

## ORDINANCE 18-07

**AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, RELATING TO STORMWATER MANAGEMENT; MAKING FINDINGS; AMENDING CHAPTER 18, ENTITLED "ENVIRONMENT"; ESTABLISHING ARTICLE VIII, ENTITLED "STORMWATER REGULATIONS" BY ADDING NEW SECTIONS 18-210 THROUGH 18-214, INCLUSIVE; PROVIDING A SHORT TITLE AND DEFINITIONS; PROHIBITING ILLICIT DISCHARGES; PROVIDING STORMWATER POLLUTION PREVENTION STANDARDS DURING CONSTRUCTION; PROVIDING FOR THE MAINTENANCE OF STORMWATER MANAGEMENT SYSTEMS; PROVIDING FOR STORMWATER TREATMENT FOR LAND DEVELOPMENT ACTIVITIES; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida Statutes, the City of Marco Island is authorized to protect the public health, safety and welfare of its residents and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

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

**WHEREAS**, the Marco Island City Council implemented a Phase II Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permit effective March 19<sup>th</sup>, 2015, which restricts illicit discharges into the storm sewer system, requires erosion and sediment control measures, requires construction sites to operate with proper best management practices (BMP) and to minimize the negative environmental effects these discharges have in and on the waterbodies within and around the City of Marco Island, which degrade the quality of life, and jeopardize the health, safety, and welfare of the citizens of Marco Island; and

**WHEREAS**, there is a need to adopt specific standards and details to guide the development community to ensure the proper design and installation of stormwater facilities, grading techniques, and development practices to ensure that the applicable provisions of the current Marco Island Code of Ordinances and goals of this Ordinance are met; and

**WHEREAS**, the City of Marco Island will now identify the South Florida Water Management District (SFWMD) criteria as the recommended level of service goal for meeting water quality standards in the City of Marco Island; and

**WHEREAS**, there is a need to control stormwater from new developments, redevelopments, and substantial improvements which prevent adjacent and downstream property from experiencing erosion, surface flooding, or groundwater seepage; and ensure a reasonable level of water quality treatment of stormwater prior to discharge to downstream stormwater management systems; and

**WHEREAS**, to provide reasonable flexibility and incentive based options so that the development community can be innovative in meeting goals, the City requires the use of the latest Best Management Practices (“BMP”) and encourages Low Impact Development (“LID”) approaches as defined by the State of Florida to provide reasonable flexibility and incentive based options so that the development community can be innovative in meeting the requirements; and

**WHEREAS**, site plan review of all new development and redevelopment and specific stormwater standards for conveyance and water quality has been mandated as being in the best interest of the public for protection of public facilities and private property; and

**WHEREAS**, Goal 1 of the Infrastructure Element; Stormwater Management Sub-Element provides:

GOAL 1: TO PROTECT THE HEALTH AND SAFETY OF THE PUBLIC BY ENSURING STORMWATER MANAGEMENT FACILITIES ARE PROPERLY MAINTAINED [sic], ENVIRONMENTALLY SOUND, COST EFFECTIVE, AND MEET THE COMMUNITY’S PRESENT AND FUTURE DEMANDS; and.

**WHEREAS**, this Ordinance is consistent with Goal 1 of the Infrastructure Element; Stormwater Management Sub-Element, because this Ordinance provides for a reasonable and cost-effective process for creation and maintenance of stormwater systems to treat discharges and to eliminate illicit discharges into the City’s MS4 stormwater system; and

**WHEREAS**, Policy 1.1.3 of the Infrastructure Element, Stormwater Management Sub-Element provides:

Water quality for development runoff from existing sites proposed for redevelopment or expansion shall, to the greatest degree practical, comply with the more stringent permitting standards and policies of either the South Florida Water Management District and [sic] the City of Marco

Island. All new developments shall comply fully with permitting standards and policies of the South Florida Water Management District, per F.A.C. Chapter 40E-41 (Surface Water Management, Basin and Related Criteria) or and [sic] the City of Marco Island. All new development shall comply fully with the more stringent permitting standards and policies of either the South Florida Water Management District, per F.A.C. Chapter 40E-41, or the City of Marco Island; and

**WHEREAS**, this Ordinance is consistent with Policy 1.1.3 of the Infrastructure Element, Stormwater Management Sub-Element, because this Ordinance provides for compliance by new or expanded stormwater systems to be consistent with South Florida Water Management criteria; and

**WHEREAS**, Objective 1.2 of the Infrastructure Element; Stormwater Management Sub-Element provides:

To limit public expenditures for stormwater facilities that would have the effect of directly subsidizing private development; and

**WHEREAS**, this Ordinance is consistent with Objective 1.2 of the Infrastructure Element; Stormwater Management Sub-Element, because this Ordinance provides for development of stormwater systems meeting promulgated standards on private property at the cost of the owner/developer of the property; and

**WHEREAS**, Policy 1.2.1 of the Infrastructure Element; Stormwater Management Sub-Element provides:

The City shall limit its funding of public stormwater facility expansion if such funding and such expansion would have the effect of directly subsidizing a specific private development in the City; and

**WHEREAS**, this Ordinance is consistent with Policy 1.2.1 of the Infrastructure Element, Stormwater Management Sub-Element, because this Ordinance provides for Development of stormwater systems meeting promulgated standards on private property at the cost of the owner/developer of the property; and

**WHEREAS**, Objective 1.4 of the Infrastructure Element; Stormwater Management Sub-Element provides:

The City will implement a proactive maintenance program to ensure that all current and future stormwater management facilities operate at designed capacity; and

**WHEREAS**, this Ordinance is consistent with Objective 1.4 of the Infrastructure Element; Stormwater Management Sub-Element, because this Ordinance provides for construction site inspection of private stormwater systems to assure that the systems meet promulgated standards; and

**WHEREAS**, Policy 1.2.4 of the Capital Improvements Element provides:

The City will implement proactive maintenance programs to ensure that all roadways, potable water, sanitary sewer, community parks, and storm water systems continue to function at *or above* adopted LOS standards; and

(emphasis supplied);

**WHEREAS**, this Ordinance will provide stormwater system protection at greater than the adopted Level of Service, and this Ordinance is therefore consistent with the Comprehensive Plan; and

**WHEREAS**, this Ordinance is consistent with Policy 1.2.4 of the Capital Improvements Element, because this Ordinance provides for design standards for stormwater discharge into the City's MS4 stormwater system; and

**WHEREAS**, the Level of Service ("LOS") standards adopted in the Capital Improvements Element provide:

(4) Storm water drainage. The LOS design standard for new stormwater management facilities will be the ten-year, one-hour storm event, with a 3.3 inches/hour intensity duration; and

**WHEREAS**, this Ordinance provides for stormwater systems on private property that will provide greater stormwater protection than is currently required by the Comprehensive Plan, and this Ordinance is therefore consistent with the adopted level of service standards for stormwater systems set by the Capital Improvements Element (see Capital Improvements Element Policy 1.2.4 above); and

**WHEREAS**, the Planning Board, sitting as the Local Planning Agency, finds that this Ordinance is consistent with the City's Comprehensive Plan and in particular Goal 1, Objectives 1.2 and 1.4, and Policies 1.1.1, 1.1.3, 1.2.1 of the Infrastructure Element; Stormwater Management Sub-Element, and Policy 1.2.4 and the adopted Level of Service standards of the Capital Improvements Element; and

**WHEREAS**, Marco Island City Council finds it to be in the best interests of its citizens to amend the Marco Island Code of Ordinances accordingly.

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

**SECTION 1. Recitals.** Each and all of the foregoing recitals ("WHEREAS" CLAUSES) be and the same are hereby incorporated in this Ordinance as if specifically set forth herein.

**SECTION 2. Amendment Adding Stormwater Regulations.** That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding new sections, to be numbered 18-201 through 209, which sections read as follows

**Sec. 18-201 – 18-209. - Reserved.**

**SECTION 3. Adoption of Code Provision.** That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a new article to be numbered VIII and a new section, to be numbered 18-210, which section reads as follows

**ARTICLE VIII. – STORMWATER REGULATIONS**

**Sec. 18-210. - Short title.**

This article shall be known and may be cited as the "Stormwater Control Ordinance".

**SECTION 4. Adoption of Code Provision.** That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a new section, to be numbered 18-211, which section reads as follows

**Sec. 18-211. - 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:

Best management practices or BMPs means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices, to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control erosion, site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. BMPs include but are not limited to geosynthetic barriers, temporary or permanent vegetation, sediment traps, silt fences, turbidity barriers, or inlet protection measures.

Clean Water Act or CWA means the federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), and any subsequent amendments thereto.

Construction activity means any on-site activity that results in a substantial change to the property, which will result in the creation of a new stormwater discharge, including the building, assembling, expansion, modification or alteration of the existing contours of the site, the erection of buildings or other structures, or any part thereof, or land clearing.

Department means the city's public works department.

Design storm means a selected rainfall pattern of specified amount, intensity, duration, and frequency, that is used as a basis for design.

Detention means the collection and temporary storage of stormwater with subsequent release, at a specified rate, into a downstream system.

Developer means and includes one who develops a parcel of land, an applicant for a city permit to develop a parcel of land, a property owner, and a contractor on a parcel of land.

Development shall be as defined in s. 163.3164, Florida Statutes.

Emergency means, as provided in section 10-1 of this Code, any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

Engineer means a Professional Engineer registered in the state, or other person exempted pursuant to the provisions of chapter 471, Florida Statutes.

Erosion is the action of surface processes such as water flow or wind that remove soil, rock, or dissolved material from one location, then transport it away to another location.

Exfiltration means a stormwater management procedure, which stores runoff in a subsurface collection system and disposes of it by percolation into the surrounding soil.

Filtration means the selective removal of suspended matter from stormwater by passing the water through at least two (2) feet of suitable fine textured granular media such as porous soil, uniformly graded sand and gravel, or other natural or artificial aggregate, which may be used in conjunction with filter fabric and underdrain pipe.

Hazardous substances mean any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical,

chemical, or infectious characteristics, may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment, when improperly treated, stored, transported, disposed of, or otherwise managed.

*Illicit connection* means either of the following: 1) any drain or conveyance, whether on the surface or subsurface, which allows an illegal or discharge to enter the MS4 including but not limited to any conveyances that allow any non-storm water discharge, including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the department; or 2) any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by the department.

*Illicit discharge or illegal discharge or illegal dumping* means any discharge to the city's MS4 which is not composed entirely of stormwater, unless exempted pursuant to this article, or the discharge to the city's MS4 which is not in compliance with federal, state or local permits.

*Industrial activities* mean activities at facilities identified by the United States Environmental Protection Agency as requiring an NPDES stormwater permit in accordance with 40 CFR §122.26(b)(14) or amendments thereto, or any unit operation, complex, area, or multiple of unit operations, that produce, generate, handle, process, or cause to be processed, any materials which may cause water pollution.

*Impervious* means land surfaces which do not allow, or minimally allow, the penetration of water; included as examples are building roofs, normal concrete, paver driveways, paver sidewalks, and asphalt pavements and some fine-grained soils such as clays.

*Maintenance* means routine custodial maintenance needed to ensure the functioning of a stormwater management system to meet original design criteria.

*Municipal separate storm sewer system or MS4* means a conveyance, storage area or system of conveyances and storage areas (including, but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, treatment ponds, and other structural BMPs) owned and operated by a local government that discharge to waters of the United States or to other MS4s, that are designed solely for collecting, treating or conveying stormwater, and that are not part of publicly owned treatment works (POTW) as defined by 40 CFR §122.2 or any amendments thereto.

*National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit* means a permit issued by the Florida Department of Environmental

Protection (FDEP) that authorizes the discharges of pollutants to waters of the United States.

Non-stormwater discharge means any discharge to the storm drain system that is not composed entirely of stormwater.

Person means an individual, corporation, limited liability company, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

Pollutant means anything that causes or contributes to pollution. Pollutants may include, but are not limited to paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that the same may cause or contribute to pollution; floatables; pesticides; herbicides; fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Project site means the area being modified or altered in conjunction with a proposed activity.

Receiving waters or receiving channel means any water bodies, watercourses and wetlands into which surface waters flow.

Rendered or Rendition means the issuance of a written order, including approval, approval with conditions, or denial of a determination by the city council, the department director, the city manager (or said manager's designee), or other administrative official, effective upon the date of signing by the authorized city official of such order or final letter of determination and its filing in the records of the city council or said department director, city manager (or said manager's designee), or other administrative official.

Retention means the prevention of discharge of a given volume of stormwater runoff by complete on-site storage with subsequent release through accepted water treatment facilities or underdrains.

Roadway means a designated travel pathway, either public or private, which is designed for vehicular traffic and is not used primarily as a driveway access to a property.

Sediment means material that settles to the bottom of a liquid.

Short-circuiting means flow characteristics of a detention pond in which a direct flow path exists between the inflow and outflow points, thus diminishing the velocity reduction and settling capability of the pond.



Solid waste means unregulated under the federal Clean Water Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

Special waste means solid wastes that can require special handling and management, including, but not limited to, white goods, waste tires, used oil, lead-acid batteries, construction and demolition debris, ash residue, yard trash, and biological wastes.

Storm sewer system means a stormwater collection and transmission system consisting primarily of inlets and storm sewers.

Stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

Stormwater management system means the designed features of the property which collect, convey, channel, hold, inhibit, or divert, the movement of stormwater.

SFWMD means the Big Cypress Basin South Florida Water Management District.

Swale means excavated areas that can be either used for water conveyance retention or any combination of the two. A roadway swale means a depression along a roadway used to retain and/or convey the movement of surface water runoff. The roadway swale is generally the area between the edge of the pavement of a roadway and the sidewalk or Right-of-Way limit.

Temporary soil stabilization means the use of seeding, mulching, netting, blankets, or other approved methods, to prevent erosion during construction activities.

Underdrain means a system of pipes, gravel, sand, and filter cloth used to recover retention volumes from stormwater ponds or lower the water table under roads or stormwater ponds.

Waters or water body means any natural or artificial pond, lake, reservoir, or other area, which ordinarily or intermittently contains water, and which has a discernible shoreline.

Watercourse means any natural or artificial stream, creek, channel, ditch, canal, waterway, gully, ravine, or wash, in which water flows in a definite direction, either continuously or intermittently, and which has a definite channel, bed or banks.

**SECTION 5. Adoption of Code Provision.** That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a new section, to be numbered 18-212, which section reads as follows

**Sec. 18-212. Illicit discharges.**

(a) Purpose and intent. The purpose of this section is to provide for the health, safety, and general welfare of the citizens of the city through the regulation of non-stormwater discharges to the city's municipal separate storm sewer system (MS4) to the maximum extent practicable. This section establishes methods for controlling the introduction of pollutants into the city's MS4 within the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this section are:

(1) To regulate the contribution of pollutants to the city's MS4 by stormwater discharges by any user;

(2) To prohibit illicit connections and discharges to the city's MS4; and

(3) To establish legal authority to carry out all inspection and monitoring procedures, necessary to ensure compliance with this section.

(b) Applicability. This section shall apply to the entire city's MS4, unless explicitly exempted by the city in writing.

(c) Ultimate responsibility. The standards set forth herein, and promulgated pursuant to this section, are minimum standards. This section does not intend or imply that compliance by any person will ensure there will be no contamination, pollution, nor unauthorized discharge of pollutants.

(d) Control of pollutant contributions from interconnected MS4s. Interconnected MS4s, including MS4s not owned by the city, shall be controlled so that they do not impair the operation of the receiving MS4 or contribute to the failure of the receiving MS4 to meet any applicable local, state, or federal law or regulation. Owners of sections of an interconnected MS4 shall be responsible for the quality of stormwater within their portion of the system and shall coordinate with the owners of the downstream segments.

(e) Prohibitions; Illicit/illegal discharges and illegal dumping.

(1) No person shall throw, drain, or otherwise discharge, cause, or allow others under such person's control to similarly discharge into the city's MS4 any pollutants or waters containing any pollutants, other than stormwater, whether such discharges occur through piping connections, runoff, exfiltration, infiltration, seepage, or leaks. Polluting matter includes, but is not limited to, the following:

(i) Petroleum products, including, but not limited to oil, gasoline, grease;

(ii) Solid waste;

(iii) Paints;  
(iv) Steam cleaning waste;  
(v) Pesticides, herbicides or fertilizers, or as regulated by existing ordinance;

(vi) Degreasers, solvents;  
(vii) Sanitary sewage;  
(viii) Chemically treated cooling water;  
(ix) Antifreeze and other automotive products;  
(x) Lawn clippings, leaves, branches, or yard trash;  
(xi) Animal carcasses;  
(xii) Recreational vehicle waters;  
(xiii) Dyes;  
(xiv) Construction materials and waste;  
(xv) Any liquids in quantity or quality that are capable of causing a violation of the city's NPDES stormwater permit; and  
(xvi) Solids in such quantities or of such size capable of causing interference or obstruction to the flow of the city's MS4.

(2) No lawn mowing, clipping or other such discharge of debris is permitted towards or into waterbodies or watercourse(s).

(3) No direct discharge of roof drains to the city's canal system is permitted.

(f) *Prohibitions; Illicit connections.*

(1) No person may maintain, use, or establish, any direct or indirect connection to the city's MS4 that results in any discharge in violation of any provision of federal, state, or local governmental law, rule, regulation.

(2) This subsection is effective upon adoption of the Ordinance and applies to illicit connections made prior to March 5, 2018 (the effective date of this Ordinance) regardless of whether made under a permit or other authorization, or whether permissible under laws or practices applicable or prevailing at the time the connection was made.

(3) A person is considered to be in violation of this section, if the person connects a line conveying sewage to the city's MS4 or allows such a connection to continue.

(g) *Violation of permits.* Any discharge into the city's MS4 in violation of any federal, state, or local governmental law, rule, regulation or permit is prohibited, except those discharges set forth in this article or in accordance with a valid NPDES permit.

(h) *Stormwater discharges from commercial, industrial or construction activities to the MS4 or regulated waters.*

(1) Stormwater from areas of any commercial activity, industrial, or construction activity shall be controlled, treated and managed on-site using best management practices so as not to cause an illicit or illegal discharge to the city's MS4 or regulated waters.

(2) All erosion, pollutant, and sediment controls required by city code or by any applicable local, state, or federal permit, including elements of a stormwater pollution prevention plan required under an NPDES permit, shall be properly implemented, installed, operated, and maintained.

(3) Authorized discharges to the city's MS4 shall be controlled so that they do not impair the operation of the city's MS4 or contribute to the failure meet any applicable local, state, or federal law or regulation.

(4) Authorized discharges to regulated waters as defined by the Clean Water Act, shall be controlled so that they do not adversely impact the quality or beneficial uses of those waters, or result in violation of any applicable local, state, or federal law or regulation.

(5) Any person who has been issued an NPDES permit authorizing discharges to the city's MS4 shall submit a complete copy of the permit to the city's building department within thirty (30) days after March 5, 2018 (the effective date of this Ordinance), or within thirty (30) days after the issuance of a permit.

(i) *Authorized exemptions.* The commencement, conduct, or continuance of any illicit or illegal discharge to the city's MS4 is prohibited, except as described as follows:

- (1) Water line flushing;
- (2) Flushing of reclaimed water lines;
- (3) Street cleaning;
- (4) Diverted stream flows;
- (5) Rising ground waters;
- (6) Foundation and footing drains;
- (7) Dechlorinated swimming pool discharges;
- (8) Uncontaminated ground water infiltration (as defined at 40 C.F.R. §35.205(20));
- (9) Uncontaminated pumped ground water;
- (10) Discharges from potable water sources;
- (11) Air conditioning condensate;
- (12) Irrigation water, including landscaping and lawn water;
- (13) Springs;
- (14) Individual residential car washing;
- (15) Flows from riparian habitat and wetlands; and
- (16) Discharges or flows from emergency firefighting activities and emergency response activities done in accordance with an adopted spill response/action plan.

(j) *Non-application of prohibitions.* The prohibitions provided in this section shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Florida Department of Environmental Protection; provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations.

(k) Emergency conditions.

(1) Notwithstanding any other provisions of this section, whenever the city manager, or said manager's designee, or as otherwise provided pursuant to section 10-3 of the Marco Island Code of Ordinances, determines that emergency conditions or activities require immediate action to protect the public health, safety or welfare, or to provide for compliance with these regulations, city approved construction plans, city inspectors and employees are authorized to enter at a reasonable time in or upon any property, consistent with subsection (l) of this provision, for the purpose of testing, inspecting, investigating, measuring, sampling and correcting such emergency conditions. Failure to admit personnel responding to emergency conditions, shall constitute a separate violation of this section only if actual violation is determined.

(2) Suspension due to illicit discharges in emergency conditions. The city manager, or said manager's designee, may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4. If the violator fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.

(3) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this section may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. It is considered an offense of this section, if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the city.

(l) Inspection and monitoring for compliance. City code inspectors may request access for inspection of facilities discharging or suspected of discharging to the city's MS4 to effectuate the provisions of this section and to investigate violations or potential violations of any of the terms herein.

(m) Reporting requirements. Illicit discharges to the city's MS4 are prohibited. Any person owning or occupying a premise or facility who has knowledge of a discharge of pollutants from those premises or facilities or other type of evidence which might result in a violation of the prohibitions found in this section shall immediately take action to abate the discharge of pollutants and shall notify the department and city code enforcement department within 24 hours of the discharge of pollutants. The initial notification may be by telephone, but the person responsible shall submit a written report within 72 hours of discovery. The written report shall include a description of the discharge volume, content, frequency, discharge point location to the MS4, measures taken or to be taken to terminate the discharge, and the name, address and telephone number of the person who may be contacted for additional information.

(n) *Penalty; additional remedies.* Enforcement of this Stormwater Control Ordinance shall be conducted pursuant to Chapter 162, Florida Statutes. Penalties for violations of this Storm Water Control Ordinance shall be as specified therein, or any other appropriate remedy provided by law. The city may seek enforcement action against the owner or developer of record, any person in actual or constructive possession, and any person or entity responsible for carrying out any prohibited action. The provisions of this section are an additional and supplemental means of enforcing city codes and ordinances. Nothing in this section shall prohibit the city from enforcing this code by injunctive relief, or by any other means provided by law.

(o) *Appeals.* Appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this section shall be filed in writing within thirty (30) calendar days after the decision is rendered by the city council, city manager (or said manager's designee), department director, or building official, all as provided for herein. Appeal of the decision of the city manager's designee, department director, or building official will be considered by the city manager. Appeal of the city manager's decision will be considered by the city council.

(p) *Injunctive and other relief.* City council, through the city attorney, may file a petition in the name of the city in the circuit court of the County or such other courts as may have jurisdiction seeking the issuance of an injunction, damages, or other appropriate relief to enforce the provisions of this Stormwater Control Ordinance or other applicable law or regulation. Suit may be brought to recover any and all damages suffered by the city as a result of any action or inaction of any person who causes or suffers damage to occur to the city's storm sewer system, or for any other expense, loss or damage of any kind or nature suffered by the city.

**SECTION 6. Adoption of Code Provision.** That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a new section, to be numbered 18-213, which section reads as follows:

**Sec. 18-213. Stormwater pollution prevention for construction.**

(a) *Activities; Purpose and Intent.* The purpose of this section is to provide for the health, safety, and general welfare of the citizens of the city through the regulation of potential pollution from construction activities. These activities would include connections or areas not connected to the city's MS4 system.

(1) No building permit shall be issued for any building in the city, unless a site plan is submitted with the application for such building permit illustrating the location of driveways, sidewalks if required by this code, parking strips consistent with this code and perimeter retaining structures or a surface water management plan which provides for containment of runoff on-site with surplus routed to rights-of-way or right-of-way swales for drainage as applicable.

(2) Site plans for construction projects in all zoning districts shall be reviewed and administratively approved by staff for on-site erosion control per applicable code provisions outlined herein. Appropriate erosion control devices must be

planned, implemented, and maintained in accordance with the best management practices (BMPs) described in the Florida Department of Environmental Protection's *Erosion & Sediment Control Designer & Reviewer Manual*, most current edition, and required as part of any permit review, approval, and compliance. If approved BMPs are not working properly, it is the responsibility of the developer or contractor to utilize new BMP methods as necessary to provide erosion and sediment control.

(b) *Erosion and sediment control.* Construction activity can result in the generation of significant amounts of pollutants, which may reach surface or ground waters. One of the primary pollutants of surface waters is sediment due to erosion. Excessive quantities of sediment which reach water bodies of floodplains have been shown to adversely affect their physical, biological, and chemical properties. Transported sediment can obstruct stream channels, reduce the hydraulic capacity of water bodies of floodplains, reduce the design capacity of culverts and other works, and eliminate benthic invertebrates and fish spawning substrates by siltation. Excessive suspended sediments reduce light penetration and, therefore, reduce primary productivity. Therefore, the minimum standards set forth in subsection (c) below shall apply to any construction activity within the city.

(c) *Minimum standards.* The minimum standards referenced in subsection (b) include:

(1) Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place;

(2) All sediment control measures are to be adjusted to meet field conditions at the time of construction and be constructed prior to any grading or disturbance of existing surface material on the balance of site. Perimeter sediment barriers shall be constructed to prevent sediment or trash from flowing or floating on to adjacent properties;

(3) Permanent or temporary soil stabilization shall be applied to denuded areas within seven (7) days after final grade is reached on any portion of the site. Where practicable, temporary soil stabilization shall be applied within seven (7) days to denuded areas that may not be at final grade but will remain undisturbed for longer than thirty (30) days. Permanent stabilization shall be applied to areas that are to be left undisturbed for more than ninety (90) days;

(4) During construction of a project, soil stock piles shall be stabilized or protected with sediment trapping measures. The developer is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as soil intentionally transported from the project site;

(5) A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that, in the opinion of the city's reviewer, is uniform, and mature enough to survive and will inhibit erosion;

(6) Stabilization measures shall be applied to earthen structures, such as dams, dikes and diversions immediately after installation;

(7) After any significant rainfall, sediment control structures will be inspected for integrity. Any damaged devices shall be corrected immediately;

(8) Concentrated runoff shall not flow down, cut, or fill slopes, unless contained within an adequate temporary or permanent channel, flume or slope drain structure;

(9) Whenever water seeps from a slope face, adequate drainage or other protection shall be provided;

(10) Sediment will be prevented from entering any storm drain system, ditch, or channel. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered, or otherwise treated, to remove sediment;

(11) Before temporary or newly constructed stormwater conveyance channels are made operational, adequate outlet protection, and any required temporary or permanent channel lining, shall be installed in both the conveyance channel and receiving channel;

(12) When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area to the greatest extent possible during construction. Non-erodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by non-erodible cover materials;

(13) When a live watercourse must be crossed by construction vehicles, a temporary stream crossing constructed of non-erodible material shall be provided;

(14) The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed;

(15) Periodic inspection and maintenance of all sediment control structures must be provided to ensure the intended purpose is accomplished. The developer shall be continually responsible for all sediment leaving the property. Sediment control measures shall be in working condition at the end of each working day;

(16) Underground utility lines shall be installed in accordance with the following standards in addition to other applicable criteria:

(A) No more than 500 linear feet of trench may be opened at one time;

(B) Excavated material shall be placed on the uphill side of trenches;

(C) Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both, and discharged in a manner that does not adversely affect flowing streams or off-site property; and

(D) Re-stabilization shall be accomplished in accordance with these regulations;

(17) Where construction vehicle access routes intersect paved public roads, provisions shall be made to minimize the transport of sediment by tracking onto the paved surface. Where sediment is transported onto a public road surface with curbs and gutters, the road shall be cleaned thoroughly at the end of each work day. Sediment shall be removed from the roads by shoveling or sweeping and transported



to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual subdivision lots as well as to larger land-disturbing activities;

(18) All temporary erosion and sediment control measures shall be removed within thirty (30) days after final site stabilization or after the temporary measures are no longer needed, in the opinion of the city's reviewer. Disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation;

(19) Properties and waterways downstream from construction sites shall be protected from sediment deposition and erosion;

(20) Phased projects should be cleared in conjunction with construction of each phase;

(21) The city permit reviewer may approve modifications or alternate plans to these erosion control criteria due to site specific conditions.

(d) *Development of an erosion and sediment control plan.* An erosion and sediment control plan must be submitted as part of the building permit application that include land disturbing activities. This plan and its implementation is a way of providing reasonable assurance that water quality standards will not be violated during the construction phase of a project. The plan must identify the location, relative timing, and specifications for all erosion and sediment control and stabilization measures that will be implemented as part of the project's construction. This plan can be prepared on a site plan/plot plan depicting the improvements proposed. The plan must illustrate methods that would provide reasonable assurances that no offsite discharges of pollutants will be allowed. Said plan shall be prepared by a Florida licensed Professional Engineer. The preparer will certify the plans to and for reliance by the city with the submittal that they are familiar with Florida stormwater best management practices, and that the proposed plan meets or exceeds those criteria.

(e) *Development of a Stormwater Pollution Prevention Plan (SWPPP) for NPDES Requirements.* Applicants are advised that preparation and adherence to a SWPPP is required where the permitted activity also requires an NPDES construction permit pursuant to subsection 62-621.300(4), Florida Administrative Code. Namely, those construction activities resulting in greater than one acre of soil disturbance discharging to waters of the state or a permitted MS4 must also apply for and receive coverage from Florida Department of Environmental Protection under Florida's NPDES Generic Permit for Stormwater Discharge from Large and Small Construction Activities (CGP) before disturbing the soil.

**SECTION 7. Adoption of Code Provision.** That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a new section, to be numbered 18-214, which section reads as follows:

**Sec. 18-214. Maintenance of stormwater management systems.**

Proper maintenance of a stormwater management system shall include at a minimum the following items:

- (1) Retention/detention system or pond side slopes shall be vegetated or other approved methods for erosion control;
- (2) Retention/detention system storage volume and geometry shall be maintained to the dimensions shown on the approved plans;
- (3) Littoral zone coverage with wetland plants shall be maintained to SFWMD standards;
- (4) Vegetation shall be mowed frequently enough to provide easy access to the ponds for inspections and maintenance;
- (5) Weirs and orifices shall be kept clear of debris to allow their proper functioning;
- (6) Skimmer blades shall be maintained to minimize floating debris and oils from leaving the ponds and allow unrestricted flow through the control structure;
- (7) The dimensions and elevations of control structures shall be preserved;
- (8) Underdrains shall be properly functioning;
- (9) Channel dimensions and geometry shall be maintained to approved designs;
- (10) Vegetation in dry ponds and channels shall be kept to a minimum to maintain flow and storage capacities; and
- (11) Underground stormwater management systems (exfiltration systems, underdrains, and similar types of structures and systems) shall be maintained and kept clear of debris to allow for their proper functioning, as designed. If stormwater management system effluent degradation is identified, effluent testing can be directed by city department or environmental staff.

**SECTION 8. Codification.** It is the intention of the City Council, and it is hereby ordained that the amendments in Sections 2. through 7. of this Ordinance made to the City of Marco Island Code of Ordinances shall constitute a new Article VIII to Chapter 18 of the City of Marco Island Code of Ordinances, and that the sections of this Ordinance may be renumbered and re-lettered as necessary, and that the word "Ordinance" may be changed to "Section, "Article" or other appropriate word. Sections 1, 8 through 10 shall not be codified. The City Clerk is directed to insert the effective date of this Ordinance in the appropriate blank set forth in Section 18-212(f)(2) and (h)(5) in this Ordinance.

**SECTION 9. Severability/Interpretation.**

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

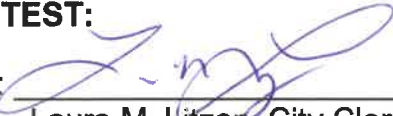
(b) In interpreting this Ordinance, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text. Asterisks (\* \* \* \*) indicate a deletion from the Ordinance of text, which continues to exist in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

**SECTION 10. Effective Date.** This Ordinance shall become effective immediately upon its adoption by the City Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 5<sup>th</sup> day of March 2018.


**ATTEST:**

By:

  
\_\_\_\_\_  
Laura M. Litzan, City Clerk

**CITY OF MARCO ISLAND, FLORIDA**

By:

  
\_\_\_\_\_  
Jared Grifoni, Chairman

Approved as to form and legal sufficiency:

By:

  
\_\_\_\_\_  
Alan L. Gabriel, City Attorney

