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**ORDINANCE 19-01**

**AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA,  
AMENDING THE CITY CODE OF ORDINANCES AT CHAPTER  
18 "ENVIRONMENT," ARTICLE V "ENDANGERED,  
THREATENED OR LISTED SPECIES PROTECTION" TO  
PROVIDE FOR ADDITIONAL DEFINITIONS, PERMITTING  
PROCEDURES, ENFORCEMENT, AND PENALTIES;  
PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR  
CONFLICTS; PROVIDING FOR SEVERABILITY; AND  
PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, protecting endangered, threatened, and listed species is important to the quality of life enjoyed by City residents, businesses and visitors; and

**WHEREAS**, the City's land use authority includes protecting habitats for endangered, threatened, and listed species of wildlife; and

**WHEREAS**, City Council finds that the City has a significant and substantial interest in protecting the endangered, threatened, or listed species in the City.

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

**SECTION 1. Recitals.**

The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true, correct, and reflective of the legislative intent underling this Ordinance.

**SECTION 2. City Code Amended.**

That Article V "Endangered, Threatened or Listed Species Protection" of Chapter 18 "Environment" of the Code of Ordinances of Marco Island, Florida, is hereby amended to read as follows:<sup>1</sup>

**Chapter 18 – ENVIRONMENT**

**\*\*\***

**ARTICLE V. – ENDANGERED, THREATENED OR LISTED SPECIES PROTECTION**

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

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<sup>1</sup> Additions to existing city code text are shown by underline; deletions from existing city code text are shown by ~~strikethrough~~.

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

The presence of listed species on a parcel of property presents legitimate hardship, and may constitute reasonable grounds for consideration of a variance for construction setbacks and/or landscape requirements, that are consistent with all state and federal requirements.

#### **Sec. 18-142. - 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:]

~~*Listed species* means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range and is listed by CITES, USFWS and FWC.~~

~~*Protective zone* means the 25-foot diameter area that surrounds the listed species habitat and/or burrow.~~

~~*Taking* means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or an attempt to engage in any such conduct.~~

*Active burrow* means a potentially occupied burrow for Burrowing Owls that contains eggs or is used by flightless young.

*Authorized or Registered Agent* means a person or applicant who has been approved by FWC to perform protective actions specified by an incidental take permit.

*Burrow* means a hole in the ground used as a shelter by wildlife, especially Gopher Tortoises and Burrowing Owls, to incubate, birth, and raise offspring.

*Inactive burrow* means a potentially occupied burrow for Burrowing Owls that does not contain eggs or flightless young.

*Listed species* means any species that is commonly found on Marco Island and which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range and is listed by CITES, USFWS and FWC.

*Posting* means stakes, flagging, signage, perches, string, rope, pipes, or other means to identify a protection zone.

*Protection zone* means the buffer area deemed necessary by state or federal guidelines or rules to minimize or avoid disturbance or taking of listed species.

*Taking* means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or an attempt to engage in any such conduct. This may also include significant habitat modification or

degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

#### Sec. 18-143. - New development.

For new development or any order that requires a pre-permit inspection the following, as applicable, shall serve as guidelines or standards for the protection of endangered, threatened or species of special concern or status as prescribed by the goals, objectives and policies of the conservation element of the Marco Island Comprehensive Plan:

(1) Prior to submission of a building any permit application, the applicant must survey 100% of the affected property for the most commonly found listed species on Marco Island: the Burrowing Owl (~~Athene~~~~Speotyto~~ *cunicularia floridana*), the Gopher Tortoise (*Gopherus polyphemus*) burrows, American Osprey (*Pandion haliaetus*), beach-nesting and migratory coastal bird species, including American Oystercatcher (*Haematopus palliatus*), Black Skimmer (*Rynchops niger*), Least Tern (*Sternula antillarum*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), Snowy Plover (*Charadrius nivosus*), Reddish Egret (*Egretta rufescens*), Roseate Spoonbill (*Platalea ajaja*), Tricolored Heron (*Egretta tricolor*), and Little Blue Heron (*Egretta caerulea*), and Bald Eagle (*Haliaeetus leucocephalus*) nests. If a listed species is on the property, the appropriate state and/or federal agency must be contacted for management guidelines, and compliance with all agency permits and protections is required.

(2) If a listed species is found on the property, then the applicant must include the survey with the building permit application and indicate that a state or federal permit is being pursued for removal, relocation or protection of the listed species onsite. The survey must be conducted by a professional environmental surveyor licensed to conduct such work or an FWC authorized or registered agent. In addition, all burrowing owl burrows and gopher tortoise must be posted by the City of Marco Island, Audubon of the Western Everglades (AWE), or Florida Fish and Wildlife Conservation Commission (FWC) staff or authorized agents.

(3) Further, a management plan for a protection zone during construction shall be submitted for review and approval by the community affairs department for the management of on-site habitat and wildlife, including measures for protection and/or relocation of species of special status. Such plans shall comply with current federal, state and local policies. The city may consider and utilize recommendations and letters of technical assistance of the FWC, and recommendations and guidelines of the USFWS, in issuing developmental orders on property containing wildlife species of special status.

#### Sec. 18-144. - Activities within protection zones.

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

(1) City-approved volunteers, including FWC and Audubon staff and volunteers, who maintain burrows in designated zones in the City of Marco Island may conduct maintenance

activities that shall include the clipping of vegetation within the protection zone, staking and posting the zone with flagging tape, string or rope, and signage, and recording pertinent data.

(2) FWC or Audubon-trained ~~C~~contractors may enter the protection zone to remove debris with the full understanding that they can do nothing to disturb or harm the species or burrow in any manner. Contractors and lawn/lot maintenance companies shall accept full responsibility for the actions of their employees to ensure that all laws protecting such species are adhered to. Entry into a protection zone is prohibited except by Authorized or Registered Agent, property owner, FWC, and trained City or Audubon staff, volunteers or consultants.

(3) FWC or Audubon-trained City employees and property owners may enter the protection zone for the purpose of maintaining vegetation if using equipment that does not exert pressure on the ground to ensure the burrow does not collapse.

(4) Scientific research/investigations approved by the FWC and/or the USFWS may occur within the City. The City of Marco Island shall be notified of all such research/investigations and provided with all study reports and publications.

(5) Authorized representatives of developers including, but not limited to, professional environmental consultants that are conducting surveys or monitoring in conjunction with private or municipal construction may enter only after training or permit from FWC.

(6) To prevent unnecessary disturbance, take or burrow collapse, operation and parking of any vehicles or equipment is prohibited within 33 feet of burrowing owl burrows and within 25 feet of gopher tortoise burrows.

#### **Sec. 18-145. - Protection and permitting ~~taking~~ procedures.**

Requirements for incidental take permitting ~~ing or~~ and protecting listed ~~the~~ species are as follows:

(1) No active or inactive owl and/or gopher tortoise burrow, or nests of any other listed species, may be taken without proper state or federal permits issued by the FWC or USFWS, as required.

(2) If state or federal permit(s) are issued, they shall be posted on site during all phases of the construction.

~~(3) During the Burrowing Owl nesting season as designated by FWC (February 15 through July 10) no city building permits will be issued for applicants to take an owl burrow, unless the FWC has issued permits to take the owl burrow(s) during nesting season or permits have been issued to take the owl burrow(s) after nesting season and the construction can commence with a protection zone in place. No city building permits will be issued for applicants to take a Gopher Tortoise burrow, unless FWC has issued permit to take the tortoise burrow(s) and construction can commence with a protection zone in place. No city permits will be issued for applicants to take a Burrowing Owl burrow unless a FWC Migratory Nest/Burrow Removal Permit has been issued and provided to the City of Marco Island. Only inactive burrows can be taken per FWC Migratory Nest/Burrow Removal Permit provisions and the FWC Burrowing Owl Guidelines. For burrowing~~

Owls, the protection zone requirement shall be a protection zone, consisting of silt fencing, erected prior to construction activities around two to three sides of each affected burrow, leaving one or two sides open for species ingress and egress, as follows:

- a. 10-foot buffer in all directions around the entrance of Burrowing Owl burrows during the non-breeding season (July 11 through February 14).
- b. 33-foot buffer in all directions around the entrance of Burrowing Owl burrows during the breeding season (February 15 through July 10).
- c. FWC or Audubon trained contractors will be responsible for maintaining the protection zone during construction and informing all workers and subcontractors to avoid the protection zone and to not do anything that would violate the burrow(s) in such a way as to make it collapse. Any contractor that violate or destroys a protection zone will be subject to penalties, as provided in this article. Such protection zone shall be removed upon completion of construction activities.

(4) No city permits will be issued for applicants to take a Gopher Tortoise burrow, unless FWC has issued permit to take the tortoise burrow(s) and construction can commence with a protection zone in place.

The protection zone requirements for Gopher Tortoises shall be:

- a. A protection zone, consisting of ~~construction~~ silt fencing, having a diameter of at least 25 feet, ~~will be erected~~ prior to construction activities around two to three sides of each affected burrow during all phases of construction, leaving one or two sides open for species ingress and egress.
- b. FWC or Audubon trained ~~C~~contractors will be responsible for maintaining the zone and informing all workers and subcontractors to avoid the zone and to do nothing to violate the burrow(s) in such a way as to make it collapse. Any violation or destruction will place the contractor subject to penalty. Such protection zone shall be removed upon completion of construction activities.

All protection plans shall be subject to review and approval by the environmental specialist of the community affairs department. The city may consider and utilize recommendations and letters of technical assistance of the FWC, and recommendations and guidelines of the USFWS, in issuing development orders on property containing wildlife species of special status. No development order will be effective until all required state and federal permits and authorizations have been obtained and submitted to the City.

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

(6) The City will enforce trash and food waste management policies to protect listed species and control nuisance wildlife and human health threats. Trash bins must remain closed at all times

and secured from wildlife entry. Discarding of food waste or other trash is prohibited anywhere outside proper receptacles.

(7) Feeding any wildlife is prohibited in the City, except the use of bird feeders at least 300 feet from any designated conservation area.

(8) State and federal protections will be enforced for Bald Eagles, Ospreys, shorebirds, wading birds, Brown Pelicans, and their nests and roost sites, including required protection buffer zones.

(9) State and federal protections for Manatees will be enforced within the City, including manatee speed zones on waters of the City.

(10) Mangroves, dunes and dune vegetation are protected from damage and destruction because of their value to listed species as habitat and the well-documented protection they provide from tropical storms and coastal inundation and erosion. Trimming of mangroves is regulated by the Florida Department of Environmental Protection. Any permits issued for the removal of Mangroves or any required mitigation related to Mangrove impacts shall be administered by FDEP.

(11) To protect the regionally significant populations of beach-nesting birds and migratory flocks within the City, the following policies are in effect:

- a. No trespassing in posted or closed nesting or habitat areas (protection zones).
- b. Fireworks, dogs and other lethal disturbance sources are prohibited on beaches.
- c. Drones, kites, and other aerial disturbances are prohibited within 500 feet of posted avian listed species nests or habitats.

#### **Section 18-146. Enforcement**

This City is authorized to take the following steps in order to enforce the provisions of this Article, to protect and post the species listed herein.

(1) The City shall seek the property owner's permission to enter property for the purpose of inspection and monitoring of any protected species.

(2) *Search warrant or Administrative Inspection warrant.* The City, through the City Attorney may seek to obtain a search warrant or administrative inspection warrant, as may be appropriate, from the appropriate authority to gain access to private property for the purposes of inspection and monitoring if such lawful entry under of this Section has previously been denied by the property owner.

(3) *Code Enforcement.* Notwithstanding any of the above, the City Manager or designate may cite any property owner to the City's Code Enforcement Special Magistrate or Collier County Licensing Board for violation of any provision of this Article under F.S. § 162 part II. A violation of any condition or requirement under this Article, or of a permit issued pursuant to this Article, shall be a violation of this Article.

(4) 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 Article or other applicable law or regulation.

Remedies nonexclusive. The remedies provided for in the ordinance are not mutually exclusive. The City Manager or designate may take any, all, or any combination of these actions against a noncompliant business/person.

### **Section 18-147. Penalties**

In addition to and as a supplement to any civil and criminal penalties provided by state and federal statutes, the following shall apply:

Any person who is found to have violated any provision of this article or any condition of a permit issued pursuant to this division, shall be, upon conviction, subject to the following penalties:

- a. First offense – minimum of \$150.00, not to exceed \$500.00 for each offense as provided for in F.S. § 162.22;
- b. Second offense – minimum of \$500.00, not to exceed \$1,500.00, as provided for in F.S. § 162.09; and
- c. Third offense – minimum of \$1,500.00, not to exceed \$2000.00, as provided for in F.S. § 162.09.

Each separate violation shall constitute a separate offense, and upon conviction of a specified ordinance violation, each day of violation shall constitute a separate violation. In addition to the penalties provided herein, the City may recover reasonable attorney's fees, court costs, court reporter's fees and other expenses of litigation by appropriate suit at law against the person found to have violated this division or the orders, rules, regulations and permits issued hereunder.

Secs. 18-1486—18-170. - Reserved.

### **SECTION 3. Codification.**

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 constitute a revised 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.

### **SECTION 4. Conflicts.**

All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with the provisions of this Ordinance are hereby superseded and resolved to the extent of any conflict in favor of the provisions of this Ordinance.

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**SECTION 5. Severability.**

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 applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence or section did not exist.

**SECTION 6. Effective Date.**

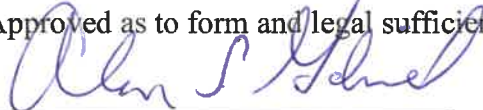
This Ordinance shall become effective upon its adoption.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND THIS 7<sup>TH</sup> DAY OF JANUARY 2019.**

**ATTEST:**

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

**CITY OF MARCO ISLAND, FLORIDA**  
By:   
\_\_\_\_\_  
Erik Brechnitz, Chairman

Approved as to form and legal sufficiency:  
  
\_\_\_\_\_  
Alan L. Gabriel, City Attorney