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ORDINANCE 14-14

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, DELETING CHAPTER 14 SECTIONS 14-1 THRU 14-78 (REPEALING CITY OF MARCO ISLAND ORDINANCES 98-4 AND 99-3 IN THEIR ENTIRETY); ESTABLISHING THE CITY OF MARCO ISLAND "CODE COMPLIANCE ORDINANCE"; SETTING FORTH FINDINGS AND PURPOSE; SETTING FORTH APPLICABILITY; PROVIDING DEFINITIONS; ESTABLISHING THE SPECIAL MAGISTRATE; PROVIDING CODE COMPLIANCE NOTICE OF VIOLATION PROCEDURES; PROVIDING FOR CIVIL VIOLATION CITATION PROCEDURES; PROVIDING FOR ADMINISTRATIVE AUTHORITY; PROVIDING FOR LIENS; PROVIDING THAT PROVISIONS OF THIS ORDINANCE ARE SUPPLEMENTAL; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Part I of Chapter 162, Florida Statutes, "The Local Government Code Enforcement Boards Act," the Marco Island City Council duly enacted Marco Island Ordinances Nos. 98-4, "The City of Marco Island Code Enforcement Board Ordinance" which created a Code Enforcement Board, authority and procedures; and

WHEREAS, Part I of Chapter 162, Florida Statutes, authorizes the establishment of a Special Magistrate to act in conjunction or in lieu of a Code Enforcement Board; and

WHEREAS, Chapter 162, Part II, Florida Statutes, provides for a "Supplemental Code Enforcement Procedure" whereby duly designated Code Enforcement Officials are authorized to issue citations or notices to appear to a person when, based upon personal investigation, the Official has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance; and

WHEREAS, the City has previously implemented the procedures established by Part II of Chapter 162, Florida Statute, by adopting Ordinance No. 99-3; and

WHEREAS, Chapter 162, Florida Statutes, does not preclude a municipality from combining any features of Part I and Part II of Chapter 162; and

WHEREAS, the Marco Island City Council wishes to repeal the City of Marco Island Ordinances 98-4 and 99-3 and desires to establish and restate, pursuant to the authority vested in it by Chapter 162, Florida Statutes, the code enforcement procedures described therein to allow duly designated Code Enforcement Officers the authority to issue such citations, notices to appear, and notices of violation where appropriate to enforce the codes and ordinances of the City; and

46 WHEREAS, the Marco Island City Council believes it is in the best interests of the
47 citizens of Marco Island to appoint Special Magistrates as an alternative means of enforcement.
48

49 NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
50 CITY OF MARCO ISLAND, FLORIDA, THAT:
51

52 The City of Marco Island Code Compliance Ordinance is hereby created to read as
53 follows:
54

55 **SECTION ONE: GENERAL**
56

57 **1-1. LEGISLATIVE INTENT**
58

- 59 1. It is the intent of this Ordinance to promote, protect, and improve the health,
60 safety, and welfare of the residents and visitors to the City of Marco Island by
61 authorizing the designation of Special Magistrates with authority to impose
62 administrative fines and other noncriminal penalties and to provide an equitable,
63 expeditious, and effective method of enforcing any codes and ordinances in force
64 in the City of Marco Island.
65
- 66 2. It is the intent of this Ordinance to establish a procedure by which duly designated
67 Code Enforcement Officers are authorized to issue citations, notices of violations,
68 and notices to appear, under the circumstances set forth in this Ordinance, for
69 civil violations which are reasonably believed to be violations of duly enacted
70 codes or ordinances of the City of Marco Island.
71

72 **1-2. TITLE AND CITATION**
73

74 This Ordinance shall be known and may be cited as the "City of Marco Island Code
75 Compliance Ordinance."
76

77 **1-3. APPLICABILITY**
78

79 This Ordinance shall apply to and be enforced in all incorporated areas of the City of
80 Marco Island and shall be deemed in addition to and supplemental to Chapter 162, Part I
81 and Part II, Florida Statutes, or as otherwise provided by general law.
82

83 **1-4. DEFINITIONS**
84

85 The following words, terms and phrases, when used in this Ordinance, shall have the
86 meanings ascribed to them in this Section, except where the context clearly indicates a
87 different meaning. Said definitions are inclusive as well as supplemental to those
88 definitions set forth in Chapter 162, Florida Statutes.
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- 90 1. "City Prosecutor" means the City Attorney, their designee, or others as approved
91 by Council.

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2. "Code Compliance Official" means the City Manager or any designated employee or agent of the City whose duty it is to ensure compliance with codes and ordinances enacted by the City. Employees or agents hereby designated as Code Compliance Officials include, but are not limited to, code inspectors, zoning administrator, building officials, code compliance officers, code administrator, police officers, community service officers, fire safety inspectors, city environmentalists or other designated employees of the City designated by the City Manager.
3. "Irreparable or Irreversible Violation" means a violation which is irreparable or irreversible in nature, and which cannot be remedied after the violation has been committed because the violation constitutes a single prohibited act rather than an ongoing condition or circumstance.
4. "Special Magistrate" means a person designated by the Council pursuant to Section 4 of this Ordinance and Section 162.03, Florida Statutes, with the authority to hold hearings and assess fines for violations and such reasonable costs incurred by the City of its agents in procuring compliance with a violation of City codes and ordinances. The Special Magistrate shall have no power to initiate code enforcement proceedings.
5. "Transient Violation" means a violation that is of a temporary or fleeting in nature, or where the Violator is itinerant or otherwise has no legal residence within the City.
6. "Violator" means the person or entity legally responsible for the violation (the property owner, tenant, or business entity on the premises, or any combination thereof) and may include the property owner on whose property the violation occurs regardless of who commits the violation.

1-5. NOTICE TO SUBSEQUENT OWNERS

Any owner of property that is subject to a code enforcement proceeding under this Chapter who transfers ownership of such property between the time the initial notice or pleading was served and the time of the hearing is required to comply with the provisions of Section 1620.06(5), Florida Statutes, as amended.

SECTION TWO: SPECIAL MAGISTRATES

2-1. APPOINTMENTS; QUALIFICATIONS

1. The Council may appoint up to three (3) Special Magistrates.

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2. Special Magistrates shall at a minimum:
 - (a) Be a graduate of a law school accredited by the American Bar Association;
 - (b) Be a member in good standing of the Florida Bar; or another State Bar.
 - (c) Be an arbitrator qualified by a recognized arbitration association.
3. Special Magistrate appointments shall be for a two (2) year term. Any Special Magistrates shall be eligible for reappointment by the Council. The Council shall have the authority to remove a Special Magistrate with or without cause upon ten (10) days written notice.
4. If any Special Magistrate resigns or is removed prior to expiration of their term, or if the Council determines that a Special Magistrate shall not be reappointed, the City Manager may make a recommendation for appointment from the candidates previously interviewed to fill the vacancy.

2-2. POWERS AND DUTIES OF THE SPECIAL MAGISTRATE

1. The Special Magistrate shall have the jurisdiction and authority to do the following:
 - (a) Adopt rules and regulations for the conduct of hearings to be approved by Council;
 - (b) Subpoena Violators and witnesses to appear at its hearings, which subpoena may be served by the Collier County Sheriff or any person authorized by law to serve process;
 - (c) Subpoena evidence to its hearings, including, but not limited to, records, surveys, plats, and other documentary evidence; which subpoena may be served by the Collier County Sheriff or any person authorized by law to serve process;
 - (d) Take testimony under oath;
 - (e) Hold hearings on notice of violations or contested citations where applicable;
 - (f) Issue orders having the force of the law to command whatever steps are necessary to bring a violation into compliance;

- 182 (g) Modify or reduce any existing orders, including any assessed fines prior to
183 their recordation pursuant to guidelines adopted by resolution of the
184 Council;
185 (h) Such other powers as provided by general law.
186

187 **SECTION THREE: CODE COMPLIANCE NOTICE OF VIOLATION**
188 **PROCEDURE**
189

190 **3-1. NOTICE OF VIOLATION**
191

- 192 1. The City hereby adopts the code enforcement provisions of Part I, Chapter 162,
193 Florida Statutes, as supplemented by this Ordinance. It shall be the duty of the
194 Code Compliance Officer to initiate enforcement proceedings of the various
195 codes.
196
197 2. Except as provided in subsections 5 and 6 of this Section, if a violation of any
198 code is found, the Code Compliance Officer shall notify the Violator and give
199 them a reasonable time to correct the violation.
200
201 3. Should the violation continue beyond the time specified for the correction, the
202 Code Enforcement Official shall execute a written Notice of Violation which shall
203 include a statement of facts and circumstances of the alleged violation and shall
204 identify the code or ordinance which has been violated and shall schedule a public
205 hearing before the Special Magistrate. Written notice of the scheduled hearing,
206 which shall contain the date, time, and place of the hearing, and a copy of the
207 Notice of Violation, shall be provided to the Violator. Failure to provide proper
208 notice may be grounds for continuing the hearing but shall not be grounds for
209 dismissal of the charges.
210
211 4. If the violation is corrected and thereafter recurs, or if the violation is not
212 corrected by the time specified for the correction, the case shall be presented to
213 the Special Magistrate even if the violation has been corrected prior to the
214 hearing, and, if practicable, the notice shall so state.
215
216 5. If a repeat violation is found, the Code Enforcement Officer shall notify the
217 Violator but is not required to give the Violator a reasonable time to correct the
218 violation. The Code Enforcement Officer, upon notifying the Violator of a repeat
219 violation, shall schedule a hearing before the Special Magistrate and shall provide
220 notice pursuant to Section 162.12, Florida Statutes, as amended. The case may be
221 presented to the Special Magistrate even if the repeat violation has been corrected
222 prior to the hearing, and the notice shall so state. If the repeat violation has been
223 corrected, the Special Magistrate retains the right to schedule a hearing to impose
224 the payment of reasonable enforcement fees upon the repeat Violator.
225
226 6. If the Code Enforcement Officer has reason to believe a violation presents a
227 serious threat to public health, safety, or welfare, or if the nature of the violation

228 constitutes a Irreparable or Irreversible Violation, the Code Enforcement Officer
229 shall make a reasonable effort to notify the Violator and may immediately notify
230 the Special Magistrate and request a hearing.

231 **3-2. FINES; COSTS OF REPAIRS**

- 232
- 233 1. A Special Magistrate, upon notification by the Code Enforcement Official that an
234 order of the Special Magistrate or the prior Code Enforcement Board has not been
235 complied with by the set time or upon finding that a repeat violation has been
236 committed, may order the Violator to pay a fine in an amount specified in this
237 Section for each day the violation continues past the date set by the Special
238 Magistrate for compliance or, in the case of a repeat violation, for each day the
239 repeat violation continues beginning with the date the repeat violation is found to
240 have occurred by the Code Enforcement Officer. In addition, the Special
241 Magistrate may direct that all reasonable repairs which are required to bring the
242 property into compliance are made and charge the Violator with the reasonable
243 cost of the repairs, along with the fine imposed pursuant to this Section. If a
244 finding of a violation or of a repeat violation has been made as provided in this
245 Chapter, a hearing shall not be necessary for issuance of the order imposing the
246 fine. If, after due notice and hearing, the Special Magistrate finds a violation to be
247 irreparable or irreversible in nature, they may order the Violator to pay a fine as
248 specified in this Section.
- 249
- 250 2. A fine imposed pursuant to this Section shall not exceed \$250 per day for a first
251 violation and shall not exceed \$500 per day for a repeat violation, and, in
252 addition, may include all costs of repairs pursuant to subsection 1 of this Section.
253 However, if the Special Magistrate finds the violation to be irreparable or
254 irreversible in nature, they may impose a fine not to exceed \$5,000 per violation.
- 255
- 256 3. In determining the amount of the any fine, the Special Magistrate shall consider
257 the following factors:
- 258
- 259 (a) The gravity of the violation;
 - 260
 - 261 (b) Any actions taken by the Violator to correct the violation; and
 - 262
 - 263 (c) Any previous violations committed by the Violator.
 - 264

265 **SECTION FOUR: CIVIL VIOLATION CITATION PROCEDURE**

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267 **4-1. CIVIL VIOLATION**

268

269 The City hereby adopts the code enforcement provisions of Part I, Chapter 162, Florida
270 Statutes, as supplemented by this Ordinance. A violation of any codes or ordinances for
271 which a citation is issued, under the authority provided in this Ordinance, is a civil
272 violation subject to the enforcement procedures set forth in this Ordinance and any other
273 applicable enforcement procedure set forth in any other city Ordinance or in Florida

274 Statutes. Said civil violation shall carry a minimum civil penalty not to exceed \$500.
275 Each day the violation shall continue beyond the time period for correction stated in the
276 written warning notice or citation shall be deemed to constitute a separate civil violation.
277 A civil penalty of less than the maximum civil penalty may apply if the person who has
278 committed the civil violation does not contest the citation. By separate resolution, the
279 Council shall approve a schedule of violations and penalties of less than the maximum
280 penalty if the Violator does not contest the violation.
281

282 **4-2. IRREPARABLE OR IRREVERSIBLE CIVIL VIOLATIONS;**
283 **VIOLATIONS THAT PRESENT THREAT TO THE PUBLIC**
284

285 A Code Compliance Officer may issue a civil violation citation to a person or entity with
286 no prior notice of violation when the Code Compliance Officer, upon personal
287 investigation, has reasonable cause to believe that the violation presents a serious threat
288 to the public health, safety or welfare, is a repeat violation, or if the Violator is involved
289 in a Transient Violation, or if the violation constitutes a Irreparable or Irreversible
290 Violation.
291

292 **4-3 CITATIONS IN GENERAL**
293

- 294 1. A Code Compliance Officer is authorized to issue a citation to an alleged Violator
295 when, based upon personal investigation, the Code Compliance Officer has the
296 reasonable cause to believe that the person has committed a violation of the Code.
297
- 298 2. The issuance of the civil violation citation shall comply with the following
299 requirements:
300
- 301 (a) The maximum civil penalty for each violation is five hundred dollars
302 (\$500);
303
 - 304 (b) A Code Compliance Officer shall only issue a citation upon reasonable
305 cause to believe that a person has committed an act in violation of a code
306 or an ordinance;
307
 - 308 (c) A citation issued shall be subject to contest before county court or Special
309 Magistrate, as may be provided by Code and general law.
310

311 **4-4 PROCEDURE FOR ISSUING CITATIONS**
312

313 Except as provided in this Ordinance, prior to issuing a citation, a Code
314 Compliance Official shall provide notice of violation to the alleged Violator and
315 shall establish a reasonable amount of time within which the person must correct
316 the violation. Such time period shall be no more than thirty (30) days. If upon
317 personal investigation, the Code Compliance Official finds that the person has not
318 corrected the violation within the time period specified, the Code Compliance
319 Official may issue a citation to the Violator responsible for the violation.

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4-5. FORM OF CITATION

The form of the civil violation citation issued pursuant to this Section shall be in the form as provided by general law.

4-6. SCHEDULE OF CIVIL PENALTIES AND FINES

1. By resolution the Council shall establish civil penalties with fines that lists the sections of the code or ordinances, as they may be amended from time to time; which may be enforced pursuant to the provisions of this Ordinance and prescribe the dollar amount of civil penalty for the violation of those sections.
2. The "description of violations" described in such table is for informational purposes only and the civil penalties attached are meant only as proposed figures not intended to limit the nature, number of, or amount of fines to be imposed for the violations that may be cited in this section. To determine the exact nature of the activity prescribed or required by this Code, the relevant code section, ordinance cited in the specific violation must be examined.
3. Any violation of the code that is not specified by any fee resolution of the Council shall be assessed a civil penalty of one hundred dollars (\$100).
4. A person or entity who receives a civil violation citation from a Code Compliance Officer for a code or ordinance violation has committed a civil violation and shall be subject to a maximum fine of \$500 if that citation is contested unless a lower maximum is prescribed in accordance with the adopted fee schedule resolution.

SECTION FIVE: ADDITIONAL COMPLIANCE AUTHORITY

1. The City Prosecutor shall have prosecutorial discretion, including but not limited to, the right to negotiate a plea with the Violator and present that plea to the Special Magistrate for approval, to recommend the disposition of a case to the Special Magistrate, and to decline to prosecute a case.
2. The City Manager has the authority to enter into consent agreements to facilitate compliance with the terms and conditions of this Code. Such agreements may only be entered into prior to the Violator's receipt of a notice of hearing of code enforcement action before the Special Magistrate. Any agreement must be in writing, signed by all parties, executed in recordable form, and entered into the record before the Special Magistrate. The Special Magistrate's review is a mere formality as the Special Magistrate has no authority to approve, deny, or modify the terms of any consent agreement under this subsection. The Special Magistrate is not responsible for the enforcement of compliance agreement obligations,

366 however dependent upon the terms of such agreement the recordation before the
367 Special Magistrate may establish the Violator to increased penalties for repeat
368 violation in the event of breach of the agreement or subsequent violations. At a
369 minimum, the agreement must specifically set forth the terms and obligations
370 necessary for the Violator to comply with the code, indicate that the Violator must
371 pay all costs incurred in enforcing the agreement, and provide a specific time
372 frame for the Violator to comply.
373

374 The City, at its option, record the consent agreement in the public records of
375 Collier County. Upon fulfillment of its terms, the City will record a satisfaction or
376 release of the agreement, if recorded. The Violator must pay all costs of recording
377 the original agreement and any satisfaction or release thereof.
378

379 If the Violator fails to comply with the consent agreement, the City may (i) pursue
380 code enforcement action, in which case the consent agreement will automatically
381 deemed to be null and void, will have no further effect on the parties, and will not
382 be binding on the Special Magistrate; or (ii) enforce the terms and conditions of
383 the consent agreement in a court of competent jurisdiction by injunction or an
384 action for specific performance, in the City's sole discretion.
385

386 **SECTION SIX: LIENS**

387

388 Violations of Code as provided in this Ordinance may result in liens being recorded and
389 imposed upon any real or personal property owned by the Violator as provided by general
390 law. Liens which have been recorded may only be released by action of the Council
391 independently, in accordance with any lien mitigation program instituted and adopted by
392 resolution of the Council, or as otherwise provided by law.
393

394 **SECTION SEVEN: SUPPLEMENTAL PROVISION**

395

396 It is the intent of this Ordinance and Chapter 162, Parts I and II, Florida Statutes, to
397 provide an additional or supplemental means of obtaining compliance with local codes
398 and ordinances. Nothing contained in this Ordinance shall prohibit the City from
399 enforcing its codes by any appropriate civil action, or by referral to the State Attorney's
400 Office for prosecution in the case of criminal violation, and/or by presentation to any
401 other City board or agency with jurisdiction to hear and act upon the alleged code or
402 ordinance violation.
403

404 **SECTION EIGHT: CONFLICT AND SEVERABILITY**

405

- 406 1. All ordinances or parts of ordinances in conflict with the provisions of this
407 Ordinance are hereby repealed to the extent of such conflict.
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- 409 2. If any provision of this Ordinance or the application thereof to any person or
410 circumstance is held invalid, the invalidity shall not affect other provisions or
411 applications of the Ordinance which can be given effect without the invalid

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provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION NINE: CODIFICATION

Upon codification of the Code of Ordinances of the City of Marco Island, this Ordinance shall be incorporated within such code into Chapter 14 and such sections as may be determined appropriate. It is the intention of the City Council and it is hereby ordained that the amendments to the City of Marco Island Code of Ordinances made by this Ordinance shall become part of the City of Marco Island Code of Ordinances, that the sections of this Ordinance may be renumbered and relettered as necessary, and that the word "Ordinance" may be changed to "Section, "Article" or other appropriate word.

SECTION TEN: EFFECTIVE DATE

This Ordinance shall become effective immediately upon adoption.

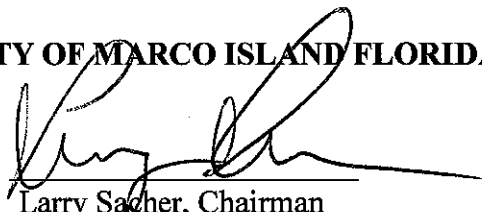
ADOPTED BY THE CITY COUNCIL of the City of Marco Island this 1st day of December, 2014.

Attest:

CITY OF MARCO ISLAND FLORIDA

By: 

Laura M. Litzan, City Clerk

By: 

Larry Sacher, Chairman

(SEAL)

Reviewed for legal sufficiency:

By: 

Burt L. Saunders, City Attorney