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ORDINANCE NO. 13-05

**AN ORDINANCE OF THE CITY OF MARCO ISLAND,
FLORIDA AMENDING THE CODE OF ORDINANCES,
CHAPTER 54: ARTICLE V. SEA TURTLE PROTECTION,
TO UPDATE SECTIONS 54-141 TO 54-149; AND CHAPTER
18: ARTICLE V. ENDANGERED, THREATENED OR
LISTED SPECIES, TO UPDATE SECTIONS 18-141 TO 18-
145; PROVIDING FOR DEFINITIONS, STANDARDS,
REPEAL OF CONFLICTING PROVISIONS AND 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 home rule powers to enable them to conduct municipal government, perform municipal functions, render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Section 1.02 of the Marco Island City Charter empowers the City to adopt, amend, or repeal ordinances, resolutions and codes as may be required for the benefit of residents and governance of the City; and

WHEREAS, the City Council of the City of Marco Island, Florida (“City Council”) recognizes that changes to the adopted Code of Ordinances and Land Development Code are periodically necessary in order to ensure that the City’s Codes are current and consistent with the City’s planning and regulatory needs; and

WHEREAS, Sections 54-141 to 54-149 do not currently include a definitions section which defines beach, sea turtle nesting and hatching season and take or taking; and

WHEREAS, Sections 18-141 to 18-145 do not currently include a definitions section which defines, listed species, protection zones and taking; and

WHEREAS, the Marco Island Planning Board, sitting as the Local Planning Agency, held a duly advertised public hearing on September 7, 2012 and determined that the proposed changes contained in this Ordinance are consistent with the City of Marco Island Comprehensive Plan and Florida law, and recommended adoption of this Ordinance to the City Council; and

WHEREAS, after reviewing the City of Marco Island Planning Board’s recommendation, the recommendation of City staff, and comments from the public, the City Council after holding an advertised public hearing finds that the proposed amendments to its Code of Ordinances are in compliance and consistent with Florida law and its adopted Comprehensive Plan; and

WHEREAS, the City Council further finds that adoption of this Ordinance is in the best interest of the residents of the City of Marco Island.

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

49
50 **SECTION 1. Recitals.**

51
52 The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true,
53 correct and reflective of the legislative intent underlying this Ordinance and are hereby made a
54 specific part of this Ordinance.

55
56 **SECTION 2. Amendment and Adoption.**

57
58 The amendments to the Code of Ordinances contained in this Ordinance are hereby
59 amended or created and adopted as follows:

60
61 **Chapter 54**
62 **Article V. SEA TURTLE PROTECTION**
63 **Sec. 54-141 TO 54-149.**

64
65 **Sec. 54-141. Purpose and intent.**

66 The purpose of this ordinance is to enhance the protection of threatened and endangered sea
67 turtles that nest along the beaches of Marco Island by safeguarding sea turtles from sources of
68 artificial light, and prohibiting the injury or harassment of adult sea turtles, hatchlings, nests and
69 eggs. The city will work in concert with applicable county, state and federal guidelines for the
70 protection of sea turtles.

71
72 **Sec. 54-142. Applicability.**

73 For the purposes of this ordinance, the beaches of Marco Island shall be designated as those
74 sandy areas facing the Gulf of Mexico, including ~~Coconut Island~~, the dynamic sand bars and
75 offshore islands that form within the City's incorporated limits, and the inlet shorelines
76 commencing at Caxambas Pass to the south and end on Hideaway Beach to the north at Collier
77 Creek.

78
79 **Sec. 54-143. Definitions.**

- 80 a. Beach – means the sand portion of land lying seaward of a seawall or line of permanent
81 vegetation and landward of the mean high water line.
82 b. Sea Turtle Nesting and Hatching Season – means May 01 through October 31 yearly.
83 c. Take or Taking - means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture
84 or collect or an attempt to engage in any such conduct.

85
86 **Sec. 54-144. New Development.**

87 Lighting associated with any construction or development activity that is within 300 feet of the
88 line of mean high water, or if there are any light sources or any reflective surfaces illuminated by
89 such sources that will be visible from the beach, such lighting shall be in compliance with
90 Ordinance 99-7 and the following:

- 91 1. Outdoor lighting shall be the minimum necessary for security and safety. Floodlights and
92 landscape or accent lighting shall be prohibited.

- 93 2. All lighting including wall-mounted fixtures, pole lighting, lights on balconies, and any
94 other type of lighting not specifically referenced by this section, shall be of low intensity
95 and shall be fitted with hoods or positioned so that the light sources or any reflective
96 surface illuminated by such sources are not visible from the beach.
- 97 3. Low profile luminaries shall be used in parking lots and such lighting shall be fitted with
98 hoods or positioned so that the light sources or any reflective surfaces illuminated by
99 such sources do not create shadows on the beach.
- 100 4. Dune crosswalks shall utilize low profile shielded luminaries directed and positioned so
101 that light sources or any reflective surfaces illuminated by such sources are not visible
102 from the beach. Dune crossover lighting shall be limited to the area landward of the
103 primary dune.
- 104 5. Windows that are visible from the beach shall be tinted or glazed to achieve an industry
105 approved light transmittance value of 45 percent or less. Such transmittance shall be
106 limited to the visible spectrum (400 to 700 nanometers) and shall be measured as the
107 percentage of light that is transmitted through the glass, inside to outside.
- 108 6. Temporary security lights at construction sites shall not be mounted more than 15 feet
109 above the ground. Light sources or any reflective surfaces illuminated by such sources
110 shall not be visible from the beach.

111
112 | **Sec. 54-145. Existing Development.**

113 For existing development permitted prior to January 1, 1994, those existing structures with any
114 light sources or reflective surfaces illuminated by such sources that are visible from the beach,
115 shall be in compliance with Ordinance 99-7, and the following:

- 116
117 1. All exterior lights shall be turned off after 9:00 p.m. between May 1 and October 31, of
118 each year, or fitted with a hood or positioned so that the light sources or any reflective
119 surfaces illuminated by such sources are not be visible from the beach.
- 120 2. Lights illuminating dune crosswalks shall be turned off after 9:00 p.m. between May 1
121 and October 31, of each year, and must be modified to conform to the requirements for
122 new development in accordance with this ordinance.
- 123
124 3. When high intensity lighting is required for security or emergency exit lighting, then low-
125 pressure sodium vapor luminaries shall be used and fitted with a hood or positioned so
126 that the light sources or any reflective surfaces illuminated by such sources are not be
127 visible for the beach. Required lighting shall be consistent with provisions in the Fire
128 Prevention and Protection Ordinance, 98-08, as amended.

129
130 To reduce or eliminate the negative effects of interior light emanating from doors or windows
131 within line of sight of the beach, one of the following actions shall be taken during sea turtle
132 nesting season:

- 133
134 a) Windows shall be tinted or glazed to achieve an industry approved light
135 transmittance value of 45 percent or less; or
- 136 b) Window treatments such as blinds or curtains shall be used to prevent
137 interior light from emanating outside; or

138 c) Lighting sources such as lamps shall be relocated away from windows,
139 and turned off after 9:00 p.m.
140

141 | **Sec. 54-146. Publicly owned lighting.**

142 Publicly owned lighting with light sources that are visible from the beach or that illuminate
143 reflective surfaces that are visible from the beach, should be fitted with a hood or re-positioned
144 to minimize or eliminate any adverse effects.
145

146 | **Sec. 54-147. Unlawful to kill, molest, or injure sea turtles.**

- 147 1. It shall be unlawful for any person to kill, molest, or cause direct or indirect injury to any
148 species of sea turtle, their nests, and/or eggs in the City of Marco Island or within its
149 jurisdictional waters. It shall be unlawful to take, collect or possess any part of a sea turtle
150 or eggs.
- 151 2. It shall be unlawful to relocate or possess a sea turtle or eggs without first obtaining a
152 permit from the Florida Department of Environmental Protection (FDEP).
- 153 3. When a sea turtle nest is created, a permitted sea turtle monitor posts it on the beach with
154 stakes, flagging tape and signage. It shall be unlawful to enter the posted nest area or
155 impact the posted nest area in any manner. A minimum of a 25 foot perimeter with no
156 activity within should be given to the posted nest area for protection.
- 157 4. It shall be unlawful to conduct sustained flashlight use, mobile phone light use or
158 electronic light use, to use flash photography or lantern or other source of light on the
159 beach after 9 PM during sea turtle nesting season.
160

161 | **Sec. 54-148. Construction during nesting season.**

162 It shall be unlawful to construct any structure, add any fill, mechanically clean any beach, or
163 grade any ~~dir#~~ soil material within 100 feet of the nesting zone of a beach where sea turtles nest
164 or may nest during the nesting season. Construction activities shall not interfere with sea turtle
165 nesting, shall preserve or replace any native vegetation on the site, and shall maintain the natural
166 existing beach profile and minimize interference with the natural beach dynamics and function.
167 All rules, guidelines, best management practices required by the federal or state agencies, if not
168 stated in this ordinance, shall be followed.
169

170 | **Sec. 54-149. Violations.**

171 Violation of the provisions of this ordinance or failure to comply with any of its requirements
172 shall constitute a misdemeanor. Any person or firm who violates this division or fails to comply
173 with any of its requirements shall upon conviction thereof be fined, or imprisoned, or both, as
174 provide by law. Each day such violation continues shall be considered a separate offense.
175 Additionally, each sea turtle or eggs that are killed injured, or molested shall constitute a separate
176 violation. Any other person, who commits, participates in, assists in, or maintains such violation
177 may each be found guilty of a separate offense and suffer the penalties herein provided.

178 The City, in addition to the criminal sanctions contained herein, may take any other appropriate
179 legal action, including but not limited to injunctive action, to enforce the provisions of this
180 division.
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182 *****
183

184 **Chapter 18**
185 **Article V. ENDANGERED, THREATENED OR LISTED SPECIES PROTECTION**
186 **Sec. 18-141 TO 18-145.**
187

188 **Sec. 18-141. Purpose and intent.**

189 The purpose of this ordinance is to protect the species currently listed by the Florida Fish and
190 Wildlife Conservation Commission (FWC), United States Fish and Wildlife Service (USFWS)
191 and Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
192 as endangered, threatened or of special concern or status in the City of Marco Island, Florida by
193 including measures for protection and/or relocation of endangered, threatened, or species of
194 special concern or status.

195 The presence of ~~protected~~ listed species on a parcel of property presents legitimate hardship, and
196 may constitute reasonable grounds for consideration of a variance for construction setbacks
197 and/or landscape requirements.
198

199 **Sec. 18-142. Definitions.**

- 200 a. Listed Species - Any species which is likely to become an endangered species within the
201 foreseeable future throughout all or a significant portion of its range and is listed by
202 CITES, USFWS and FWC.
203 b. Protective Zone - The 25 foot diameter area that surrounds the listed species habitat
204 and/or burrow.
205 c. Taking - means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect
206 or an attempt to engage in any such conduct.
207

208 **Sec. 18-143. New Development.**

209 For new development the following, as applicable, shall serve as guidelines or standards for the
210 protection of endangered, threatened or species or special concern or status as prescribed by the
211 goals, objectives and policies of the conservation element of the Marco Island Comprehensive
212 Plan:

- 213 1. Prior to submission of a building permit application, the applicant must survey the
214 affected property for the most commonly found listed species on Marco Island: the
215 Burrowing Owl (*Speotyto cunicularia floridana*), ~~and~~ the Gopher Tortoise (*Gopherus*
216 *polyphemus*) burrows, American Osprey (*Pandion haliaetus*) and Bald Eagle (*Haliaeetus*
217 *leucocephalus*) nests. If a listed species is on the property, the appropriate State and/or
218 Federal agency must be contacted for management guidelines.
219 2. If a listed species is found on the property, then the applicant must include the survey
220 with the building permit application and indicate a state or federal permit is being
221 pursued for removal, relocation or protection of the listed species onsite. ~~complete a~~
222 ~~Species of Special Concern Affidavit along with required building plan. This document~~
223 ~~shall inform the applicant that the owl and/or tortoise are protected species and that~~
224 ~~certain Federal, State, and City regulations apply and must be followed during the~~
225 ~~building activity on the property. The applicant shall provide the following information~~
226 ~~on the Affidavit:~~
227 (i) ~~Applicant's name address, and phone number~~
228 (ii) ~~Address of property to be developed (Unit, Block, Lot)~~
229 (iii) ~~Number and location of burrows located on property~~

230 (iv) ~~Indicate whether State or Federal permits are needed to physically take the~~
231 ~~species and the burrow.~~

232 (v) ~~Signature of applicant~~

233 (vi) ~~Signature of witness~~

234
235 ~~This information shall be posted at the site during all phases of construction~~
236 ~~activity. Any false information will be considered a violation of this ordinance~~
237 ~~and will place the applicant subject to penalty.~~

- 238 3. Further, a management plan for a protection zone during construction shall be submitted
239 for review and approval by the Community ~~development~~ Affairs Department for the
240 management of on-site habitat and wildlife, including measures for protection and/or
241 relocation of species of special status. Such plans shall comply with current federal, state
242 and local policies. The City may consider and utilize recommendations and letters of
243 technical assistance of the FWC, and recommendations and guidelines of the USFWS, in
244 issuing developmental orders on property containing wildlife species of special status.

245
246 **Sec. 18-144. Activities within protection zones.**

247 The following activities are permitted within the protection zones of the burrowing owl and
248 gopher tortoise burrows with the understanding that if any burrow does collapse, it must be
249 reported immediately to the City of Marco Island to ensure proper rescue efforts can take place.

- 250 (a) City approved volunteers who maintain burrows in designated zones in the City of
251 Marco Island may conduct maintenance activities that shall include the clipping of
252 vegetation within the protection zone, staking and ~~roping~~ posting the zone with
253 flagging tape and signage, and recording pertinent data.
- 254 (b) Contractors may enter the protection zone to remove debris with the full
255 understanding that they can do nothing to disturb or harm the species or burrow in
256 any manner. Contractors and lawn/lot maintenance companies shall accept full
257 responsibility for the actions of their employees to ensure that all laws protecting such
258 species are adhered to.
- 259 (c) City employees and property owners may enter the protection zone for the purpose of
260 maintaining vegetation if using equipment that does not exert pressure on the ground
261 to ensure the burrow does not collapse.
- 262 (d) Scientific research/investigations approved by the FWC and/or the USFWS. The City
263 of Marco Island shall be notified of all such research/investigations and provided with
264 all study reports and publications.
- 265 (e) Authorized representatives of developers including, but not limited to, professional
266 environmental consultants that are conducting surveys or monitoring in conjunction
267 with private or municipal construction.

268
269 **Sec. 18-145. Protection and taking procedures.**

270 Requirements for taking or protecting the species are as follows:

- 271 (i) No active or inactive owl and/or gopher tortoise burrow, or nests of any
272 other listed species, may be taken without proper State permits issued by
273 the FWC.
- 274 (ii) If State permit(s) are issued, they shall be posted on site during all phases
275 of the construction.

276 (iii) During the Burrowing Owl nesting season as designated by FWC
277 (February 15 through July 10) no City building permits will be issued for
278 applicants needing to take an owl burrow, unless the FWC has issued
279 permits to take the owl burrow(s) during nesting season or permits have
280 been issued to take the owl burrow(s) after nesting season and the
281 construction can commence with a protection zone in place. No City
282 building permits will be issued for applicants to take a Gopher Tortoise
283 burrow, unless FWC has issued permit to take the tortoise burrow(s) and
284 construction can commence with a protection zone in place.

285
286 The protection zone requirements shall be:

- 287
288 (a) A protection zone, consisting of construction silt fencing, having a
289 diameter of at least twenty-five (25) feet will be erected around each
290 affected burrow during all phases of construction.
291 (b) Contractors will be responsible for maintaining the zone and informing
292 all workers and subcontractors to avoid the zone and to do nothing to
293 violate the burrow(s) in such a way as to make it collapse. Any
294 violation or destruction will place the contractor subject to penalty.

295
296 All protection plans shall be subject to review and approval by the
297 environmental specialist of the ~~development services~~ Community Affairs
298 Department. The city may consider and utilize recommendations and
299 letters of technical assistance of the FWC, and recommendations and
300 guidelines of the USFWS, in issuing development orders on property
301 containing wildlife species of special status.

302 (iv) All FWC and USFWS rules and guidelines relating to protection and/or
303 taking procedures shall be followed if not described in this ordinance.

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305 *****

306
307 **SECTION 3. Inclusion in the Code of Ordinances.**

308
309 It is the intention of the City Council and it is hereby ordained that the
310 amendments to the City of Marco Island Code of Ordinances made by this Ordinance shall
311 become part of the City of Marco Island Code of Ordinances, that the sections of this Ordinance
312 may be renumbered and relettered as necessary, and that the word "Ordinance" may be changed
313 to "Section, "Article" or other appropriate word.

314
315 **SECTION 4. Conflicts.**

316
317 All ordinances or parts of ordinances and all resolutions or parts of resolutions in
318 conflict with the provisions of this Ordinance are hereby repealed.

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SECTION 5. Severability.

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

SECTION 6. Effective Date.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 4th day of ~~September~~, 2013.
February

ATTEST:

CITY OF MARCO ISLAND FLORIDA

By: 

Laura M. Litzan, City Clerk

By: 

Joe Batte, Chairman

(SEAL)

Reviewed for legal sufficiency:

By: 

Burt L. Saunders, City Attorney