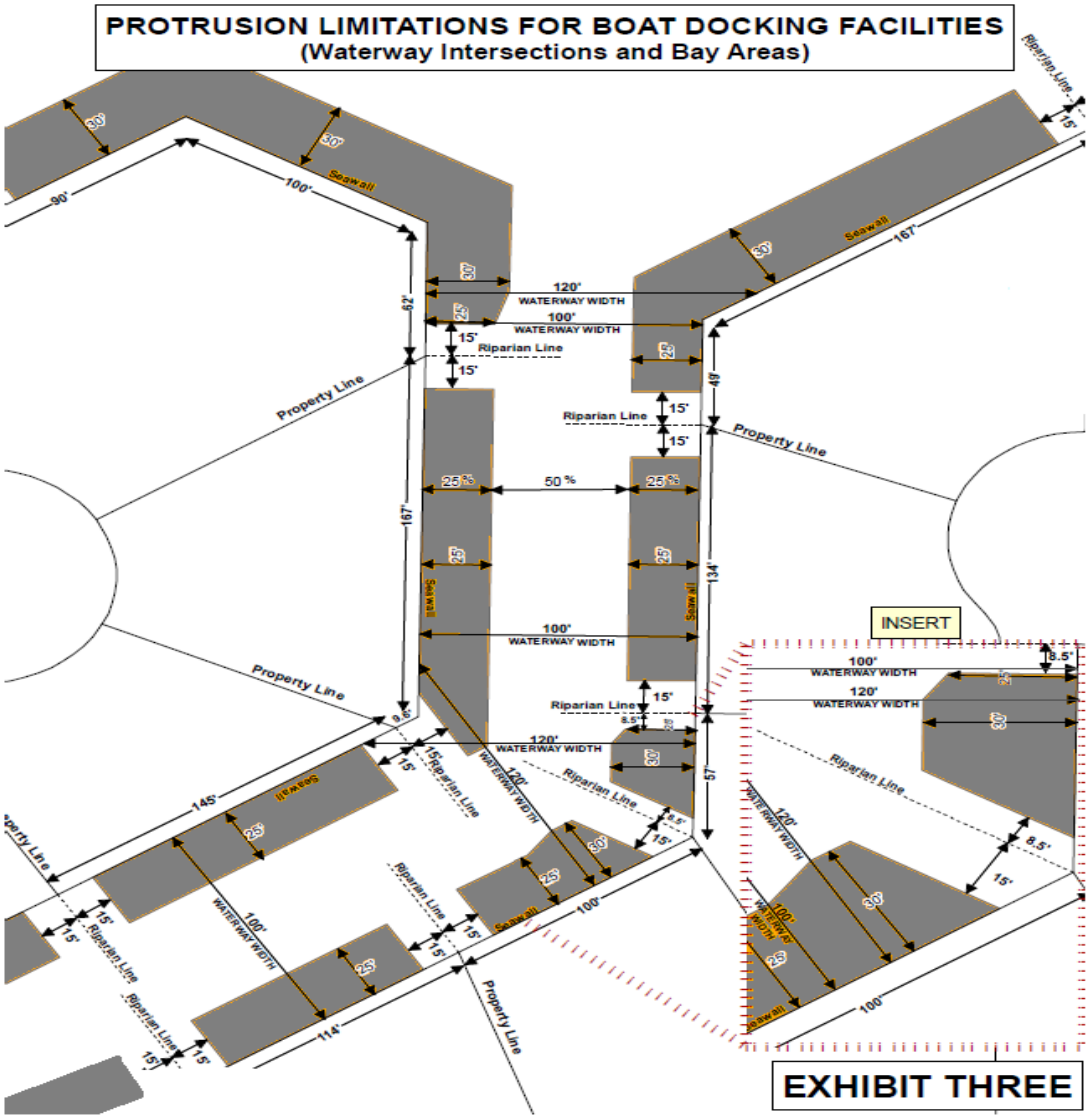
Sec. 54-111. Dimensional standards.

(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.


PROTRUSION LIMITATIONS FOR BOAT DOCKING FACILITIES
(Waterway Width 100 Ft and Greater)
SHOULDER LOT
CORNER LOT
Seawall
CUT-OUT
Property Line
Riparian Line
7.5'
25'
60'
80'
100'
9'
12'
15'
50 %
25%
100'
WATERWAY WIDTH
EXHIBIT ONE

1



(2) On waterfront lots located on waterways which are less than 100 feet in width, the combination of a boat docking facility and moored vessel(s) shall not protrude more than 20 percent of the platted width of the waterway, except that on waterfront lots with a marginal dock as defined in section 54-101, the combination of the dock and moored vessel(s) shall not exceed 25 percent of the platted width of the waterway or 25 feet, whichever is more restrictive. The protrusion of boat docking facilities, which are located at the intersection of two waterways or in areas where the waterway widens, may ~~in cases~~ exceed 20 ~~feet~~ percent but not more than 30 feet into the waterway. Boat docking facilities located at the end of a canal shall not protrude more than 20 percent of the platted width of the waterway. See Exhibits Two (below) and Three (above). In the event of a conflict between the text of this section and Exhibits Two or Three, the exhibits shall prevail.

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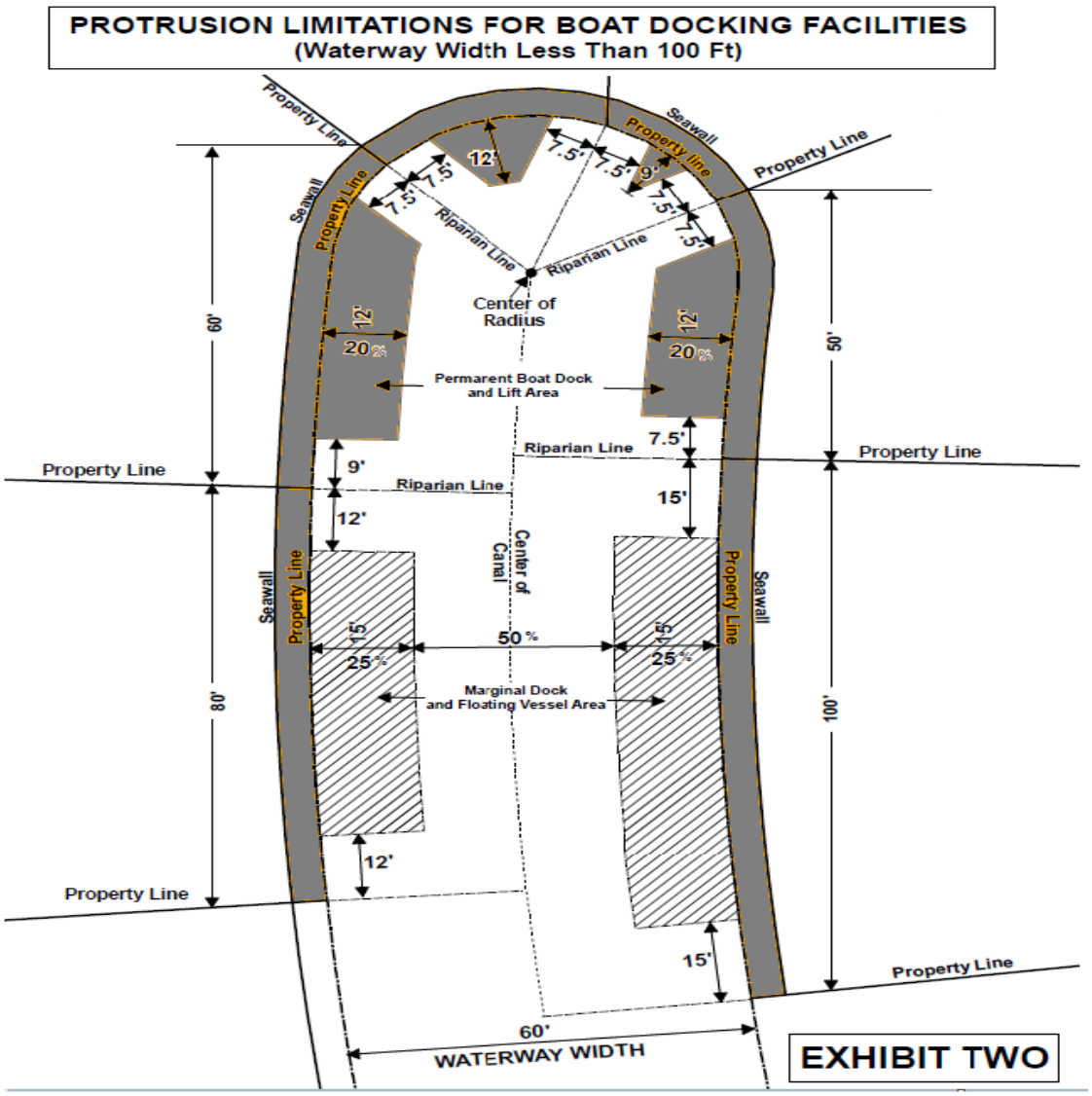

(3) No piling, boatlift, or other structure necessary to moor a vessel shall be permitted unless that structure meets the protrusion requirements set forth herein or a boat dock extension has been approved.

(4) Protrusion shall be measured from the face of the seawall. On lots where the property line extends into the water, the protrusion shall be measured from the property line.

(5) The platted width of the waterway shall be defined by the recorded plat.

(6) City staff shall determine whether or not the proposed location and design of the boat docking facility and moored vessel(s) in combination is such that it may infringe upon the use of neighboring properties, including any existing boat docking facilities.

(7) Protrusion measurement into a waterway from a waterfront lot shall include the combination of the boat docking facility, mooring piles, and moored vessel(s). Outboard motor(s), inboard propeller(s), lower unit transmission(s) propeller(s), bow pulpit(s), navigational light(s), ladder(s), and other vessel appurtenances attached to the moored vessel shall also be included in the protrusion measurement.

(8) Boat dock decking and dock area shall comply with any other applicable local, state, or federal law, rule, regulation or policy.

(9) Waterfront lots located within multifamily and commercial zoning districts may provide a parallel waterfront walkway along the waterway side of the seawall from lot line to lot line (riparian lines) not to exceed a maximum width of six feet. City staff shall determine whether or not the waterfront walkway interferes with adjacent boat docking facilities.

(10) Wet slip mooring may be provided in the side yard setback adjacent to side yard property lines/riparian lines in multifamily and commercial zoning districts, provided boat docks, mooring piles, and access piers comply with side yard setbacks set forth herein.

(11) If the platted width of a waterway is unclear from available information, a waterfront property owner may, at the waterfront property owner's expense, provide a survey, which is dated no earlier than 90 days from the date of the waterfront property owner's boat dock extension application, to staff as additional information regarding the actual width of the waterway.

(b) Side yard setback requirements for boat docking facilities and swivel PWC lifts:

(1) Boat docking facilities shall have side yard setbacks equivalent to 15 percent of the seawall length, as measured along the waterfront and from each applicable riparian line.

a. The minimum required setback shall be seven and one-half feet.

b. The maximum required setback shall be 15 feet.

c. Waterfront corner lots that have less than 80 feet of water frontage shall have required setbacks of seven and one-half feet from each riparian line. Lots located adjacent to waterfront corner lots, regardless of their waterfront length, shall have a seven and one-half foot setback, but only from the riparian line shared with the waterfront corner lot. A waterfront corner lot is a "lot, corner" on the "waterfront" as defined in section 30-10 and is also known as a "lot, shoulder" as defined in section 30-10.

D. The setback shall apply to that portion of the boat dock facility and moored vessel waterward of the property line.

(2) Boat docking facilities which are constructed in an existing cut-in boat slip shall have a minimum side yard setback of ten feet.

(3) Any decked area which is extended or located past the waterward side of the seawall shall be considered part of the boat docking facility. All height limitations and setback requirements contained herein shall apply to such decked area, terrace or patio extensions.

(4) Any boat, accessory attached to a boat, or PWC stored on the decking of a boat docking facility must meet the setback requirements set forth in this section.

(5) Seawall support pilings which are not part of a boat docking facility and meet the height limitations set forth in this article shall not be required to comply with side yard setback requirements.

(6) Typical setback and protrusion requirements for boat docking facilities and swivel PWC lifts are set forth on six exhibits set forth below. See Exhibits Four, Five, Six, Seven, Eight, and Nine. In the event of a conflict between the text of this section and Exhibits Four, Five, Six, Seven, Eight, and Nine, the exhibits shall prevail.

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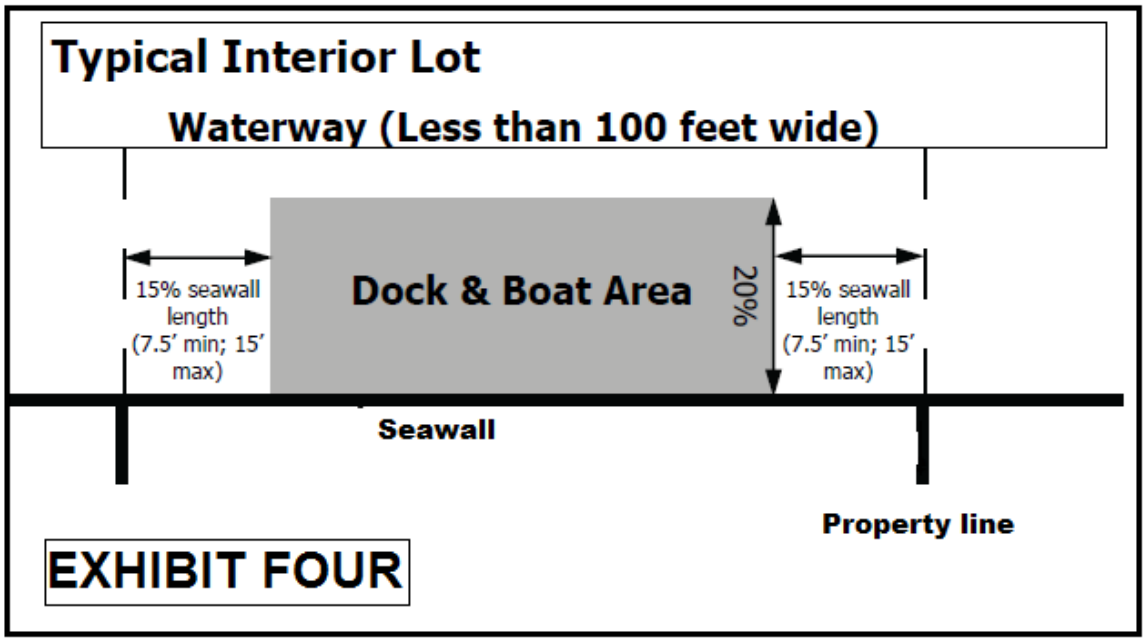
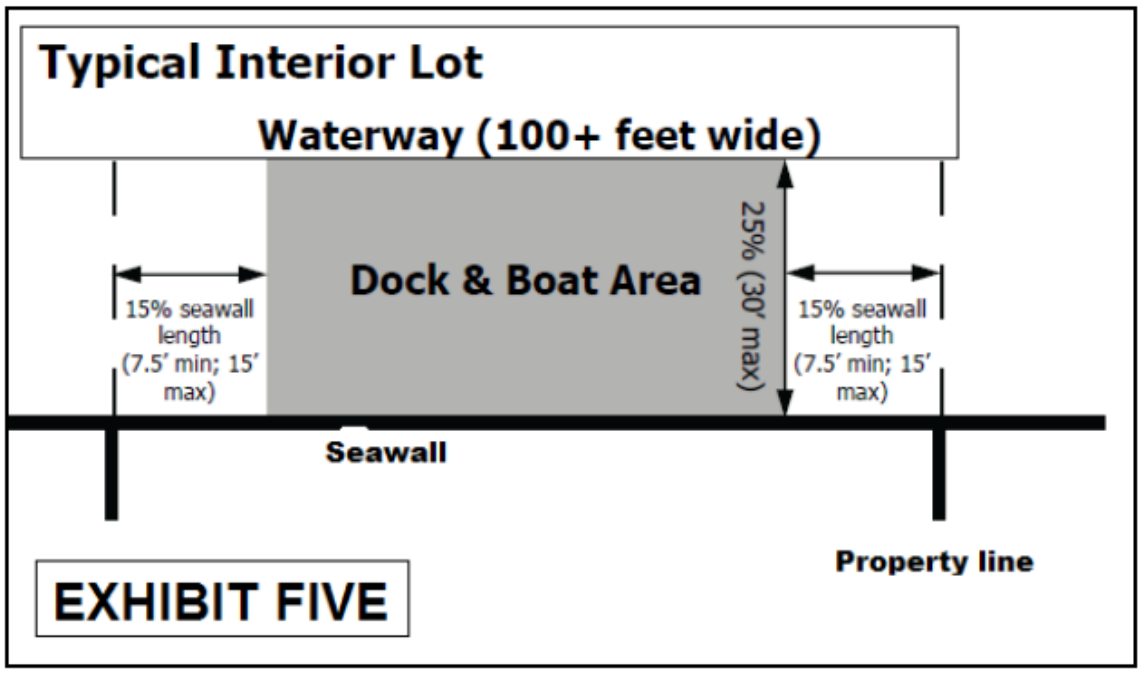
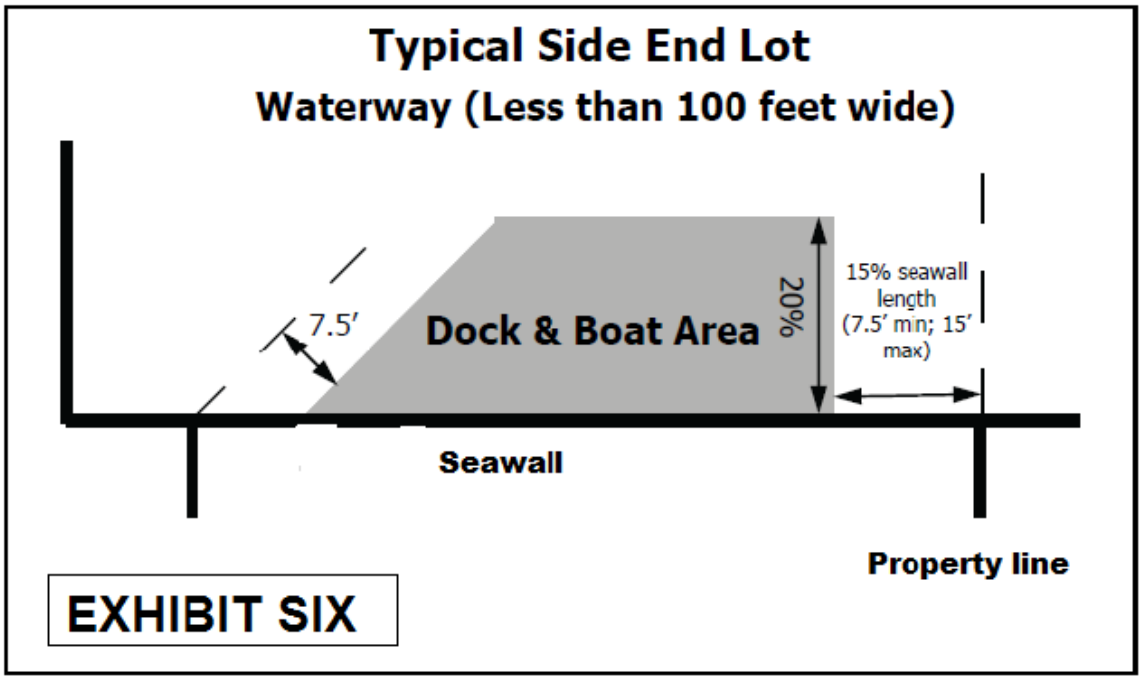

Typical Interior Lot
Waterway (Less than 100 feet wide)
15% seawall length (7.5' min; 15' max)
Dock & Boat Area
20%
15% seawall length (7.5' min; 15' max)
Seawall
Property line
EXHIBIT FOUR

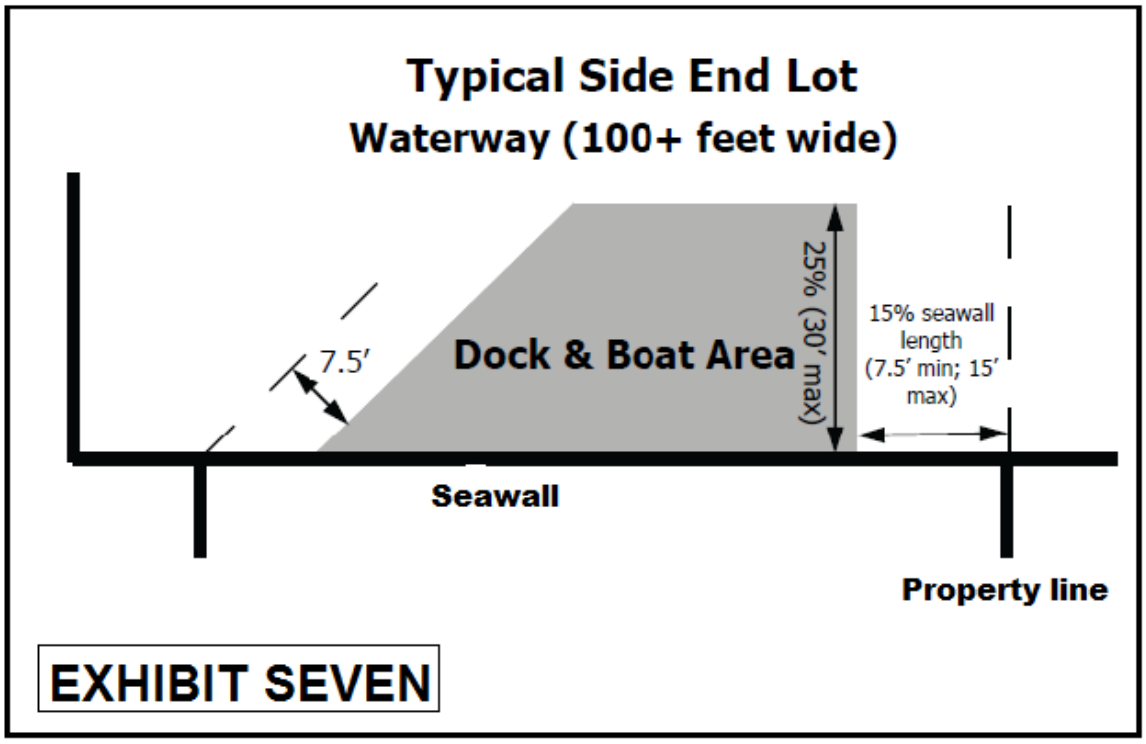
1


Typical Interior Lot
Waterway (100+ feet wide)
15% seawall length (7.5' min; 15' max)
Dock & Boat Area
25% (30' max)
15% seawall length (7.5' min; 15' max)
Seawall
Property line
EXHIBIT FIVE

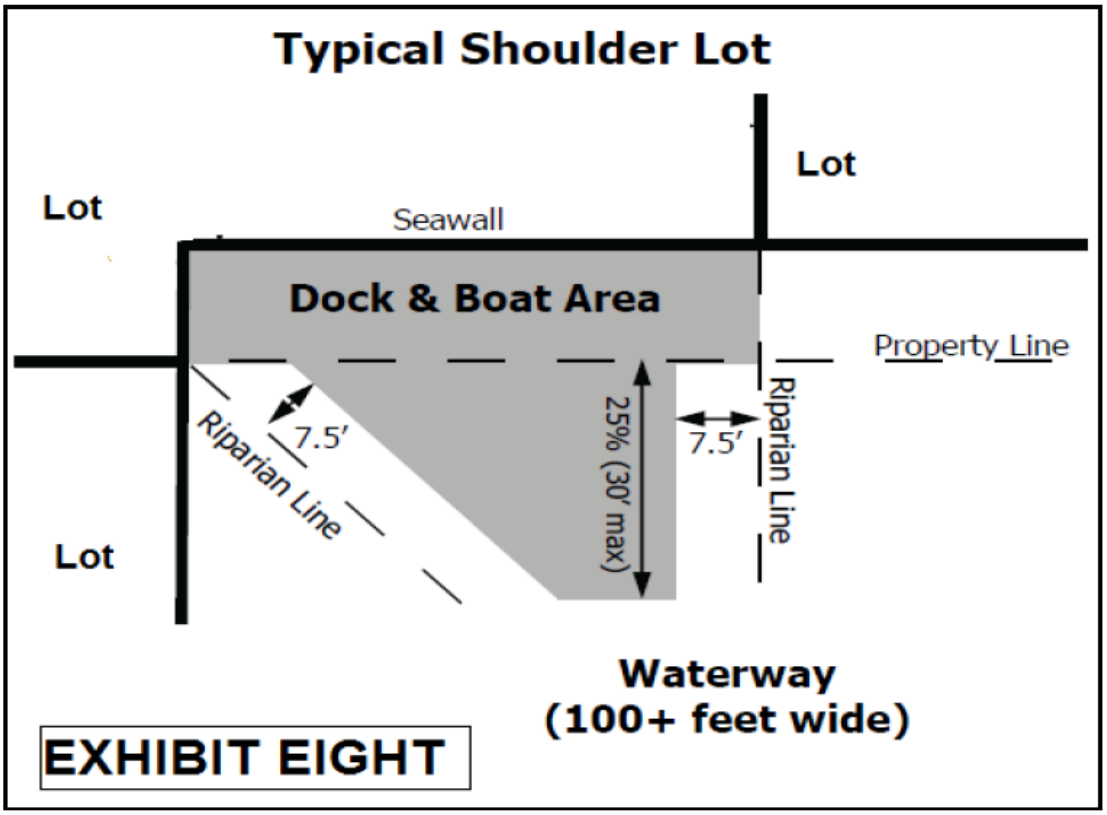
2

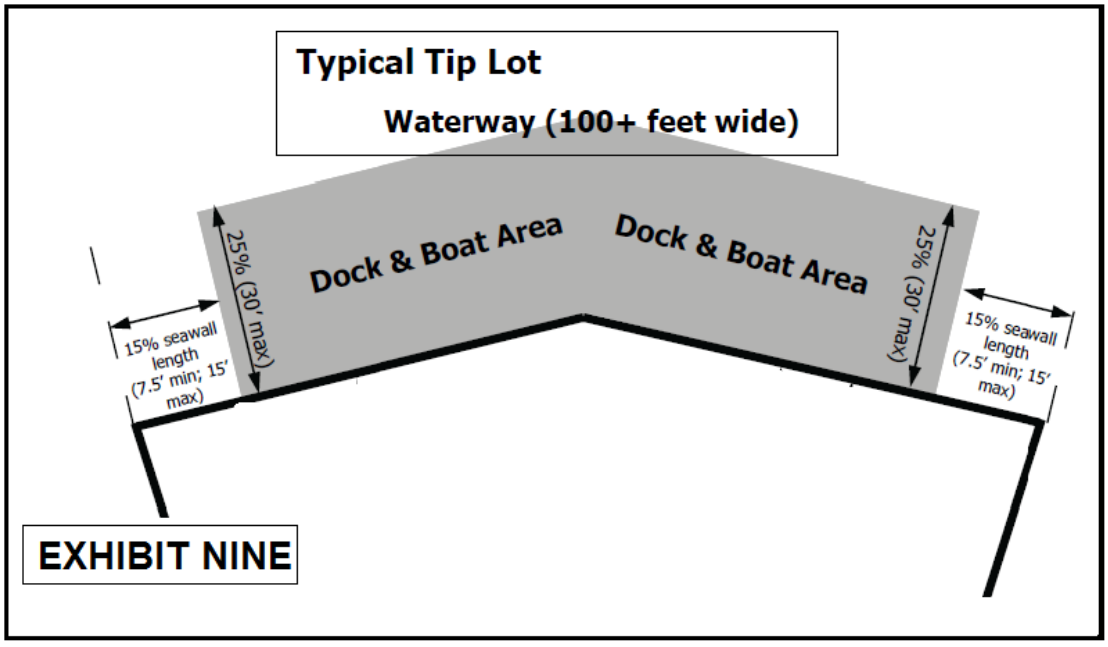

Typical Side End Lot
Waterway (Less than 100 feet wide)
7.5′
Dock & Boat Area
20%
15% seawall length (7.5′ min; 15′ max)
Seawall
Property line
EXHIBIT SIX

1


Typical Side End Lot
Waterway (100+ feet wide)
7.5′
Dock & Boat Area
25% (30′ max)
15% seawall length (7.5′ min; 15′ max)
Seawall
Property line
EXHIBIT SEVEN

2





Sec. 54-112. Additional requirements.

(a) All boat docking facilities are subject to, and shall comply with, all federal and state requirements and permits, including but not limited to the requirements and permits of the state department of environmental protection, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency.

(b) Any proposed expansion of or addition to (excluding boatlifts or mooring cover assist systems) an existing nonconforming boat docking facility, whether attached to or detached from an existing boat docking facility, shall require the entire boat docking facility be brought into conformance with the requirements of this article. Any repair or replacement of the structure within the existing footprint shall not require that the facility be brought into compliance with the standards set forth in this article.

(c) All boat docking facilities, regardless of length or protrusion, shall have blue or white reflectors installed facing the water at the outermost end of the boat docking facility on both sides. Red and green reflectors are prohibited.

(d) All boat dock facilities, regardless of length or protrusion, shall have house numbers, which are a minimum of four inches in height and a contrasting color from the area of installation, installed facing the water at the outermost end of the boat docking facility on both sides.

(e) Live-aboard vessels may not anchor or tie up in waters under the jurisdiction of the city except at anchorage sites identified on official National Oceanographic and Atmospheric Administration (NOAA) navigational charts or at facilities located in zoning districts permitting such use and at facilities within such districts designated for such use and meeting city, county, and state health standards for such use.

(f) Use of boat docking facilities to moor boats for boat rentals, boat repair, boat sales, associated boat supplies storage, or the rental of boat docking facilities in all single and multifamily districts is expressly prohibited.

(g) Any outside lighting on a boat docking facility shall comply with the lighting regulations set forth in chapter 6, article V of this cCode. 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.

(h) No owner shall allow the boat docking facility and/or associated infrastructure located at the owner's lot to become dilapidated, deteriorated, structurally unsound, unsightly or a safety hazard.

(i) A crane or barge may not sit idle for more than 15 business days. An extension of up to an additional 15 business days may be approved administratively if the barge or crane cannot be moved within the initial 15 business days due to mechanical problems.

(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.

(2) All proposed boat docking facilities shall be located and aligned to stay at least ten feet from any existing seagrass beds, except where a continuous bed of seagrasses exists off the shore of the property and adjacent to the property, and shall minimize negative impacts to seagrasses and other native shoreline, emergent and submerged vegetation and hard bottom communities.

(3) Where a continuous bed of seagrasses exists off the shore of the property and adjacent to the property, the applicant shall be allowed to build a boat docking facility across the seagrasses or within ten feet of seagrasses. Such boat docking facilities shall comply with the following conditions:

a. The dock shall be at a height of at least 3.5 feet N.G.V.D.

b. The terminal platform of the dock shall not exceed 160 square feet.

c. The access dock shall not exceed a width of four feet.

d. The boat docking facility shall be sited to impact the smallest area of seagrasses possible.

(4) The applicant or petitioner shall be required to demonstrate how negative impacts to seagrasses and other native shoreline vegetation and hard bottom communities have been minimized prior to the approval of any boat dock extension or the issuance of any building permit.

(k) Mooring cover assist systems shall be allowed.

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.

(d) A certificate of use may be issued upon approval of all required inspections except for the final survey. A certificate of use shall only be valid for a period of 90 days after date of issuance.

(e) A certificate of completion may be issued upon submission and approval of a final survey prepared and certified by a Florida registered engineer or surveyor, showing the as-built location and depicting compliance with the standards set forth.

(1) A certificate of completion must be issued within 90 days of the issuance of a certificate of use or the permit will become invalid.

(2) The installation of a PWC lift which swivels and stores a PWC onto an existing dock or the installation of seawall support pilings shall be exempt from the final survey requirement.

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) A survey prepared and certified by a Florida registered engineer or surveyor identifying the exact location and size of the encroachment.

(2) A statement of how and when the encroachment was created.

(3) A statement of current ownership and ownership at the time the encroachment was created.

(4) A letter of no objection from each adjacent property owners.

(5) Any other factors which may show that the encroachment was not intentionally created.

(6) Applicable fee as listed in the schedule of fees.

Sec. 54-115. Boat dock extensions, protrusion or encroachment into the riparian setback.

(a) Property owners may request a boat dock extension, protrusion or encroachment into the riparian setback ("request" or "application") to provide for additional length or protrusion beyond the respective distances specified in section 54-111 by following the procedures in this section.

(b) General requirements.

(1) Petitioner must demonstrate justification for the request ~~extension, protrusion or encroachment into the riparian setback requested and/or special conditions relative to the subject property,~~ in addition to compliance with ~~applicable~~ review criteria in subsection (f), below.

(2) Notice of public hearing(s) shall be provided to all property owners within 300 feet of the subject petition. In the case of residential, commercial, PUD and/or DRI extension requests, the petitioner shall be responsible for, and bear such costs for, all public notification requirements, including newspaper advertisements in a newspaper of general circulation and mailing by first class U.S. mail of public notices to all property owners within 300 feet. Proof of advertising and mailing shall be presented to city staff prior to placing the subject boat dock extension on the planning board and city council agendas.

(3) Required public hearing(s) will not be scheduled until the ~~boat dock extension, protrusion or encroachment into the riparian setback~~ application package has been deemed by staff to be complete. The following items, additional to any other items that may be listed on the application checklist, must be included with the application ~~boat dock extension, protrusion or encroachment into the riparian setback petition submittal~~:

a. Completed application, including signed and notarized owner/agent affidavit.

b. A site plan, drawn to scale, illustrating each of the following:

1. Location map.

2. Lot dimensions of subject property.

3. Riparian line(s).

4. Required boat docking facility setbacks.

5. Configuration and dimensions of proposed boat docking facility, including decking, boatlifts, boat mooring areas, etc.

6. Configuration and dimensions of existing boat docking facility, including decking, boatlifts, boat mooring area, etc., if applicable.

7. Configuration and dimensions of existing boat docking facilities on adjacent properties.

8. Water depth survey, completed by a professional Florida engineer, licensed marine contractor, registered surveyor, or other person deemed to be qualified by the community development director or his designee, using the format attached to the application form provided by the city, if relative to the boat dock extension request.

c. Permit number and certificate of completion date for the original construction of any existing boat docking facility, if applicable.

d. Resolution number and date of previous boat dock extension, protrusion or encroachment into the riparian setback if applicable.

e. Receipt of application fee.

(c) ~~An~~ Aapproval of an application ~~boat dock encroachment into the riparian setback, protrusion, or extension,~~ shall be issued in the form of a resolution. In the event a resolution approving a boat dock extension incorporates a site plan, said site plan shall be binding upon the property. Any deviation from the approved site plan shall require a petitioner to submit a new application under this section~~make application for a boat dock encroachment into the riparian setback, protrusion, or extension~~.

(d) ~~Additional length, protrusion, or encroachment into the riparian setback, beyond the respective distances specified in section 54-111~~ Applications for boat docking facilities ~~located~~ in any single-family district ~~shall~~ require public notice and a hearing by the planning board, after which the planning board shall render a final decision.

(e) ~~Additional length, protrusion, or encroachment into the riparian setback beyond the respective distances specified in section 54-111~~ Applications for boat docking facilities in any multifamily or~~,~~ commercial district, PUD, or development of regional impact ~~district shall~~ require public notice and a hearing by the planning board and the city council. The planning board shall consider the application and make a recommendation to the city council for approval, approval with conditions, or denial based upon the criteria set forth herein. The city council shall consider the application and recommendation from the planning board and shall make a final decision for approval, approval with conditions, or denial based on the criteria set forth herein.

(f) The planning board and city council shall base its decision for approval, approval with conditions, or denial, on the following criteria:

(1) Whether or not the proposed boat docking facility meets the other standards set forth in this article.

(2) Whether or not the water depth where the proposed vessel(s) is to be located is sufficient (as a general guide, four feet mean low water is deemed to be sufficient) to allow for safe mooring of the vessel, thereby necessitating the extension, protrusion, or encroachment requested.

(3) Whether there are special conditions related to the subject property or waterway which justify the proposed dimensions and location of the proposed boat docking facility.

(4) Whether or not the proposed boat docking facility and moored vessel(s) protrude greater than 25 percent of the width of the navigable waterway, and whether or not a minimum of 50 percent of the waterway width between boat docking facilities and moored vessel(s) on the opposite side of the waterway is maintained in order to ensure reasonable waterway width for navigation. This requirement shall only be applicable for extension or protrusion requests.

(5) Whether or not the proposed boat docking facility is of the minimum dimensions necessary in order to adequately secure the moored vessel while providing reasonable access to the boat for routine maintenance without the use of excessive deck area.

(6) Whether or not the proposed boat docking facility is of minimal dimensions and located to minimize the impact of view to the channel by surrounding property owners.

(7) Whether or not the proposed vessel(s) are in excess of 50 percent of the length of the water frontage on the subject property such that the extension of the boat docking facility may adversely impact the view to the channel by surrounding property owners. In the case of multifamily developments and public marinas, the 50 percent provision may be exceeded. This requirement shall only be applicable for extension or protrusion requests.

(8) Whether or not the proposed location and design of the boat docking facility and moored vessel(s) in combination is such that it may infringe upon the use of neighboring properties, including any existing boat docking facilities.

(9) Whether or not the seagrasses are located within 200 feet of the proposed boat docking facility.

(10) Whether or not the proposed dock is subject to the manatee protection requirements set forth in section 54-117.

(g) The planning board and city council may impose conditions upon the approval of an ~~extension, protrusion, or encroachment request~~ application which it deems necessary to accomplish the purposes of this article and to protect the safety and welfare of the public. Such conditions may include, but are not limited to, requiring greater side yard setback(s), additional reflectors, reflectors larger than four inches, or prohibiting or restricting the amount of decking on the boat docking facility.

(h) ~~As to any boat dock extension, protrusion, or encroachment into the riparian setback, petition upon which the planning board takes action, any~~An affected property owner may appeal ~~such~~a final action by the 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.

(2) Boathouses which were legally permitted but did not receive a certificate of completion shall require public notice and public hearing by the planning board prior to the issuance of a building permit to repair or rebuild within the existing footprint.

(3) Boathouses which were not issued a building permit shall require public notice and a hearing by both the planning board and the city council acting as the board of zoning appeals prior to the issuance of a building permit to repair or rebuild within the existing footprint.

(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:

a. Boathouse must have a minimum side yard setback of 15 feet, this setback requirement will not apply to boathouses located over a cut-in boat slip.

b. Boathouses may not protrude more than 25 percent of the waterway width or 20 feet into the waterway, whichever is less.

c. Boathouses may not be more than 15 feet in height as measured from the top of the decking to the top of the roof.

d. Boathouses must be completely open on all four sides except that the header board can be covered with decorative finishing materials or lattice board no more than 12 inches below the bottom of the header board. Roofing material and roof color must be:

1. Same as the material and color which are used on the principal structure; or

2. Palm frond "chickee" style; or

3. Cedar shake style.

4. Roof must be hip, gable, mansard, or flat style roof, consistent with the roof style of the principal structure. When the roof must be changed to conform, the roof overhang shall not project more than 36 inches into the required side yard setbacks or more than 36 inches beyond the allowed protrusion.

5. A roof shall not be utilized as a viewing platform, sunning deck, gathering place or similar use.

e. No boathouse may be used for the purpose of human habitation or storage of materials other than recreational supplies.

(c) Boat dock canopy and boat lift canopy.

(1) Boat dock canopy and boat lift canopies shall be permitted within the City's required setback and protrusion limits over an existing boat dock/v-area or lift attached to a dock or lift legally permitted, by the requisite local, state and federal agencies, if the following criteria are met.

a. Canopy cover material shall be made of a soft membrane material.

b. Canopy cover material shall be of a uniform, nonreflective single color per primary residential building.

c. Canopy covers material shall not extend more than 27 inches beyond the width of the boat lift or dock/v-area on each side.

d. The sides of the canopy cover shall remain open on all sides, except that a drop curtain, not to exceed 18 inches, shall be permitted on the sides.

e. Boat dock canopy and boat lift canopy shall meet the requirements of awnings and canopies in the Florida Building Code.

f. No boat dock canopy or boat lift canopy shall be permitted at sites that contain either a boathouse, or any other covered accessory structure.

g. Two boat dock canopies or boat lift canopies are allowed per primary residential building.

Sec. 54-117. Manatee protection.

(a) *Purpose of section.* The following are for the purpose of manatee protection and will be applicable to all multi-slip docking facilities with ten slips or more, and all marina facilities.

(b) *Manatee protection.*

(1) Proposed developments will be reviewed for consistency with the manatee protection plan (MPP) adopted by the Collier County Board of County Commissioners and approved by the state department of environmental protection. If the location of the proposed development is consistent with the MPP,

then the developer will submit a "manatee awareness and protection plan", which shall address, but not be limited to, the following categories:

a. Education and public awareness;

b. Posting and maintaining manatee awareness signs;

c. Information on type and destination of boat traffic that will be generated from the facility;

d. Monitoring and maintenance of water quality to comply with state standards;

e. Marking of navigational channels may be required.

(c) *Marina siting.*

(1) The purpose of the marina site rating system is to help determine the maximum wet slip densities in order to improve existing manatee protection. The marina site rating system gives a ranking based on three criteria; water depth, native marine habitat, and manatee abundance. In evaluating a parcel for a potential boat facility, a minimum sphere of influence for the boat traffic must be designated. For this plan an on-water travel distance of five miles is considered the sphere of influence.

(2) Rating criteria.

a. A preferred rating is given to a site that has or legally create adequate water depth and access, will not impact native marine habitats, and will not impact a high manatee use area (see Table 1).

b. A moderate ranking is given to a site where; there is an adequate water depth and access, no impact to a high manatee use area, but there is an impact to native marine habitat; there is adequate water depth, no impact to native marine habitat, but impacts a high manatee use area; and when the water depth is less than four feet mean low water (MLW), no impact to native marine habitat, and no impact to a high manatee use area.

c. A protected ranking is given to a site where; there is adequate water depth and access, but there is an impact to native marine habitat and there is an impact to a high manatee use area; there is not adequate water depth, there is impact to or destruction of native marine habitat and there is impact to a high manatee use area; there is not adequate water depth, no impact to marine habitat, but there is impact to a high manatee use area; or there is not adequate depth, there is impact to marine habitat and no impact to a high manatee use area.

D. The exact areas will depend on site specific data gathered during the site development process.

Table 1

	Water Depth		Native Marine Habitat		Manatee Use	
	Greater than 4' MLW	Less than 4' MLW	No Impact*	Impact	Not High	High
Preferred	X		X		X	
Moderate	X		X			X
Moderate	X			X	X	
Moderate		X	X		X	
Protected	X			X		X
Protected		X		X		X
Protected		X	X			X
Protected		X		X	X	

*For shoreline vegetation such as mangroves, no impact is defined as no greater than five percent of the native marine habitat is disturbed. For sea grasses, no impact means that no more than 100 square feet of sea grasses can be impacted.

(d) *Allowable wet slip densities.*

(1) *Preferred sites.* New or expanded wet slip marinas and multi-family facilities shall be allowed at a density of up to 18 boat slips for every 100 feet of shoreline. Expansion of existing and construction of new dry storage facilities is allowed. Expansion of existing and construction of new boat ramps is allowed.

(2) *Moderate development sites.* New or expanded wet slips and multi-family facilities shall be allowed at a density of up to ten boat slips for every 100 feet of shoreline. Expansion of existing dry storage facilities is allowed. Construction of new dry storage facilities is prohibited. Expansion of existing boat ramps is allowed. Construction of existing boat ramps is allowed. Construction of new boat ramps is prohibited.

(3) *Protected site.* New or expanded wet slip marinas and multi-family facilities shall be allowed at a density of one boat slip for every 100 feet of shoreline. Expansion of existing dry storage facilities or construction of new dry storage facilities is prohibited. Expansion of existing boat ramp or construction of new boat ramps is prohibited.

(4) *Mitigation.* If a potential boat facility site is ranked as moderate or protected because of its proximity to a high use manatee area its ranking can be increased if slow speed zones are established that account for a significant portion of the expected travel route of the boats using the proposed facility. In that case, the manatee criteria in the three-way test (see Table 1) would not affect the outcome of the ranking. If such slow speed zones are not existing, the city or county may establish, with DEP approval, additional slow speed zones in order to mitigate the proposed additional boat traffic.

(5) *Implementation.* This rating system does not preclude the existing zoning and density regulations required by the current land development code. This system shall be used to determine the allowable maximum powerboat wet slip densities within future marina sites for the purpose of manatee protection. These criteria will be applied at the appropriate point in the city permitting process.

(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)~~ Violation~~s~~ 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. 54-141. Purpose and intent.

The purpose of this ordinance is to protect sea turtles that nest along the beaches of Marco Island by safeguarding them from the adverse effects of artificial lighting and from injury or harassment by prohibiting

activities disruptive to sea turtles, while also maintaining public access and public safety. As part of this ordinance, the city will educate residents and beach users on the importance of appropriate coastal lighting to sea turtle nesting and perform inspections to ensure compliance with this ordinance.

(Ord. No. 22-03 , § 2, 3-7-2022)

Sec. 54-142. Applicability—Sea turtle lighting district.

An overlay district, known as the sea turtle lighting district, is hereby established in the City of Marco Island. The sea turtle lighting district is defined as all beachfront properties from Cape Marco to Hideaway Beach. Within this district, this ordinance applies to all light visible from the beach.

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.~~

Development means the carrying out of any building activity, the making of any material change in the use or appearance of any structure of land. For the purposes of this article, this would include any construction, change, or improvements regarding artificial lighting, windows, and windowed doors.

Directly visible means visibility of the glowing elements, lamps, globes, or reflectors of an artificial light source by an observer standing anywhere on the beach.

Disorientation means an event caused by direct or indirect artificial lighting on sea turtle nesting habitat resulting in the disruption in the ability of nesting sea turtle females and sea turtle hatchlings to find the sea from the beach.

False crawl means sea turtles leave the security of the ocean and crawl up onto Florida beaches at night during the summer to dig a hole and lay their eggs. Sometimes they crawl back to the water without digging a nest and without laying eggs. This is called a "false crawl."

Foot candle means the English unit for measuring illuminance; the uniform illumination of a surface one foot away from a point source of one candela; one lumen per square foot; equal to 10.76 lux.

Frontal dune means the first natural or man-made mound or bluff of sand which is located landward of the beach, and which has sufficient vegetation, height, continuity, and configuration to offer protective value.

Full cutoff means a lighting fixture constructed in such a manner that no light emitted by the fixture, either directly from the lamp or a diffusing element or indirectly by reflection or refraction from any part of the luminaire, is projected at or above 90° as determined by photometric test or certified by the manufacturer.

Fully shielded means a lighting fixture constructed in such a manner that the glowing elements, lamps, globes, or reflectors of the fixture are completely covered by an opaque material to prevent them from being directly visible from the beach. Any structural part of the light fixture providing this shielding must be permanently affixed.

Handheld devices include any portable device that can be carried and held in one's palm. A handheld can be any computing or electronic device that is compact and portable enough to be held and used in one or both hands. A handheld may contain cellular communication, but this category can also include other computing devices.

Harass means an intentional or negligent act or omission which creates the likelihood or injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, nesting, breeding, feeding, or sheltering.

Hatchling means any species of marine turtle, within or outside of a nest, which has recently hatched from an egg.

Indirectly visible means visibility of reflected light as a result of glowing elements, lamps, globes, or reflectors of an artificial light source which is visible to an observer standing anywhere on the beach without the light source being directly visible.

Irreparable or irreversible event means an irreversible action leading to a false crawl, disorientation, injury, or death of a sea turtle or their young. This also includes but is not limited to any irreversible harm or damage to the nest.

Lighting plan means plan view and cross section drawings describing location, number, wattage, wavelength, elevation, orientation, fixture cut sheets, and all types of proposed exterior artificial light sources, including, but not limited to, artificial lighting affixed to permanent structures, outdoor lighting, pool lighting, and internally or externally lighted signs.

Long wavelength means a luminaire emitting light wavelengths of 560 nanometers or greater and absent wavelengths below 560 nanometers. Lamps that meet the definition of long wavelength using filters, gels, or lenses are not permitted.

Nest means an area where marine turtle eggs have been naturally deposited or subsequently relocated.

Nesting season means the nesting period for sea turtles is from May 1st through October 31st of each year. Nesting season may be extended up to 30 days by the city manager or their designee before or after these dates on an annual basis based on nesting activity observed in the City of Marco Island.

New development includes new construction or remodeling of existing structures when such remodeling includes alteration of exterior lighting and/or replacement of all glass or glazing.

Nighttime means the locally effective time between 9:00 p.m. and 6:00 a.m.

Nonegress lighting means lighting that is not being used to light a distinct path or meet minimum requirements for emergency egress, including, but not limited to, decorative lights (e.g., Christmas lights, strobe lights, string lights, etc.), balcony lights, ceiling fan lights, landscape lights, and up lights.

Outdoor area means any portion of a property that could have an artificial light source not attached to a permanent structure, including, but not limited to, pathway lighting, landscape lighting, pool lighting, etc.

~~*Person* means any individual, firm, association, joint venture, partnership, estate, trust, syndicate, fiduciary, corporation, group, or unit or federal, state, county, or municipal government.~~

Sea turtle means any turtle, including all life stages from egg to adult, of these species: Green (Chelonia mydas), Leatherback (Dermochelys coriacea), Loggerhead (Caretta caretta), Hawksbill (Eretmochelys imbricata), and Kemp's Ridley (Lepidochelys kempi). For the purposes of this ordinance, the term sea turtle is synonymous with marine turtle.

Sea turtle nesting habitat means all sandy beaches adjoining the waters of the Atlantic Ocean, the Gulf of Mexico, and the Straits of Florida in all coastal counties and all inlet shorelines of those beaches. Nesting habitat includes all sandy beach and unvegetated or vegetated dunes immediately adjacent to the sandy beach and accessible to nesting female turtles.

Special event is an event such as a beach activity, sports, religious, and community event, or other similar events that requires preparation, planning, and municipal resources, and may require public area or roadway closures, and often a city permit.

Substantial remodeling means anything that requires a permit with regards to glass/windows, substantial remodeling refers to 100 percent of all windows that may have light transmittance toward the beach.

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

Temporary lighting means any nonpermanent light source that may be hand-held or portable, including, but not limited to tiki torches, lanterns, flashlights (including cell phone flashlights), candles, flash photography, etc.

Tinted glass means glass modified via tinting, film, or other material to reduce the inside to outside light transmittance value.

Turtle-friendly bulbs. Bulbs that are FWC Certified Wildlife Lighting, or a bulb that produces only long wavelength light (560 nanometers (nm) or longer) without the use of filters, gels, or lenses, and meet the same lighting standards for FWC Certified Wildlife Lighting, as may be amended from time to time.

Turtle-friendly fixtures. Fixtures that are FWC Certified Wildlife Lighting, or fixtures that are fully shielded, downward direct, meet or exceed full cut-off, and with nonreflective opaque interior surfaces, and meet the same lighting standards for FWC Certified Wildlife Lighting, as may be amended from time to time.

Visible from the beach means visible to a person standing on any portion of the beach.

Sec. 54-144. Existing development.

Lighting associated with existing development within the sea turtle district that was permitted prior to the date of this ordinance and visible from the beach, except for turtle friendly long wavelength bulbs, low, and shielded light, and shielded recessed fixtures with turtle friendly bulbs, shall follow Ordinance 99-7 and the following.

(1) *Exterior lighting.*

a. All exterior lights shall be turned off after 9:00 p.m. during turtle nesting season.

b. Lights illuminating dune crosswalks shall be turned off after 9:00 p.m. or fitted with a hood during turtle nesting season.

c. High-intensity lighting, including security lighting, shall not be visible from the beach during turtle nesting season.

d. Within five years, all existing multi-unit or commercial structures shall use turtle-friendly bulbs and turtle-friendly fixtures on all external sources of artificial light that are visible from the beach.

(2) *Interior lighting.* To reduce or eliminate the negative effects of interior lighting emanating from windows and doors that is visible from the beach, one or more of the following actions shall be taken during sea turtle nesting season:

a. Turn off all unnecessary interior lights after 9:00 p.m.

b. Use opaque shades or darkening window treatments (e.g., blinds, shutters, or curtains) to shield interior lights from the beach.

c. Rearrange moveable light fixtures away from windows so they are not visible from the beach.

d. Apply a window tint or film to an inside-to-outside light transmittance value of 45 percent or less. Light transmittance values greater than 15 percent will require additional window treatments or lights to be turned off to be compliant with requirements.

(3) Emergency lights are not subject to the above standards if on a separate circuit and activated only during power outages or other situations in which emergency lighting is necessary for public safety.

Sec. 54-145. New development.

Lighting associated with new development that is within the sea turtle district and visible from the beach shall be in compliance with Ordinance 99-7 and the following:

(1) Outdoor artificial lighting that is visible from the beach for any new development and not specifically referenced in this section shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required foot-candles. This includes indirect visible light sources that can be seen from the beach.

(2) All exterior nonegress lighting shall not be directly or indirectly visible from the beach.

(3) All interior egress lighting shall not exceed the federal, state, and local safety requirements for the number of fixtures and foot-candles.

(4) Low-profile luminaries shall be used in parking lots and such lighting shall be fitted with hoods or positioned so that the light sources or any reflective surfaces illuminated by such sources are not visible from the beach.

(5) Windows and doors whose light is visible from the beach at nighttime shall:

a. Use tinted glass with an inside to outside light transmittance value of 45 percent or less and opaque shades or darkening window treatments (e.g., blinds, curtains, or screens) to shield interior lights from the beach during turtle nesting season; or

b. Use tinted glass with an inside to outside light transmittance value of 15 percent or less with no additional window treatments; or

c. As an alternative, turn off all lights after 9:00 p.m. that are within the line of sight of the beach. Rearrange lamps and other moveable fixtures away from windows.

(6) Temporary security lights at construction sites shall not be visible from the beach during sea turtle nesting season or shall meet turtle friendly lighting standards.

(7) Emergency lights shall be on a separate circuit and activated only during power outages or other situations in which emergency lighting is necessary for public safety.

(8) Common areas, including, but not limited to, stairwells, elevators, parking garages, pools, or courtyards shall not produce light that is directly or indirectly visible from any portion of the beach.

(9) The city manager or designee may waive these requirements with an alternative solution that meets the intent and purpose of this section.

Sec. 54-146. Publicly owned lighting.

Publicly owned lighting with light sources that are visible from the beach or that illuminate reflective surfaces that are visible from the beach, not limited to streetlights, parking lot lights and beach access lightings, shall be fitted with a hood, or re-positioned so that the point source of artificial light is not visible from the beach and does not directly or indirectly illuminate the beach.

Sec. 54-147. Outdoor areas.

Lighting associated with any outdoor areas shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required foot-candles.

(1) All pathway lighting shall utilize low-level fixtures that do not exceed 42 inches in height. Fixtures shall be downward directed and utilize long wavelength lamps and beachside shields.

(2) All nonegress outdoor lighting shall not be directly or indirectly visible from any portion of the beach.

(3) Internally or externally lighted signs shall not be located on the seaward and shore-perpendicular sides of any structures and shall not produce light that is directly or indirectly visible from any portion of the beach.

(4) Ponds and fountains on the seaward and shore-perpendicular sides of any structures shall not produce light that is directly or indirectly visible from any portion of the beach.

(5) Excluding a special event permit, outdoor televisions or monitors shall only be located landward of the dune and shall be shielded or positioned such that they are not directly or indirectly visible from any portion of the beach.

(6) Handheld and other portable temporary lighting may only be used on the beach at nighttime during nesting season if it is long wavelength and not directed toward or used in a manner that disturbs sea turtles.

Sec. 54-148. Parking areas.

Lighting associated with any new development in parking areas shall be long wavelength, downward directed, full cutoff, fully shielded, and mounted to the minimum level required to maintain compliance with federal, state, and local law.

(1) Parking area lighting shall be shielded from the beach via vegetation, natural features, or artificial structures rising from the ground. These shall prevent artificial light sources, including, but not limited to, vehicular headlights, from producing light that is directly or indirectly visible from any portion of the beach. Lighting of parking areas shall consist of either:

a. Ground-level downward-directed fixtures, equipped with interior dark nonreflective baffles or louvers, mounted either with a wall mount, on walls or piles, facing away from the beach, or

b. Bollard-type fixtures, which do not extend more than 42 inches above the adjacent floor or deck, measured from the bottom of fixture, equipped with downward-directed louvers that completely hide the light source, and externally shielded 180 degrees on the side facing the beach, or

c. Pole-mounted lights, if required, which shall:

1. Only be used in parking areas when mounting the lights at lower elevations cannot practicably comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.

2. Located on the landward sides of buildings and shall not produce light that is directly or indirectly visible from any portion of the beach.

3. Mounted at the minimum height necessary to meet the minimum light level requirement.

4. Downward directed onto nonreflective surfaces.

d. Equipment yards, storage yards, and temporary security lights shall also adhere to the lighting restrictions contained herein.

Sec. 54-149. Pool areas.

Lighting associated with any with pool decks, pool facilities, swimming pools, and spas shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required foot-candles.

(1) Lighting of the pool water surfaces, and the pool wet deck surfaces shall comply with the minimum light levels set forth in applicable federal and state laws designed to protect public safety.

(2) Above-water lighting of pool decks, pool facilities, swimming pools, and spas shall otherwise adhere to the applicable requirements for acceptable light fixtures set forth herein.

(3) Underwater lighting of pools or spa light shall:

a. Be mounted in the wall

b. Not produce light that is directly or indirectly visible from any portion of the beach, and

c. Shall comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.

Sec. 54-150. Dune walkovers and beach access points.

Lighting associated with any beach access points shall be restricted to that portion of the structure landward of the dune. All lighting of beach access points shall be long wavelength, downward directed, full cutoff and fully shielded and shall not be directly or indirectly visible from any portion of the beach.

Lights are allowable on dune walkovers or elevated boardwalks only as required for building code purposes and may only be installed landward of the frontal dune. Walkover lighting shall not be directly or indirectly visible from any portion of the beach.

Sec. 54-151. Special events, vehicles, raking, temporary lighting, and beach furniture.

(VI) ~~(a)~~ All special events or development taking place on or adjacent to the beach requires a permit from the City of Marco Island in addition to any required permit from the Florida Department of Environmental Protection. Lighting associated with any special events at night shall be turned off at 9:00 p.m. during turtle nesting season.

Exception: Through a special event exception permit, event may go till 10:00 p.m. on the condition that the event is monitored by any person who can provide credentials or proof of having received training on sea turtle lighting. All lighting, including vehicles on the beach, must meet sea turtle friendly lighting standards.

(b) The operation of all vehicles, except emergency, law enforcement, code enforcement, or community service officer vehicles or those permitted on the beach for sea turtle conservation in accordance with F.S. § 379.2431(1), as may be amended, or other research and conservation, shall be prohibited on the beach from 9:00 p.m. to 8:00 a.m. during sea turtle nesting season.

~~(c)~~include Beach raking activities during sea turtle nesting season, if permitted by the City of Marco Island, shall not:

a. Operate after 9:00 p.m.

b. Begin before 8:00 a.m. or before the completion of daily monitoring for turtle nesting activity by the Florida Fish and Wildlife Conservation Commission (FWC) authorized marine turtle permit holder, whichever occurs first.

c. Occur within 25 feet of any marked sea turtle nest.

(1) During sea turtle nesting season, temporary work zone lighting for roadway construction and during declared emergencies shall be directed away from the beach to avoid illumination of or direct visibility from the beach. Work zone luminaires shall be shielded to avoid lighting areas outside of the immediate construction area.

(2) All other temporary construction lighting shall be:

a. Inclusive of all the standards herein, including utilizing fixtures that are long wavelength, downward directed, full cutoff, and fully shielded so light is not directly or indirectly visible from the beach; and

b. Turned off from 9:00 p.m. to 6:00 a.m. in sea turtle nesting season, or if temporary lighting is deemed necessary during sea turtle nesting season it shall only be allowed from 6:00 a.m. to 9:00 p.m., must be restricted to the minimal amount necessary, and shall incorporate all the standards herein; and

c. Mounted less than eight feet above the adjacent floor or deck, measured from the bottom of fixture, and

d. Restricted to the minimal number of foot-candles necessary to conform to the applicable construction safety regulations.

(3) Man-made moveable objects shall not obstruct sea turtle nesting habitat during nesting season during nighttime. All obstructions, including, but not limited to, beach furniture, cabanas, umbrellas, tents, personal watercraft, bikes, vehicles, and boats, shall be removed from the sea turtle nesting habitat, and shall be removed between 9:00 p.m. and 8:00 a.m., or prior to the completion of daily monitoring for sea turtle nesting activity by the FWC authorized marine turtle permit holder, whichever comes first.

(4) During sea turtle nesting season, beach vendors with a valid beach vendor permit are authorized to store registered equipment and vehicles at or adjacent to the beach vendor operations office or storage area, which shall be located at the dune vegetation line or at another acceptable location.

(5) No beach furniture or other man-made object shall be placed within 25 feet of a marked sea turtle nest.

Sec. 54-152. Unlawful to kill, molest, or injure sea turtles.

(a) It shall be unlawful for any person, firm, or corporation to kill, molest, cause a disorientation, or cause direct or indirect injury to any species of sea turtle or sea turtle hatchlings, their nests, and/or eggs in the City of Marco Island or within its jurisdictional waters. It shall be unlawful to take, collect or possess any part of a sea turtle or eggs.

(b) It shall be unlawful for any person, firm, or corporation to relocate or possess a sea turtle or eggs without first obtaining a permit from the Florida Department of Environmental Protection (FDEP)/Florida Fish and Wildlife Conservation Commission (FWC). A person, not take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any sea turtle species or hatchling, or parts thereof, or the eggs or nest of any sea turtle species.

(c) When a sea turtle nest is created, a permitted sea turtle monitor posts it on the beach with stakes, flagging tape and signage. It shall be unlawful to enter the posted nest area or impact the posted nest area in any manner. A minimum of a 25-foot perimeter with no activity within should be given to the posted nest area for protection.

Sec. 54-153. Construction during nesting season.

It shall be unlawful to construct any structure, add any fill, mechanically clean any beach, or grade any soil material within 100 feet of the nesting zone of a beach where sea turtles' nest or may nest during the nesting season. Construction activities shall not interfere with sea turtle nesting, shall preserve, or replace any native vegetation on the site, and shall maintain the natural existing beach profile and minimize interference with the natural beach dynamics and function. All rules, guidelines, best management practices required by the federal or state agencies, if not stated in this ordinance, shall be followed.

Sec. 54-154. ~~Violations~~Reserved.

~~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 Sher~~i~~'ff's Office, and any other state or federally authorized law enforcement agency.

(1) Such officers shall have the power and duty to issue such orders and to make such investigations, reports, and arrests in connection with the provisions of this article or cause any inspections to be made of all vessels in accordance with this article and the Florida Statutes.

(2) Any official with jurisdiction is authorized and empowered to make inspections at reasonable hours of all activities regulated by this article in order to ensure compliance with the provisions of this article. Any person who violates any provision of this chapter, or of any regulation or guideline that implements this chapter, shall be ordered immediately to stop all work.

(3) Every two weeks, lighting compliance inspections shall be conducted by ~~the~~ a code compliance official ~~City of Marco Island Code Enforcement or city designee~~ during sea turtle nesting season to ensure compliance with this ordinance.

Sec. 54-156. Penalties.

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

~~(a) After one warning in a calendar year excluding an irreparable event, in addition to and as a supplement to any civil and criminal penalties provided by state and federal statutes, and the Ci~~'~~ty's Code of Ordinances, the following shall apply:~~

~~(1) Any person who is found to have violated any provision of this article, shall be, upon conviction, subject to the following penalties:~~

~~a. First offense—Minimum of $150.00, not to exceed $500.00 for each offense as provided for in F.S. § 162.22: and~~

~~b. Second offense—Minimum of $500.00, not to exceed $1,500.00, as provided for in F.S. § 162.09; and~~

~~c. Third offense—Minimum of $1,500.00, not to exceed $2,000.00, as provided for in F.S. § 162.09; and~~

~~d. Irreparable event—Up to the maximum possible as provided for in F.S. § 162.09~~.

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

~~(3) In addition to the penalties provided herein, the city may recover reasonable attorn~~'~~ey's fees, court costs, court report~~'~~er's fees and other expenses of litigation by appropriate suit at law against the person found to have violated this division or the orders, rules, regulations and permits issued hereunder.~~

~~(4) If a state of emergency is declared by the Governor of the State of Florida or there is a significant weather event, the City of Marco Island Code Enforcement may issue more than one warning for noncompliance with this article.~~

Secs. 54-157—54-160. Reserved.

ARTICLE VI. WATERWAYS AND BOATING SAFETY

Sec. 54-161. Intent and purpose.

It is the intent and purpose of this article to protect and promote the health, safety and welfare of the public by providing reasonable regulation of the use and operation of vessels on the public waters of the city. It is intended that this article shall be liberally construed to affect such intent and purpose.

Sec. 54-162. Title and citation.

This article shall be known and cited as the "City of Marco Island Waterways and Boating Safety Ordinance."

Sec. 54-163. Applicability.

This article shall apply to and be enforced within the corporate limits of the City of Marco Island including all natural and manmade waterways, the Gulf of Mexico, and those islands within the defined city limits of the city. Employees of, and vessels operated by, or under the direction of, federal, state, county or city governments, or their contractors, when authorized by the city, are exempt from these provisions.

Sec. 54-164. Definitions.

When~~As~~ used in this ~~chapter and in this~~ article, the terms below shall have the following meanings unless the context clearly requires a different meaning, the term. 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 vessel means any vessel whose ownership cannot be determined due to failure to register said vessel or failure to document said vessel; failure to properly mark or identify said vessel as required in the registration or documentation process; any unattended vessel which is adrift; any unattended vessel that is found in a badly deteriorated condition, or is taking on water, or is sinking or partially sunk, or sunk; any unattended vessel that is causing damage to private or public property; any unattended vessel that is releasing contaminates or chemicals into water; any unattended vessel that is or was on fire; or any unattended vessel that is a menace to navigation; any vessel that is unattended for a period greater than 72 hours.

Anchorage means a designated area within the bays and waterways of Marco Island in which vessels may remain at anchor for the period of time permitted by the ordinance.

Anchoring means to secure a vessel by use of ground tackle.

Bays and *waterways* mean any natural or manmade body of water, creek, bay, inlet or canal within the boundaries of the city.

Beach has the meaning ascribed to it in section 1-2 of this code.~~means the soft sand portion of land lying seaward of a seawall or rocky shore or line of permanent vegetation and landward of the mean high water line.~~

Boating accident means a collision, accident, or casualty involving a vessel in or upon, or entering into or exiting from, the water, including but not limited to capsizing, collision with another vessel or object, sinking, personal injury, death, disappearance of any person from on board under circumstances which indicate the possibility of death or injury, or property damage (in excess of $2,000.00) to any vessel or dock, or other property.

Commercial vessel means any vessel primarily engaged in the taking or landing of saltwater fish or saltwater products or freshwater fish or freshwater products, or any vessel licensed pursuant to F.S. § 370.06, from which commercial quantities of saltwater products are harvested, from within and without the waters of this state for sale either to the consumer, retail dealer, or wholesale dealer; or any vessel engaged in any activity wherein a fee is paid by the user, either directly or indirectly, to the owner, operator or custodian of the vessel; or any vessel engaged in commercial enterprise; or any vessel designed to support commercial operations; or any other vessel, except a recreational vessel as defined herein.

Commission means the division of law enforcement of the fish and wildlife conservation commission.

Discharge means the intentional or unintentional release of pollution or sewage.

Ground tackle means a mechanical device that prevents a vessel from moving, including but not limited to anchors, anchor chains, anchor lines and/or fittings, etc. for anchoring or mooring a vessel.

License or *licensed* means a valid occupational license recognized by the city.

Length means the measurement from end to end over the deck parallel to the centerline excluding sheer.

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~~.

Livery vessel means any vessel leased, rented, or chartered to another person or entity for consideration.

Marina means a boating facility, chiefly for recreational boating, located on navigable water frontage, and providing all or any combination of the following: boat slips or dockage, dry boat storage, small boat hauling or launching facilities, marine fuel and lubricants, marine supplies, bait and fishing equipment, restaurants, boat and boat motor sales, and rentals. Minor boat, rigging and motor repair which is incidental to the principal marina use is generally allowed as an accessory use. However, no dredge, barge or other work-dockage or service is permitted, and no boat construction or reconstruction is permitted. A boat sales lot is not a marina.

Marine sanitation device means any equipment on board a vessel, which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.

Marker means any aid to navigation, including channel marker, information or regulatory mark, isolated danger mark, safe water mark, special mark, inland waters obstruction mark, or mooring buoy in, on, or over the waters or the shores thereof, and includes, but is not limited to, a sign, beacon, buoy, or light.

Moor means to tie off a vessel to any submerged fixed object; or to tie or secure a vessel to a piling, dock, wharf, seawall, dolphin, mooring buoy, or other object or thing located or attached to real property in or adjacent to real property.

Navigation rules means the International Navigational Rules Act of 1977, 33 U.S.C. appendix following s. 1602, as amended, including the annexes thereto, for vessels on waters outside of established navigational lines of 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., as amended, including the annexes thereto, for vessels on all waters not outside of such lines of demarcation.

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 upon the waters of the city.

Owner means a person who holds the legal title of a vessel, or, if a vessel 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, such person shall be deemed the owner.

Parasail means a parachute or paraglide device tethered to a vessel enabling recreational gliding in the air while being towed by the vessel.

Permit means a vendor's permit, building permit, or other permit required by the city to comply with this or any other city ordinance.

Person has the meaning ascribed to it in section 1-2 of this code.~~means an individual, partnership, firm, corporation, association, or other legal entity.~~

Personal watercraft has the meaning ascribed to it in section 54-32 of this code.~~means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump, as its primary source of motive 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~~.

Police department means City of Marco Island Police Department.

Prohibited activity means such activity as will impede or disturb navigation or creates a safety hazard, or any act specifically prohibited by this article.

Recreational vessel means any vessel manufactured and used primarily for noncommercial purposes, or leased rented or chartered to a person for the person's noncommercial use.

Registration means a state-operating license on a vessel, which is issued with an identifying number, an annual certificate of registration, and a decal designating the year for which a registration fee is paid.

Restricted area means any area denoted by regulatory marker, any area or vessel (moving or stationary) designated as restricted by a government entity denoted with markers, or by written, radio, or verbal notice to mariners. These restrictions may be made by a governmental entity on the basis of safety to the public, vessel speeds, vessel traffic, boating accidents, visibility, hazardous conditions, currents, water depth, or other navigation hazard.

Safety equipment means that equipment designed to be life saving or distress conveying appliances required by the United States Coast Guard (as specified in the Code of Federal Regulations) by the State of Florida, and the city.

Seaplane has the meaning ascribed to it in section 54-32 of this code.~~means any aircraft that is capable of landing and/or lifting off from a water surface~~.

Unattended vessel is any vessel that has no person on board.

Vessel has the meaning ascribed to it in section 54-32 of this code.~~for the purpose of this article means any human, motor, wind, non-powered or artificially propelled water conveyance and every other description of boat, watercraft, barge, and airboat, seaplane on the water, used or capable of being used as a means of transportation or in the water~~.

Water-skiing has the meaning ascribed to it in section 54-32~~ means a person or persons being towed in the water by a vessel and using water skis, a ski board, inflatable device or aqua plane~~.

Sec. 54-165. Restricted areas and activities.

It shall be unlawful:

(1) To operate a vessel in a prohibited manner or to carry on any prohibited activity, as defined in this article, or state or federal law, which has been deemed a safety hazard or interference with navigation, or to operate or continue operating after warning, within any restricted area.

(2) For anyone to fish from any private property of another without the express permission of the owner or lessee. Where such property is vacant or not developed, failure to provide written evidence of such permission shall be considered as prima facia evidence of lack of permission.

(3) For anyone to fish from the surface portion, sidewalk, roadway, approach, landing, or underneath any bridge, except the areas approved for fishing underneath the following:

a. The State Road 951 Bridge at the Marco River.

b. The County Road 92 Bridge at the Marco River.

(4) To launch or retrieve a vessel utilizing a trailer; from any public right-of-way or land owned by a government or from any private land without the consent of the owner, except:

a. Marinas;

b. Caxambas Park boat ramp;

c. Southwest of the State Road 951 bridge at the Marco River; and

d. Other areas as specifically authorized by the city.

(5) For any person to post any sign, regulatory marker, aid to navigation, permanent mooring device, or other device in any canal, navigational channel, or other place without having first obtained a license or permit from the appropriate state or federal agency where such permit is required under state or federal law and a permit from the city.

(6) For any person with a commercial vessel to load or off-load hazardous materials upon a beach or public park, boating facility or ramp without a permit from the city.

Sec. 54-166. Interference with navigation.

Consistent with F.S. § 327.44, as may be subsequently modified or amended from time to time, no person shall anchor, operate, or permit to be anchored, except in case of emergency, or operated a vessel or carry on any prohibited activity in a manner which shall unreasonably or unnecessarily constitute a navigational hazard or interfere with another vessel. Anchoring under bridges or in or adjacent to heavily traveled channels shall constitute interference if unreasonable under the prevailing circumstances.

Sec. 54-167. Anchoring and mooring.

It shall be unlawful:

(1) To anchor or moor a live-aboard vessel or floating structure within the city. A "floating structure" shall have the same meaning as used in F.S. § 327.02, as may be subsequently modified or amended from time to time.

(2) To moor a vessel at a dock, mooring, piling or seawall of a property owner without the consent of the owner or person in control of the premises, except in an emergency. Failure to provide written evidence of such permission shall be considered as prima fascia evidence of lack of permission. Any such mooring must comply with all applicable regulations of ~~the City~~ this c~~C~~ode.

(3) To intentionally place or moor a commercial vessel on a beach for more than four hours without a permit from the city.

Sec. 54-168. Damage of markers or buoys.

No person shall willfully damage, alter, or move a lawfully placed aid-to-navigation marker or buoy, regulatory marker or buoy, or area boundary marker or buoy. Any person who damages, alters, or moves a lawfully placed aid-to-navigation marker or buoy, regulatory marker or buoy, or area boundary marker or buoy located within the city shall immediately notify the ~~Marco Island~~ p~~P~~olice d~~D~~epartment.

Sec. 54-169. Abandoned vessels.

Any vessel that is deemed abandoned in or on a city waterway, bay, canal, open water, or beach or abandoned in violation of this article may be removed and impounded by the police department. All costs for removal, towing and storage will be assessed to the owner on a rate scale established by the city manager. If the vessel is unclaimed is shall be disposed as provided in state statutes and may be retained by the city for official use or sold with the proceeds paying for the charges incurred, with the remainder of the funds to be used solely by the

~~Marco Island P~~police ~~d~~Department for the education and enforcement of marine related laws. (Ref. F.S. ch 327.22) Failure to act on the part of the owner waives all liability of the city from damages as a result from towing and storage.

Sec. 54-170. Liveries; safety regulations.

(a) A livery or marina may not knowingly lease, hire, or rent a vessel to any person:

(1) When the number of persons intending to use the vessel exceeds the number considered to constitute a maximum safety load for the vessel as specified on the authorized persons capacity plate of the vessel.

(2) When the vessel does not contain the required safety equipment required under this article and/or F.S. § 327.50.

(b) When the vessel is equipped with a motor of ten horsepower or greater, the livery 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 includes, but need not be limited to, all of the topics included on the list provided to each livery or marina by the ~~Marco Island p~~Police ~~d~~Department.

(1) The pre-operation instruction briefing must be documented on a form approved by the ~~Marco Island p~~Police ~~d~~Department prior to use.

(2) Any such form must be retained for a period of six months.

(3) Any such form shall be provided to the ~~Marco Island P~~police ~~d~~Department, or any other law enforcement agency, upon request.

(c) All operators shall initial and sign the 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 will be required to cosign the form attesting that they have insured that all operators have received the required pre-operation safety briefing.

(d) Any person delivering the pre-operational safety briefing on behalf of the livery or marina shall have:

(1) Successfully completed a boater safety course approved by the National Association of State Boating Law Administrators and this state.

(2) 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.

(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 P~~police ~~d~~Department, 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 P~~police ~~d~~Department 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. 54-171. Maritime special events.

Any person directing or holding a demonstration, regatta, race, marine parade, tournament, or exhibition on the navigable waters of the city, must insure that the event is held in compliance with F.S. § 327.48, and obtain the

appropriate permit(s) from the city. Any person directing the holding of such event shall be responsible for providing adequate protection to the participants, spectators, and other users of the water, and must obey all terms and conditions of required permits.

Sec. 54-172. Water-ski, parasail, and aquaplanes regulated.

Water-skiing or towing of an object designed for a person to ride on or in when a person is actually riding on or in the object or being towed is prohibited within all canals or bays or when closer than 50 feet from any manmade object.

Sec. 54-173. Swimming and diving.

It shall be unlawful:

(1) To swim, snorkel, or scuba dive within 50 feet of any bridge, within the city.

(2) To jump from any bridge within the city.

Sec. 54-174. Jurisdiction and enforcement.

(a) This article is enforceable by the ~~Marco Island P~~police ~~d~~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, 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.

(b) Such officers shall have the power and duty to issue such orders and to make such investigations, reports, and arrests in connection with 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.~~