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CITY OF MARCO ISLAND

ORDINANCE 20-

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, RELATING TO SEAWALLS; MAKING FINDINGS; AMENDING SECTION 30-793, CITY CODE OF ORDINANCES, RELATING TO A TEMPORARY CONSTRUCTION PERMIT REPEALING PROVISIONS ALLOWING FOR A TEMPORARY CONSTRUCTION PERMIT FOR SEAWALL OR SEAWALL MANUFACTURE OR FABRICATION; PROVIDING FOR SEVERABILITY/ INTERPRETATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to prohibit seawall or seawall panel manufacture or fabrication within the city; and

WHEREAS, as the City has allowed seawall contractors to use provisions in the Land Development Code ("LDC") to fabricate or manufacture seawalls or seawall panels in residential zoning districts; and

WHEREAS, the seawall contractors may use vacant residential lots as staging areas for fabrication or manufacture of seawalls or seawall panels, causing substantial noise, as well as generation of debris and dust resulting from the manufacturing or fabrication process, and

WHEREAS, vacant residential lots used as staging areas for the fabrication or manufacture of seawalls or seawall panels may also cause injury or death to protected species, such as endangered or threatened species, rare species or species of special concerns as listed by the U.S. Government or the State of Florida; and

WHEREAS, the foregoing activities have caused numerous complaints from residents about the public aesthetics and health of residents; and

WHEREAS, the Planning Board finds that the need and justification for this Ordinance is to resolve the foregoing circumstances by prohibiting the fabrication or manufacture of seawalls or seawall panels within the City; and

WHEREAS, the Planning Board also finds that there are adequate opportunities for contractors to fabricate or manufacture seawalls or seawall panels off of the island in adjacent areas of unincorporated Collier County; and

43
44 **WHEREAS**, it is not the intent of this Ordinance to stop marine construction or
45 repair of seawalls in the City, merely the fabrication or manufacture of seawalls or seawall
46 panels; and
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48 **WHEREAS**, the Planning Board finds that this Ordinance is consistent with Policy
49 1.7.2 of the Future Land Use Element of the Comprehensive Plan, because this
50 Ordinance and the underlying conditions creating a need for this Ordinance have caused
51 the City to thoughtfully review the need for, and revise the list of, a particular use permitted
52 within the City, namely manufacture and fabrication of seawalls and seawall panels; and
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54 **WHEREAS**, the Planning Board finds that this Ordinance is consistent with Policy
55 1.7.3 of the Future Land Use Element of the Comprehensive Plan, because seawall and
56 seawall panel manufacture and fabrication, particularly in residential areas, creates a non-
57 conformity with the quality and aesthetic design of the community; and
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59 **WHEREAS**, the Planning Board finds that this Ordinance is consistent with Policy
60 1.7.4 of the Future Land Use Element and Policy 1.5.2 of the Housing Element of the
61 Comprehensive Plan, because seawall manufacture or seawall panel fabrication creates
62 substantial dust and generates construction debris creating unsafe housing and nuisance
63 conditions in residential areas, and elimination of such activities is consistent with Policy
64 1.7.4; and
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66 **WHEREAS**, the Planning Board finds that this Ordinance is consistent with Policy
67 1.5.1 of the Housing Element of the Comprehensive Plan, because this Ordinance
68 eliminates a “manufacturing” use from residential areas which detracts from the enhanced
69 architectural and aesthetic qualities of those residential areas; and
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71 **WHEREAS**, the Planning Board finds that this Ordinance is consistent with Policy
72 1.5.3 of the Conservation and Coastal Management Element of the Comprehensive Plan,
73 because this Ordinance eliminates a “manufacturing” use from coastal and water related
74 areas which could detract from ensuring the viability or natural resources; and
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76 **WHEREAS**, the Planning Board finds that this Ordinance is consistent with
77 Objective 1.7 of the Conservation and Coastal Management Element of the
78 Comprehensive Plan, because this Ordinance eliminates a “manufacturing” use from
79 areas that may be habitat for endangered or threatened species, such as burrowing owls
80 and other species; and
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82 **WHEREAS**, the Planning Board reviewed this Ordinance for consistency with the
83 Comprehensive Plan and finds that this Ordinance is consistent with the City’s
84 Comprehensive Plan, and in particular, Future Land Use Element Policies 1.7.2, 1.7.3,

1.7.4, Policies 1.5.1 and 1.5.2 of the Housing Element, Policy 1.5.3 of the Conservation and Coastal Management Element, and Objective 1.7 of the Conservation and Coastal Management Element; and

WHEREAS, upon review of the testimony and evidence presented and Staff recommendations, the City Council adopts the findings of the Planning Board; and

WHEREAS, the City Council finds that, as a result of the foregoing, this Ordinance will promote the public health, safety, aesthetics, and welfare of the community,

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

SECTION 1. Recitals. Each and all of the foregoing recitals be and the same are hereby incorporated into this Ordinance as if specifically set forth herein.

SECTION 2. Amendment and Adoption. That section 30-793(2)(h)(i) and (3) of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-793. - Construction temporary use permit.

During the construction of any development for which a site development plan has been approved or a building permit issued, the developer may request a temporary use permit subject to the following:

(1) The temporary use permit shall be granted initially for a period not to exceed 24 months in length and may be renewed annually based upon demonstration of need. A request for renewal shall be submitted to the city manager or designee in writing 30 days prior to the expiration of the temporary use permit. Marine construction activities (seawall and boat dock construction, demolition, replacement, and repair), on a vacant lot shall only be performed up to 100 consecutive days while an associated permit(s) is active. More than one permitted marine construction activity may be staged at the vacant lot concurrently. Upon completion of the use and prior to the expiration of the approved activity, the contractor shall restore the lot to pre-use condition. Any vacant lot so used shall not be used for marine activity for an additional 365 days following issuance of the last associated certificate of completion or CO, with the exception of an emergency repair or replacement to a seawall at the subject vacant lot.

(2) Temporary construction and development permits shall be allowed for the following uses:

h. Other on-site uses similar to the foregoing uses and determined to meet the intent of this article. Manufacture or fabrication of seawalls or seawall panels is not permitted.

i. Off-site staging ~~no further than 150 feet from the building lot~~ with written authorization from the property owner and proof of notification to ~~adjoining~~ property ~~owners within 300 feet of the site~~, when, in the opinion of the building official, site constraints such as, but not limited to, an irregular shaped lot where building activity will take place indicates its appropriateness. In such case, only construction equipment, materials and vehicles used in the construction process of the permitted structure may be staged. However, no overnight parking of any vehicles is allowed; any additional or unauthorized materials or lack of upkeep or reasonable maintenance shall result in revocation of the temporary use permit by the building official. Manufacture or fabrication of seawalls or seawall panels is not permitted.

j. Receipt of equipment, materials or supplies for immediate redeployment to actively permitted construction sites, not to exceed ten (10) calendar days.

k. Any type of demolition material shall be either removed from the lot or placed in a dumpster within five days. Demolition activity may not occur outside the hours of 8:00 a.m. to 5:00 p.m., Monday through Saturday.

l. Failure to comply with the provisions of this section shall constitute a violation of this code. Contractors in violation shall receive a revocation of applicable permit(s) and shall not be granted any additional permits for the period of time a violation exists. If the violation has not been cured within the time specified in the notice of violation, starting the next day a fine of \$250.00 per day for a first violation and \$500.00 per day for a repeat violation shall be assessed until the violation is corrected. Future permits shall not be issued to the contractor until all fees, fines, and costs have been paid in full.

m. Special exceptions: The contractor may seek an administrative extension beyond the permit period provided the city manager or designee is presented sufficient information justifying the contractor's need. Justification may include inclement weather, unavailability of materials or other unexpected conditions beyond the control of the contractor. Staff may provide a maximum 45-day extension provided the request is justified.

~~(3) — In addition to the uses described above, a construction temporary use permit shall be obtained for the use of a vacant lot for the seawall manufacture, construction, repair and related boat dock construction activities on all vacant lots or parcels under the following conditions:~~

a. ~~The contractor shall notify the city, as part of the building permit application process for seawall manufacture, construction, repair, and related boat dock construction activities, of its intentions to use a vacant lot for such purpose.~~

b. ~~The contractor shall provide written permission from the property owner of the vacant lot. A copy shall be submitted to the city building services division and made a part of the temporary use permit application. The city shall require a signed document holding the city harmless from any claim by the property owner or the permit holder for any damage to the vacant lot or seawall. City staff shall provide notification to the property owner indicating any vacant lot utilized for seawall manufacture, construction, repair, and related boat dock construction activities may not be used again for an additional 365 days following expiration of the last temporary use permit utilized for the subject vacant lot. In addition, city staff will provide notification of the proposed temporary use of the vacant lot to all property owners within a 300-foot radius of the subject vacant lot, together with other conditions of the permit as may be required by the city.~~

c. ~~The contractor shall post the subject property with a permit board and all applicable permits including a copy of the temporary use permit.~~

d. ~~Manufacture of precast seawall panels and related boat dock construction activities on a vacant lot shall only be performed for a maximum of 100 consecutive days while an associated repair permit is active. More than one permitted seawall repair or marine construction contract may be staged at the vacant lot concurrently. Upon completion of the use and prior to the expiration of the 100-day period, the contractor shall restore the lot to pre-use condition. Any vacant lot so used shall not be used for seawall manufacture, construction, repair, and related boat dock construction activities for an additional 365 days following issuance of the last associated certificate of completion or CO, with the exception of an emergency repair or replacement to the seawall at the subject vacant lot.~~

e. ~~Failure to comply with the provisions of this subsection shall constitute a violation of this code. If a violation is found, code compliance staff shall provide a notice of violation to the violator and allow for up to ten business days to cure. If the violation is not corrected by the time specified for correction, a stop work order shall be issued by the City of Marco Island Building Services Department. Contractors in violation shall receive a revocation of applicable permit(s) and shall not be granted any additional permits for the period of time a violation exists. If the violation has not been cured within time specified in the notice of violation, starting the next day a fine of \$250.00 per day for a first violation and \$500.00 per day for a repeat violation shall be assessed until the violation is corrected. If a violation is not corrected within ten business days from the date of issuance of the notice of violation, the city or city's designee may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with all fines imposed pursuant to this section. Future permits shall not be issued to the contractor until all fees, fines, and costs have been paid in full. Assessed fines may be appealed to the code enforcement board. Repeat violation shall mean a violation of this code by a person who has been previously~~

found to have violated the same provision of this code within five years prior to the violation, notwithstanding the violations occur at different locations.

f. ~~Special exceptions: The contractor may seek an administrative extension beyond the 100-day period provided the city manager or designee is presented sufficient information justifying the contractor's need. Justification may include inclement weather, unavailability of materials or other unexpected conditions beyond the control of the contractor. Staff may provide a maximum 45-day extension provided the request is justified. Exceptions shall not be used to extend use of the vacant lot beyond 145 consecutive days.~~

g. ~~The contractor shall provide a silt fence along the side yard property lines.~~

h. ~~Any type of demolition material shall be either removed from the lot or placed in a dumpster within five days. Piling, decking, and boatlift equipment that will be later reused on that lot, shall be permitted to remain on site. Demolition, if by cutting, shall require a wet saw method, except for steel rebar. Demolition activity may not occur outside of the hours of 8:00 a.m. to 5:00 p.m., Monday through Saturday. Dumping or storage of any material not directly associated with current permitted job is expressly prohibited.~~

i. ~~Manufactured seawalls shall not be stacked more than five feet in height.~~

j. ~~The public works department shall determine whether temporary structures will be required to protect the swale area and proper stormwater conveyance.~~

k. ~~Boat and barge repair shall not be allowed on vacant residentially zoned parcels. The use of any such boat, barge or vessel shall be subject to the specific requirements of Code section 54-111 and subsection 54-112(i).~~

l. ~~Only equipment and vehicles directly associated with the permitted repairs will be allowed on the property, and only during an open permit.~~

SECTION 3. Severability/Interpretation.

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

(b) In interpreting this Ordinance, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text. Asterisks (* * *) indicate a deletion from the Ordinance of text, which continues to exist in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the

asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

SECTION 4. Effective Date. This Ordinance shall be effective immediately upon adoption by the City Council on second reading.

PASSED on First Reading on the ____ day of _____, 2020, and
ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this ____ day of
_____, 2020.

CITY OF MARCO ISLAND FLORIDA

By: _____
Erik Brechnitz, Chairman

Attest:

By: _____
Laura M. Litzan, City Clerk

Reviewed for legal sufficiency:

By: _____
Alan L. Gabriel, City Attorney