

**CITY OF MARCO ISLAND  
ORDINANCE NO. 02-10**

**AN ORDINANCE AMENDING CHAPTER 14, ARTICLE II, OF THE CITY CODE, ESTABLISHING THE MARCO ISLAND CODE ENFORCEMENT BOARD, ADOPTED ON JUNE 1, 1998; RELATING TO MEMBERSHIP REQUIREMENTS, APPOINTMENTS, TERMS OF OFFICE, AND CRITERIA FOR REMOVAL FROM OFFICE OF MEMBERS; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes, provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Section 1.01 of the Marco Island City Charter empowers the city to adopt, amend, or repeal ordinances, resolutions, and codes as may be required for the good governing of the City; and

**WHEREAS**, the City Council passed Ordinance 98-4, establishing the Marco Island Code Enforcement Board on June 1, 1998; and

**WHEREAS**, Ordinance 98-4 has been codified in Chapter 14, Article II of the City Code; and

**WHEREAS**, the City Council desires to clarify language contained in Chapter 14, Article II relating to membership requirements, appointments, terms of office, and criteria for removal from office of Code Enforcement Board.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Marco Island, Florida that:

**Section 1. Purpose and Intent.**

The intent and purpose of this ordinance is to amend Chapter 14, Article II of the City Code, as shown on Exhibit A, attached hereto and incorporated herein by reference.

**Section 2. Incorporation, Conflict and Severability**

(1) It is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section," "article," or other appropriate word.

(2) All sections or parts of sections of the Code of Laws and Ordinances of Collier County, Florida, all Collier County Ordinances or parts of ordinances and all Collier County Resolutions or parts of resolutions made applicable by the City Charter in conflict herewith are hereby repealed to the extent of such conflict.


(3) If any word, phrase, clause, subsection, or section of this ordinance is for any reason held unconstitutional or invalid by a court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of the ordinance.

**Section 3. Effective Date.**

This ordinance shall take effect immediately upon adoption by the Marco Island City Council.

Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 19th day of February 2002.

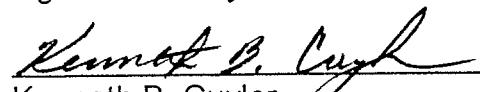
Attest:

  
\_\_\_\_\_  
A. William Moss  
City Manager/City Clerk

CITY OF MARCO ISLAND, FLORIDA

BY:   
\_\_\_\_\_  
E. Glenn Tucker, Chairman

Approved as to form and  
legal sufficiency:

  
\_\_\_\_\_  
Kenneth B. Cuyler  
City Attorney

**PART II CODE OF ORDINANCES**  
**Chapter 14 CODE ENFORCEMENT**

**ARTICLE II. CODE ENFORCEMENT BOARD**

**Sec. 14-31. Title of article.**

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

**Sec. 14-32. 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:

*City attorney* means the legal counsel to the council.

*Clerk to the code enforcement board* means the clerk to the city council, or the designee of such person, who shall be responsible for minutes and other records of a code enforcement board and such other matters as provided for in this article.

*Code enforcement official* means any authorized agent or employee of the city whose duty it is to ensure code and ordinance compliance, and who is responsible for the enforcement or implementation of codes and ordinances of the city.

*Enforcement board* means the city code enforcement board.

*Hold-over term* means the continuation of an expired term of a code enforcement board member who, prior to the expiration date of such member's term, presided over the presentation of a case hearing that had not reached conclusion with a final vote by the time of the expiration date of such term. Such continuation of a member's expired term shall be extended for the limited time and for the limited purpose of presiding over such particular case until conclusion and final vote and the time for rehearing has passed. If a rehearing is granted, such member's term shall continue for the limited time and limited purpose to rehear the matter and reach a conclusion by final vote.

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

*Prosecutor* means the city attorney and/or any member of the city staff who presents cases before an enforcement board, as applicable.

*Violator* means a person alleged to, or who has been found to, have violated any ordinance or code of the city which a code enforcement board has jurisdiction to enforce.

**Sec. 14-33. Findings; purpose of article.**

The city council does hereby make 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 by authorizing the creation of a code enforcement board, with authority to impose administrative fines and other noncriminal penalties.
- (2) The purpose and function of such code enforcement board is to provide an equitable, expeditious, effective and inexpensive method of enforcing the codes and ordinances of the city, with the exception of traffic violations, where a pending or repeated violation continues to exist, including but not limited to housing regulations, occupational license regulations, fire regulations, development standards, building regulations, zoning regulations, and sign codes.
- (3) It is in the best interest of the citizens of the city to create such a code enforcement board as a supplemental and additional means of enforcement.

**Sec. 14-34. Applicability of article.**

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

**Sec. 14-35. Membership; compensation of members; appointment and term of members; vacancies.**

- (a) The council may appoint one seven-member enforcement board. All members of the enforcement 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 the council.
- ~~(b) Prior to making appointments to the enforcement board, the council's staff shall provide the council with a list which outlines the qualifications of each candidate for board membership, along with a list detailing the qualifications and term expiration of present members of the enforcement board, if applicable.~~
- (b) The appointment, removal, and terms of members shall be in accordance with Section 2, Article IV of this Code.

(c) The appointment of members to the enforcement board shall be made on the basis of experience or interest in the fields of zoning and building control, or other areas as are relevant to the codes or ordinances of the city, which are to be enforced. The membership of the enforcement board shall, whenever possible, include, but not be limited to, an architect, a ~~businessman~~ businessperson, an engineer, a general contractor, a subcontractor and a Realtor.

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

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

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

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

(e) If any member's term expires during the pendency of any case which has not reached conclusion by a final vote, such member's expired term shall be extended for the limited time and for the limited purpose of presiding over such particular case until conclusion and final vote and the time for rehearing has passed. If a rehearing is granted, such member's terms shall continue for the limited time and limited purpose to rehear the matter and reach a conclusion by final vote.

~~(f) After initial appointments, all appointments shall be made for a term of three years. A member may be reappointed by the council for one successive term; provided, however, that nothing in this section shall prohibit any individual from being reappointed to the enforcement board for an additional term or terms after a hiatus of two years. An appointment to fill a vacancy on the enforcement board shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive board meetings without a satisfactory excuse and without prior approval of the chairman, the enforcement board shall declare the member's office vacant and the council shall promptly fill the vacancy. Vacancies occurring on the enforcement board shall be publicized, but need not be advertised, in a publication of general circulation within the city, and vacancy notices are to be posted in the city hall. Members of the enforcement board serve at the pleasure of the council and may be suspended or removed, with or without cause, by the council.~~

#### **Sec. 14-36. Officers; voting; Rules of procedure; staff support; reports.**

~~(a) Officers. At the first meeting of the enforcement board, the members shall elect a chairman and vice chairman, who shall be voting members, from among the members of the board.~~

- ~~(b) Quorum. The presence of four or more members shall constitute a quorum of the enforcement board necessary to take action.~~
- (c) Rules of procedure. The enforcement board may adopt such rules and regulations as it may deem necessary to carry out the duties of the enforcement board in accordance with the provisions and intent of this article.
- (d) Staff support. The council shall provide such clerical and administrative personnel and legal services as may be reasonably required by the board for the proper performance of its duties.
- (e) Counsel. The city attorney, or his designee, shall either be counsel for the enforcement board or shall represent the city by presenting cases before the enforcement board, but in no case shall the city attorney or a member of his staff serve in both capacities for the same case or at the same time.
- ~~(f) Reports. The enforcement board shall provide to the council written quarterly reports of the activities of the board, which reports shall delineate the name of the cases heard for the quarter, the date of hearing and the resolution of the cases.~~

**Sec. 14-37. Enforcement procedure.**

- (a) *Initiation of proceedings.* It shall be the duty of the code enforcement official to initiate enforcement proceedings. No member of the enforcement board shall have the power to initiate enforcement proceedings.
- (b) *Notice of violation.* Except as provided in subsection (e) of this section, if a violation of a code or ordinance is found to exist, the code enforcement official shall first notify the violator and shall give the violator a reasonable time to correct the violation. Notice shall be given in writing pursuant to section 14-44, and shall specify the alleged violation, the required corrective action and the time period for correction.
- (c) *Affidavit of violation; notice of hearing.* Should the violation continue beyond the time specified for correction, the code enforcement official shall execute a written affidavit of violation which shall include a statement of the facts and circumstances of the alleged violation and shall identify the code or ordinance which has been violated. Upon notification and request by the code enforcement official, the enforcement board, through its clerical staff, shall schedule a public hearing. Written notice of the scheduled hearing, which shall contain the date, time and place of the hearing, and a copy of the affidavit of violation shall be provided to the violator pursuant to the provisions of section 14-44. Failure to provide

proper notice may be grounds for continuing the hearing but shall not be grounds for dismissal of the charges.

- (d) *Hearing before board.* If the violation is corrected and thereafter recurs, or if the violation is not corrected by the time specified for correction, the case shall be presented to the enforcement board even if the violation has been corrected prior to the board meeting, and, if practicable, the notice shall so state.
- (e) *Emergency measures.* If the code enforcement official has reason to believe a violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code enforcement official shall make a reasonable effort to notify the violator and may immediately notify the enforcement board and request a hearing. Under such circumstances the code enforcement official shall not be required to adhere to the notice requirements set forth in section 14-44.

**Sec. 14-38. Conduct of hearings.**

- (a) Upon the request of the code enforcement official, or at such other time as may be necessary, the chairman of the enforcement board may call hearings of the enforcement board. At any hearing, the enforcement board may set a future hearing date. The enforcement board shall attempt to convene no less frequently than once every three months, but it may meet more or less often as the demand necessitates. Minutes shall be kept of all hearings of the enforcement board, and all hearings and proceedings shall be open to the public.
- (b) Each case before the enforcement board shall be presented by the city attorney or, alternatively, by a member of the city staff.
- (c) Assuming proper notice of the hearing has been provided to the alleged violator as provided in section 14-44, a hearing may proceed in the absence of the alleged violator.
- (d) The enforcement board shall proceed to hear the cases on the agenda for that day. All testimonies shall be under oath and shall be recorded. The enforcement board shall take testimony from the code enforcement official and alleged violator, and from such other witnesses as may be called by the respective parties. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.
- (e) Irrelevant, immaterial or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent

persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the state.

- (f) Any member of the enforcement board, or any attorney appointed to represent the board, may inquire of any witness before the board. The alleged violator, or his attorney, the attorney representing the city and the prosecutor shall be permitted to inquire of any witness before the board.
- (g) At the conclusion of the hearing, the enforcement board shall issue findings of fact based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted in this article and by state statutes. The order shall be stated orally at the hearing and shall be reduced to writing and mailed to the violator within ten days after the hearing. The findings shall be by motion approved by a majority of those members present and voting, except that at least four members of the board must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by such date.
- (h) Should the enforcement board be unable to issue a decision immediately following any hearing because of questions of law or other matters of such nature that a decision cannot be immediately made, the board may withhold issuing its decision until a subsequent meeting. In such case, further discussion of the pending matter and all deliberations relating thereto by members of the enforcement board shall occur at a public meeting of the board. The board shall thereafter issue its decision pursuant to subsection (g) of this section.

**Sec. 14-39. Powers.**

The code enforcement board shall have the power to:

- (1) Adopt rules and regulations for the conduct of its hearings.
- (2) Subpoena alleged violators and witnesses to appear at its hearings, which subpoenas may be served by the county sheriff or any person permitted to serve subpoenas under state law.
- (3) Subpoena evidence, including but not limited to records, surveys, plats, and other documentary evidence, which subpoenas may be served by the county sheriff or any person permitted to serve subpoenas under state law.
- (4) Take testimony under oath.



- (5) Hold hearings.
- (6) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.
- (7) Order the payment of fines as provided for in this article.

**Sec. 14-40. Subpoenas.**

- (a) Every subpoena for testimony before the enforcement board shall be issued by the clerk of the circuit court, or by any person permitted to issue a subpoena under state law, as ex-officio clerk to the board, under the seal of the city. Each subpoena shall state the name of the enforcement board, the title of the action, the case number of the action, the name and address of the person to whom the subpoena is issued, and the time, place and location of the hearing at which the person is directed to appear, and shall be prepared by the party requesting issuance.
- (b) A subpoena for production of documentary evidence may also be issued to command the person to whom it is directed to produce the books, papers, documents or tangible items designated therein. The enforcement board, upon motion to quash made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:
  - (1) Quash or modify the subpoena if it is unreasonable and oppressive; or
  - (2) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible items.
- (c) A subpoena may be served by any person authorized by law to serve process or by any other person who is not a party to the action and who is not less than 18 years of age. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so. Proof of service shall be filed with the clerk to the enforcement board. Payment of any service fee shall be made by the party at whose request the service is made.
- (d) Persons subpoenaed, with the exception of the alleged violator, shall be entitled to a witness fee and mileage compensation as provided for in F.S. § 92.142. The cost of the witness fee and mileage compensation shall be borne by the party at whose request the subpoena is issued and shall be paid to the witness at or before the time of service.

**Sec. 14-41. Imposition of penalties.**

- (a) *Maximum fine.* The enforcement board, upon notification by the code enforcement official, that a previous order of the board for a first violation has not been complied with by the specified time, may order the violator to pay a fine which shall not exceed \$250.00 per day for each day the first violation continues past the date set for compliance, or, in the case of a repeat violator, may order the repeat violator to pay a fine which shall not exceed \$500.00 per day for each day the repeat violation continues, and a hearing shall not be necessary for the issuance of the order. If the enforcement board finds a violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000.00 per violation.
- (b) *Determination of fine.* In determining the amount of the fine, if any, the enforcement board 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.
- (c) *Recording of order; lien.*
  - (1) A certified copy of an order imposing a fine may be recorded in the public records 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; and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After six months from the filing of any such lien, which remains unpaid, the enforcement board may authorize the city attorney to foreclose on the lien. No lien created pursuant to this article may be foreclosed on real property which is a homestead under section 4, article X of the state constitution.
  - (2) No lien provided for under this article shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. The continuation of the lien affected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

**Sec. 14-42. Rehearing of board action.**

- (a) *Request for rehearing.* Either the prosecutor or the violator may request a rehearing of the decision of the enforcement board. A request for rehearing shall be made in writing and shall be filed with the city manager, c/o clerk to the enforcement board, within ten days of the date of receipt of the board's written order, but in any event not more than 20 days from the date of mailing of the written order. A request for rehearing shall be based only on the ground that the decision was contrary to the evidence or that the hearing involved an error on a ruling of law, which was fundamental to the decision of the enforcement board. The written request for rehearing shall specify the precise reasons therefor.
- (b) *Granting of rehearing.* The enforcement board shall make a determination as to whether or not to rehear the matter and its decision shall be made at a public meeting, reduced to writing and mailed to the interested parties within ten days after the decision is made. If the enforcement board determines it will grant a rehearing, it may:
  - (1) Schedule a hearing where the parties will be given the opportunity of presenting evidence or argument limited by the enforcement board to the specific reasons for which the rehearing was granted; or
  - (2) Modify or reverse its prior order, without receiving further evidence, providing that the change is based on a finding that the prior decision of the enforcement board resulted from a ruling on a question of law which the enforcement board has been informed was an erroneous ruling.
- (c) *Stay of original order.* The original order of the enforcement board shall be stayed, and the time for taking an appeal pursuant to section 14-43 shall not commence to run until a request for rehearing has been denied or otherwise disposed of and the written decision has been received by the interested parties; provided, however, that in no event shall the order be stayed for a period longer than 20 days from the date of mailing of the rehearing decision.

**Sec. 14-43. Appeals.**

- (a) Any aggrieved party, including the council, may appeal a final administrative order of the enforcement board to the circuit court. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the enforcement board. Any appeal shall be filed within 30 days of the execution of the order to be appealed.

- (b) If a party to the proceedings before the enforcement board should elect to appeal, a verbatim record of the proceedings may be required or may be desirable. It shall be the sole responsibility of each party to the proceedings to ensure that a record is made which includes the testimony upon which an appeal may be taken. Neither the city nor the enforcement board shall have any responsibility to provide a verbatim transcript of the proceedings.

**Sec. 14-44. Service of notices.**

- (a) All notices required by this article shall be provided by certified mail, return receipt requested, or by hand delivery by the director, sheriff or other law enforcement officer, code enforcement official, or other person designated by the board, or by leaving the notice at the violator's usual place of residence with some person of his family over 15 years of age and informing such person of the contents of the notice.
- (b) In addition to providing notice as set forth in subsection (a) of this section, at the option of the board, notice may also be served by publication, as follows:
  - (1) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the city. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50 for legal and official advertisements.
  - (2) Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.
  - (3) In lieu of publication as described in subsection (b)(1) of this section, such notice may be posted for at least ten days in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the front door of the city hall. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

Notice by publication may run concurrently with, or may follow, an attempt to provide notice by hand delivery or by mail as required under subsection (a) of this section.
- (c) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a) of this section, together with proof of publication as provided in subsection (b) of this section, shall be sufficient to show

that the notice requirements of this article have been met, without regard to whether or not the alleged violator actually received such notice.

**Sec. 14-45. Provisions supplemental.**

It is the intent of this article to provide additional or supplemental means of obtaining compliance with local codes and ordinances. Nothing contained in this article 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 a 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.

Secs. 14-46--14-70. Reserved.