

1 CITY OF MARCO ISLAND

2
3 ORDINANCE NO. 09- 14
4

5 AN ORDINANCE OF THE CITY OF MARCO ISLAND
6 AMENDING SECTION 18-32 OF THE CITY CODE TO
7 REVISE THE DEFINITION OF “NOXIOUS PLANT”;
8 AMENDING SECTION 30-10 TO ADD DEFINITIONS
9 RELATING TO TREES AND VEGETATION; AMENDING
10 CHAPTER 30, ARTICLE IV “LANDSCAPING” TO REVISE
11 EXISTING PRUNING AND MAINTENANCE
12 REQUIREMENTS, ADD REGULATIONS FOR THE
13 PLANTING AND REMOVAL OF LANDSCAPING ON CITY
14 PROPERTY AND RIGHTS-OF-WAY AND ESTABLISH A
15 TREE FUND FOR CITY BEAUTIFICATION EFFORTS;
16 AMENDING SECTION 30-937 TO REVISE VEGETATION
17 PROTECTION STANDARDS DURING CONSTRUCTION
18 ACTIVITIES; PROVIDING FOR INCLUSION IN THE
19 CODE OF ORDINANCES, CONFLICTS, SEVERABILITY
20 AND AN EFFECTIVE DATE.
21

22 WHEREAS, the City of Marco Island has been granted broad home rule powers under
23 Article VIII, §2(b) of the Florida State Constitution and Section 166.021, Florida Statutes; and
24

25 WHEREAS, in order to promote the health, safety, and welfare of residents of the city,
26 the City Council has decided to re-establish minimum uniform standards for the pruning,
27 maintenance, planting and removal of public and private trees on public property; and
28

29 WHEREAS, after having received input from and participation by the City of Marco
30 Island Beautification Committee, interested members of the public, staff, and after having
31 considered the recommendations from the City of Marco Island Planning Board and staff, the
32 City Council finds the proposed ordinance to be consistent with the Comprehensive Plan; and
33

34 WHEREAS, the City Council has conducted a first and second reading of the proposed
35 ordinance at duly noticed public hearings as required by law and further finds the proposed
36 ordinance is in the best interests of the City, the residents of Marco Island and its visitors.
37

38 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
39 CITY OF MARCO ISLAND, FLORIDA:
40

41 SECTION 1. **Recitals.** The foregoing “WHEREAS” clauses are ratified and confirmed
42 as being true, correct and reflective of the legislative intent underlying this Ordinance and are

43 hereby made a specific part of this Ordinance.

44 **SECTION 2. Amendment to Section 18-32.**

45

46 Section 18-32 "Definitions" of the City Code is amended to read as follows:

47

48 *Sec. 18-32. Definitions.*

49 ***

50 Noxious plant means any living plant which is deemed an exotic, invasive or a prohibited plant
51 species pursuant to the Land Development Code or the Florida Exotic Pest Plant Council's 2007
52 List of Invasive Plant Species, as amended, and poses a risk to human health, safety, and welfare.
53 or on the noxious weed list set forth in Section 5B-57.007, Florida Administrative Code, as
54 amended. A copy of the Florida Exotic Pest Plant Council's 2007 List of Invasive Plant Species
55 and Section 5B-57.007, Florida Administrative Code, is available from the Community
56 Development Department. The following is a list of plants which are considered exotic or not
57 native to the environment or property and are considered to be noxious:

58

- 59 (1) ~~Brazilian Pepper (Schinus terebinthifolius).~~
- 60 (2) ~~Australian Pine (Casuarinas pp.).~~
- 61 (3) ~~Downy Rose Myrtle (Rhodomyrtus tomentosus).~~
- 62 (4) ~~Bischofia javanica).~~
- 63 (5) ~~Melaleuca (Melaleuca quinquenervia).~~
- 64 (6) ~~Carrotwood (Cupaniopsis anacardiodes).~~
- 65 (7) ~~Java Plum.~~

66

67 **SECTION 3. Amendment to Section 30-10.**

68

69 Section 30-10 of the Marco Island Land Development Code, entitled "Definitions", is
70 amended to add the following definitions:

71

72 *Sec. 30-10. Definitions.*

73 ***

74 (c) *Definitions enumerated.*

75

76 Beautification Committee means the Beautification Advisory Committee created by a
77 resolution of the City Council.

78

79 Breast height means the height of four and one-half (4 1/2) feet above the ground.

80

81 Caliper means the minimum trunk diameter of a tree as measured at a predetermined
82 required point of measurement. Trunk diameter for trees up to four (4) inches shall be
83 measured six (6) inches above the soil line. All trees over four (4) inches in diameter shall be
84 measured twelve (12) inches above the ground.

85

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86 Canopy means the upper portion of the tree consisting of limbs, branches and leaves.

87

88 City means the City of Marco Island.

89

90 City Council means the City Council for the City of Marco Island.

91

92 City Manager means the City Manager for the City of Marco Island.

93

94 Dead tree means a tree which has lost its ability to absorb nutrients and no longer produces
95 live foliage or green wood during its normal growing season.

96

97 Department means a department within the City of Marco Island as designated by the City
98 Manager.

99

100 Diseased tree means a tree which is degenerated or damaged to the point where the death of
101 the tree is imminent or to the point where the tree poses a significant hazard to the general
102 public.

103

104 Drip line means a line extending vertically between the outermost portion of the tree crown
105 and the ground.

106

107 Effectively destroy means to cause, suffer, allow or permit any act which will cause a tree to
108 die or go into a period of unnatural decline within a period of one (1) year from the date of
109 the act. Acts that may effectively destroy a tree include, but are not limited to, damage
110 inflicted upon the root system by heavy machinery, excessive trimming, changing the natural
111 grade above the root system or around the trunk, damage inflicted on the tree permitting
112 infection or pest infestation, application of herbicides or other chemical agents or intentional
113 fire damage to the tree permitting infection or pest infestation, the infliction of a trunk wound
114 that is 50 percent or greater of the circumference of the trunk, or the removal of sufficient
115 canopy to cause the unnatural decline of the tree.

116

117 Exotic vegetation shall mean noxious plants as defined in Code Section 18-32.

118

119 Hatrack means to sever the leader or leaders, or to prune a tree by stubbing of mature wood.

120

121 Mitigation means to compensate for negative impacts to tree(s) by purchasing a replacement
122 tree or financially compensating the City.

123

124 Nuisance vegetation shall mean noxious plants as defined in Code Section 18-32.

125

126 Private trees means trees located within the public right-of way lying between property lines
127 and paved streets within the City that have not been planted or adopted by the City for care
128 and maintenance.

129

130 Pruning shall mean the cutting away, removal, cutting-off or cutting back of parts of a tree.

131
132 Public trees means street trees, median and cul-de-sac trees, park trees and other city owned
133 trees located on city property that have been planted or adopted by the City for care and
134 maintenance.

135
136 Public trees, street shall mean trees on rights-of-way lying between property lines and paved
137 streets within the City that have been planted or adopted by the City for care and
138 maintenance.

139
140 Public trees, median and cul-de-sac shall mean trees on public rights-of-way surrounded by
141 paved streets within the City that have been planted or adopted by the City for care and
142 maintenance.

143
144 Public trees, park shall mean trees located on land within public park boundaries owned by
145 the City.

146
147 Public trees, other shall mean public trees not included in any other definition of public trees,
148 but owned by the City on City property.

149
150 Removal means to cut down, dig up, destroy, effectively destroy, or the unlicensed relocation
151 of any tree.

152
153 Topping means the severe cutting back of limbs within the tree's crown to such a degree
154 where the normal canopy is removed and the tree disfigured.

155
156 Tree means any living, self-supporting, woody perennial plant which has a DBH of no less
157 than three (3) inches and which normally grows to an overall height of no less than ten (10)
158 feet in Southwest Florida.

159
160 Tree abuse means to do any of the following to a publicly owned tree:

- 161
- 162 1) Hat racking or topping a tree;
 - 163
 - 164 2) Destroying the natural habit of tree growth;
 - 165
 - 166 3) Pruning which leaves stubs or results in a flush cut; or splitting of limb ends;
 - 167
 - 168 4) Removing tree bark to the extent that if a line is drawn at any height around the
169 circumference of the tree, over one-third of the length of the line falls on portions
170 of the tree where bark no longer remains;
 - 171

- 172 5) Using climbing spikes, nails or hooks, except for purposes of total tree removal or
173 as specifically permitted by standards set by the American National Standards
174 Institute, and/or the International Society of Arboriculture, as amended;
175
176 6) Pruning that does not conform to standards or recommendations set by the
177 American National Standards Institute, as amended;
178
179 7) Pruning of live palm fronds which initiate above the horizontal plane;
180
181 8) Over lifting a tree; or
182
183 9) Shaping a tree
184

185 Tree Fund means a City account dedicated to the purchase and planting of trees and irrigation in
186 City parks, rights-of-way, medians, public open spaces and other facilities.
187

188 **SECTION 4. Amendment to Chapter 30, Article IV.**
189

190 Article IV "Landscaping" of the Marco Island Land Development Code is amended to
191 read as follows:
192

193 **ARTICLE IV. LANDSCAPING**

194 ***

195 *Sec. 30-434. Pruning, ~~and~~ maintenance, and removal.*
196

197 (a) *Pruning.* Vegetation required by this code shall be pruned by property owners to promote
198 healthy, uniform, natural growth of the vegetation. Pruning and shall be performed in
199 accordance with the current edition of pruning standards published by the American National
200 Standard Institute (ANSI) A300 Pruning Standards, ANSI Z133.1 Safety Standards, "Standard
201 Practices for Trees, Shrubs and Other Woody Plant Maintenance" ANSI A300 or latest edition of
202 the National Arborist Association. Trees shall not be severely pruned in a manner that would
203 damage the vegetation and permanently restrict growth or height. severely prune in order to
204 permanently maintain growth at a reduced height or spread. Owners found in violation of this
205 provision must remove the Severely pruned trees are considered damaged and a public nuisance,
206 which and shall be replaced with trees equal to the number and height of the damaged trees
207 removed. A plant's growth habit shall be considered to determine the extent of pruning necessary
208 to maintain healthy growth. in advance to avoid conflicts.
209

210 (1) *Utility pruning.* - Utilities shall conform to current ANSI A-300 standards when
211 performing line clearing work within public right-of-way. All utilities shall notify the City
212 Manager or designee by electronic communication or mail no later than 30 business days prior to
213 performing any utility line clearing work within public right-of-ways. Franchised utilities, after
214 notifying the City Manager or designee, shall meet with the City Manager or designee to review
215 and approve plans and schedules for utility line clearing work. Franchised utilities shall have an

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216 ISA certified arborist directing the pruning of public and private trees. Utility pruning should
217 only provide minimum safe clearance to protect energized power lines with consideration for the
218 combined movement of the conductors near trees in severe weather, the species of the tree, and
219 the voltage of the conductor.

220

221 (2) *Canopy and root pruning.* When activities affect public or private trees so that more
222 than 50 percent of the area within the drip line is disturbed, or when pruning must be performed
223 on the crown of a public or private tree, the following arboricultural techniques are required:

224

225 a. When the area within the drip line will be disturbed, the affected roots must be
226 severed by clean pruning cuts where the activity impacts the roots. Roots may be
227 pruned by utilizing trenching equipment that is specifically designed for this
228 purpose or by hand digging a trench and pruning roots with a chain saw, pruning
229 saw or other equipment designed for tree pruning. Roots within the drip line shall
230 be pruned to a depth of 12 inches below existing grade or to the depth of the
231 disturbance if less than 12 inches from the existing grade. When underground
232 utilities are to be installed through the drip line, root pruning requirements may be
233 waived by the City Manager or designee if the lines are installed via tunneling or
234 directional boring.

235

236 b. All pruning of public or private trees shall conform to the current ANSI
237 standards defined herein and shall be supervised by an ISA certified arborist.
238 There shall be no flush cuts, stub cuts, or lion's tailing of the crown of the tree.

239

240 c. It shall be a violation of this section to perform the techniques of topping, hat
241 racking or other pruning techniques that remove the vertical leader stems or other
242 pruning which results in an unnecessary reduction of shade of public or private
243 trees.

244

245 (b) *Maintenance.* The owner shall be responsible for the continued maintenance and upkeep of
246 all required landscaping so as to present a healthy plant in a condition representative of the
247 species. Tree and palm staking shall be removed between six and 12 months after installation.
248 All landscapes shall be kept free of refuse, debris, disease, pests, and weeds and shall be
249 fertilized and irrigated to maintain plants in a healthy condition. Special maintenance
250 requirements necessary to preserve the design professional's intent shall be noted on the planting
251 plan. ~~Any plant materials of any kind are required by these regulations to be replaced within 30~~
252 ~~days of their demise and/or removal.~~

253

254 1. *Care and maintenance of permitted private trees on city owned property.* The care and
255 maintenance of all private trees permitted on City owned property shall be the responsibility of
256 the adjacent property owner. A permit shall be obtained from the City Manager or designee
257 prior to planting a private tree in the public right-of-way or on other city property. Property
258 owners shall adhere to the maintenance and pruning standards contained herein when
259 maintaining privately owned trees on City property. Property owners must apply for a

260 vegetation removal permit from the City Manager or designee in accordance with Code Article
261 XIV and a permit to replace any private tree in the right-of-way in accordance with Code Section
262 30-435.

263
264 2. Care and maintenance of public trees on city owned property. The City Manager shall
265 designate a Department to be responsible for the care and maintenance of public trees on city
266 owned property. Public trees are City Street Trees, Median Trees and Cul-de-Sac Trees as
267 defined in Section 30-10. The Department shall adhere to the maintenance and pruning
268 standards contained herein when maintaining public trees on City property. The Department
269 Director shall make reports and requests for funds for the care and maintenance of public trees,
270 including needed planting and replanting, to the City Council as part of the annual budget
271 approval process. Before removing any public tree from the right-of-way, the Department
272 Director shall notify the City Manager and any other affected Department Directors.

273
274 3. Private care and maintenance of public trees on city owned property. Private
275 property owners may make a written request to the City Manager or designee for permission to
276 care for and maintain public trees on public property. Property owners shall adhere to the
277 maintenance and pruning standards contained herein when maintaining publically owned trees
278 on City property. Before replanting, removal or replacement of any public tree, a private
279 property owner shall obtain the permission of the City Manager or designee to plant the tree,
280 shrub or other vegetation and if necessary apply for a vegetation removal permit from the City
281 Manager or designee in accordance with Article XIV. If the replanting shall be in the right-of-
282 way, the property owner shall obtain a permit from the City Manager or designee in accordance
283 with Section 42-76. Fees for a permit for vegetation removal or replanting shall be waived for
284 public trees.

285
286 (c) *Removal of damaged or nuisance trees.* Ongoing maintenance to prohibit the establishment
287 of prohibited exotic species is required. Any plant materials of whatsoever type or kind required
288 by these regulations shall be replaced within 30 days of their demise and/or removal. ~~Code~~
289 ~~enforcement will inspect areas affected by this code and issue citations for violations.~~

290
291 (d) *Enforcement.* Code enforcement will inspect areas affected by this code and issue citations
292 for violations. If the required corrective action is not taken within the time allowed, the city may
293 use any available means of enforcement to secure compliance. ~~These shall include~~ing, but not be
294 limited to ~~the following~~:

- 295
296 (1) Prosecution before the city code enforcement board;
297 (2) Withholding of any permit, construction plan approval, certificate of occupancy, or
298 inspection by the city;
299 (3) Placing a lien on the property, to include all administrative, legal, material and
300 installation costs.

301
302 *Sec. 30-435. Plant material and installation standards.*

303 ***

304 (h) Regulations. Public and private trees and landscaping shall not be planted or replaced in the
305 right-of-way until a permit has been issued by the City Manager or designee in accordance with
306 Section 42-76. In addition to the standard for issuance contained in Section 42-76(f), the
307 following standards shall apply. In the event of a conflict, the more restrictive standard shall
308 govern.

309
310 1. No permit is required to perform grass maintenance in public right-of-ways.

311
312 2. All permitted trees and plant material placed in public rights-of-way do not create or
313 vest any property right in association with a permit, except in the city. Permittees shall be
314 responsible for the maintenance of such trees and plant material, as provided herein, unless
315 otherwise removed or specified as a condition of the permit issued pursuant to Section 42-
316 76.

317
318 3. A property owner desiring to privately landscape the public right-of-way shall submit a
319 landscape and irrigation plan to the City Manager or designee. The application shall
320 include three sets of detailed plans indicating existing rights-of-way facilities, type and
321 location of proposed plantings, and location of electrical and irrigation systems.

322
323 4. After review and acceptance of the landscape and irrigation plans, a landscape
324 agreement shall be signed by the permittee to insure that the permittee or his or her
325 successor or assignee shall be responsible to maintain such material and irrigation systems
326 until removed or otherwise specified. The agreement shall be recorded in the official
327 records of Collier County.

328
329 5. Tree planting distance from the edge of the sidewalk on private property shall be no
330 closer than 36" from the trunk of tree. Under no circumstances shall trees be planted within
331 the flow line of a swale regardless of the setback from the edge of the sidewalk.

332
333 6. Tree plantings must not interfere with line of sight triangles at any time or with ingress
334 or egress to the property.

335
336 7. Trees planted in the public right-of-way in close proximity (less than ten feet) to
337 underground utilities shall be reviewed and approved by the City Manager or designee.

338
339 8. Trees planted in the public right-of-way under power supply lines shall be of the type
340 that do not grow taller than fifteen (15) feet. The owner shall be responsible to maintain
341 trees under or adjacent to the power supply to prevent power failure.

342
343 9. Existing private trees located in the public right-of-way may be adversely impacted by
344 various underground construction activities undertaken by the City. The City shall not be
345 responsible for any adverse impact on existing private trees in the public right-of-way from
346 underground activities undertaken by the City.

347

348 ***

349 Section 30-444. Tree Fund.

350

351 The City shall establish a Tree Fund, which shall be used exclusively for plant replacement and
352 to provide necessary maintenance of damaged trees. Penalties, fines and tree replacement
353 payments, as provided for in this Article, shall be deposited into the Tree Fund. The public may
354 donate money to the City's Tree Fund to assist the City in its beautification efforts.

355

356 **SECTION 5. Amendment to Section 30-937.**

357

358 Section 30-937, entitled "Vegetation protection and removal", of the Marco Island Land
359 Development Code is amended to read as follows:

360

361 **ARTICLE XIV. VEGETATION REMOVAL AND PROTECTION**

362 ***

363 *Sec. 30-937. Vegetation protection and removal.*

364

365 (a) *Vegetation protection.* In general, during construction, cut and fill activities, land alteration,
366 construction material storage, driving or parking of equipment, or trenching, all reasonable steps
367 necessary to prevent the destruction or damaging of vegetation and public and private trees on
368 City owned property shall be taken, including the installation of protective barriers. All new
369 development not specifically exempted by this article shall retain existing native vegetation to
370 the maximum extent possible, especially where said native vegetation exists within required
371 buffer areas. Vegetation destroyed or receiving major damage must be replaced by vegetation of
372 equal environmental value, as specified by the City Manager or designee ~~community~~
373 ~~development department~~, before occupancy or use unless approval for their removal has been
374 granted under permit.

375

376 (1) *Filling and construction debris.* During construction, unless otherwise authorized in
377 the vegetation removal permit, no excess soil, additional fill, equipment, liquids, signs or
378 construction debris shall be placed within the dripline of any vegetation or public and private
379 trees on City owned property that is required to be preserved in its present location.

380

381 (2) *Attachments.* Unless otherwise authorized by the vegetation removal permit, no
382 attachments or wires other than those of a protective or nondamaging nature shall be attached to
383 any vegetation and public and private trees on City owned property during construction.

384

385 (3) *Excavation.* Unless otherwise authorized by the vegetation removal permit, no soil
386 is to be removed from within the dripline of any vegetation or public and private trees on City
387 owned property that is ~~is~~ are to remain in ~~its~~ their original location.

388

389 (4) *Protective barriers.* All protective barriers shall be installed and maintained for the
390 period of time beginning with the commencement of any phase of land clearing construction
391 activities, cut and fill activities, land alteration, construction material storage, driving or parking

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392 of equipment, trenching or building operations and ending with the completion of that phase of
393 the construction work on the site, unless otherwise approved to be removed by the ~~community~~
394 ~~development director's~~ City Manager or designee's field representative. All protective barriers
395 shall be installed pursuant to the Tree Protection Manual for Builders and Developers, Division
396 of Forestry, State of Florida, or other methods approved by the City Manager or designee
397 ~~community development director~~.

398
399 a. Areas to be preserved shall be protected during land alteration, ~~and~~ construction
400 activities, cut and fill activities, construction material storage, driving, parking of
401 equipment or trenching, by placing a continuous barrier around the perimeter of the area
402 of vegetation and public and private trees on City owned property to be preserved. This
403 barrier shall be highly visible and constructed of wood stakes set a maximum of ~~ten~~ eight
404 feet apart, at a height ~~range~~ of ~~two to~~ four feet, all covered continuously with brightly
405 colored, all-weather mesh material or equal type barrier method. An equivalent method
406 may be substituted with the approval of the ~~community development director~~ City
407 Manager or designee.

408
409 b. When the preservation of single trees is required by this code, a protective barrier
410 shall be placed around the tree at a distance from the trunk of six feet or beyond the
411 dripline, whichever is greater, or as otherwise approved by the ~~community development~~
412 ~~director's~~ City Manager or designee's field representative.

413
414 (5) Equipment. No equipment, waste or materials including, but not limited to, paints, oils,
415 solvents, asphalt, concrete, mortar shall be cleaned or stored within the drip line on any public or
416 private trees on City owned property.

417
418 (6) De-watering. During de-watering activities, the discharge from de-watering shall be
419 directed in a manner that does not cause standing water to accumulate at the base of any public
420 or private trees on City owned property.

421
422 (7) Silt barriers. Silt barriers, hay bales, or similar effective erosion silt control barriers shall be
423 required in any area where erosion or siltation may cause damage to any public and private trees
424 on City owned property.

425
426 (8) Inspections. The City Manager or designee shall conduct periodic inspections of the
427 construction site in order to ensure compliance with this section.

428 ***

430 **SECTION 6. Inclusion in the Code of Ordinances.**

431 It is the intention of the City Council and it is hereby ordained that the amendments to the
432 City of Marco Island Code of Ordinances made by this Ordinance shall become part of the City

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433 of Marco Island Code of Ordinances, that the sections of this Ordinance may be renumbered and
434 relettered as necessary, and that the word "Ordinance" may be changed to "Section, "Article" or
435 other appropriate word.

436 **SECTION 7. Conflicts.**

437 All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict
438 with the provisions of this Ordinance are hereby repealed.

439 **SECTION 8. Severability.**

440 If any section, clause, sentence or phrase of this Ordinance is for any reason held invalid
441 or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity
442 of the remaining portions of this Ordinance.

443 **SECTION 9. Effective Date.**

444 This Ordinance shall be effective immediately upon passage by the City Council on
445 second reading.

446 ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this
447 19th day of October, 2009.

448

449 Attest:

CITY OF MARCO ISLAND FLORIDA

450

451

452

453

454

455 (SEAL)

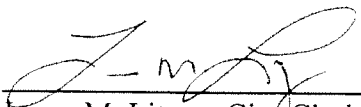
456

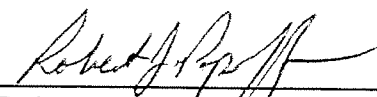
457 Reviewed for legal sufficiency:

458

459

460

By: 
Laura M. Litzan, City Clerk

By: 
Robert J. Popoff, Chairman

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