

ORDINANCE 21-05

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, RELATING TO SEAWALLS; MAKING FINDINGS; AMENDING SECTION 30-793, CITY CODE OF ORDINANCES, RELATING TO A TEMPORARY CONSTRUCTION PERMIT REPEALING PROVISIONS; ALLOWING FOR A TEMPORARY CONSTRUCTION PERMIT FOR SEAWALL PANEL MANUFACTURING OR FABRICATION AND AMENDING MARINE STAGING REQUIREMENTS; PROVIDING FOR SEVERABILITY/ INTERPRETATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to prohibit seawall panel manufacture or fabrication within the city; and

WHEREAS, as the City has allowed seawall contractors to use provisions in the Land Development Code ("LDC") to fabricate or manufacture seawall panels in residential zoning districts; and

WHEREAS, currently, seawall contractors may use vacant residential lots as staging areas for fabrication or manufacture of seawall panels, causing substantial noise, as well as generation of debris and dust resulting from the manufacturing or fabrication process, and

WHEREAS, vacant residential lots used as staging areas for the fabrication or manufacture of seawall panels may also cause injury or death to protected species, such as endangered or threatened species, rare species or species of special concerns as listed by the U.S. Government or the State of Florida; and

WHEREAS, the foregoing activities have caused numerous complaints from residents about the public aesthetics and health of residents; and

WHEREAS, the Planning Board finds that the need and justification for this Ordinance is to resolve the foregoing circumstances by prohibiting the fabrication or manufacture of seawall panels; and

WHEREAS, the Planning Board also finds that there are adequate opportunities for contractors to fabricate or manufacture seawall panels off of the island in adjacent areas of unincorporated Collier County; and

WHEREAS, it is not the intent of this Ordinance to stop marine construction or repair of seawalls in the City, merely the fabrication or manufacture of seawall panels on residential lots; and

WHEREAS, the Planning Board finds that this Ordinance is consistent with Policy 1.7.2 of the Future Land Use Element of the Comprehensive Plan, because this Ordinance and the underlying conditions creating a need for this Ordinance have caused the City to thoughtfully review the need for, and revise the list of, a particular use permitted within the City, namely manufacture and fabrication of seawall panels; and

WHEREAS, the Planning Board finds that this Ordinance is consistent with Policy 1.7.3 of the Future Land Use Element of the Comprehensive Plan, because seawall panel manufacture and fabrication, particularly in residential areas, creates a non-conformity with the quality and aesthetic design of the community; and

WHEREAS, the Planning Board finds that this Ordinance is consistent with Policy 1.7.4 of the Future Land Use Element and Policy 1.5.2 of the Housing Element of the Comprehensive Plan, because seawall panel fabrication creates substantial dust and generates construction debris creating unsafe housing and nuisance conditions in residential areas, and elimination of such activities is consistent with Policy 1.7.4; and

WHEREAS, the Planning Board finds that this Ordinance is consistent with Policy 1.5.1 of the Housing Element of the Comprehensive Plan, because this Ordinance eliminates a “manufacturing” use from residential areas which detracts from the enhanced architectural and aesthetic qualities of those residential areas; and

WHEREAS, the Planning Board finds that this Ordinance is consistent with Policy 1.5.3 of the Conservation and Coastal Management Element of the Comprehensive Plan, because this Ordinance eliminates a “manufacturing” use from coastal and water related areas which could detract from ensuring the viability or natural resources; and

WHEREAS, the Planning Board finds that this Ordinance is consistent with Objective 1.7 of the Conservation and Coastal Management Element of the Comprehensive Plan, because this Ordinance eliminates a “manufacturing” use from areas that may be habitat for endangered or threatened species, such as burrowing owls and other species; and

WHEREAS, the Planning Board reviewed this Ordinance for consistency with the Comprehensive Plan and finds that this Ordinance is consistent with the City's Comprehensive Plan, and in particular, Future Land Use Element Policies 1.7.2, 1.7.3, 1.7.4, Policies 1.5.1 and 1.5.2 of the Housing Element, Policy 1.5.3 of the Conservation and Coastal Management Element, and Objective 1.7 of the Conservation and Coastal Management Element; and

WHEREAS, upon review of the testimony and evidence presented and Staff recommendations, the City Council adopts the findings of the Planning Board; and

WHEREAS, the City Council finds that, as a result of the foregoing, this Ordinance will promote the public health, safety, aesthetics, and welfare of the community,

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 be and the same are hereby incorporated into this Ordinance as if specifically set forth herein.

SECTION 2. Amendment and Adoption. That section 30-793(2)(h)(i) and (3) of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-793. - Construction temporary use permit.

During the construction of any development for which a site development plan has been approved or a building permit issued, the developer may request a temporary use permit subject to the following:

- (1) The ~~With the exception of marine staging activities,~~ a temporary use permit shall be granted initially for a period not to exceed 24 months in length and may be renewed annually based upon demonstration of need. A request for renewal shall be submitted to the city manager or designee in writing 30 days prior to the expiration of the temporary use permit.
- (2) With the exception of marine staging activities, temporary construction and development permits shall be allowed for the following uses:
 - a. Other on-site uses similar to the foregoing uses and determined to meet the intent of this article.
 - b. Off-site staging no further than 150 feet from the building lot with written authorization from the property owner and proof of notification to property, when, in the opinion of the City manager or designee building official, site constraints such as, but not limited to, an irregular shaped lot where building activity will take place indicates its appropriateness. In such case, only construction equipment, materials and vehicles used in the construction process of the permitted structure may be staged. However, no overnight parking of any vehicles is allowed; any additional or unauthorized materials or lack of upkeep or reasonable maintenance shall result in revocation of the temporary use permit by the City manager or designee building official.
- (3) Marine staging activities (seawall and boat dock replacement and repair supplies, demolition spoils, construction equipment), may be permitted on a vacant lot and shall

only be performed up to 100 consecutive days while an associated permit is active. More than one permitted marine construction activity may be staged at the vacant lot concurrently. Upon completion of the use and prior to the expiration of the approved activity, the contractor shall restore the lot to pre-use condition. Any vacant lot so used shall not be used for marine activity for an additional 365 days following issuance of the last associated certificate of completion or CO, with the exception of an emergency repair or replacement to a seawall at the subject vacant lot. Lot may not be used for any other marine staging purposes in the calendar year. Manufacture or fabrication of seawall panels are not permitted.

The City shall also permit the use of a residential vacant lot for receipt of equipment, materials and/or supplies for immediate redeployment for actively permitted marine construction sites. This permit shall be allowed not to exceed ten (10) consecutive days and shall be allowed four (4) times on subject lot in a calendar year. Lot may not be used for any other marine staging purposes in the calendar year. This permit is exempt from the fencing requirements.

(a) *Construction fencing.* A staging lot exceeding 10 consecutive days shall have a construction fence.

(1) The fence shall be a six-foot chain link fence with a green or black fabric.

(2) The fence shall remain in place, upright and in good repair, throughout the period of construction activity and shall be removed when construction is completed.

(3) The fence shall be installed along the front and both sides of subject property.

(b) *Staging site management plan.* A management plan shall be submitted and approved by the City Manager or his designee. The plan shall include:

(1) Location of site.

(2) Detail of erosion controls to prevent erosion of soil and to control surface water discharge so that no water flows onto abutting property, ROW, and abutting waterways.

(3) Temporary fence location and roadway access point.

(4) Animal burrow protection if applicable.

(5) Location of portalet and dumpster if applicable.

(6) A 2'x2' sign placed on subject lot with contractor information including name and phone number in case of emergencies.

(c) *Permission and notices.* The contractor shall provide written permission from the property owner of the vacant lot. A copy shall be submitted to the city and made a part of

the temporary use permit application. The city shall require a signed document holding the city harmless from any claim by the property owner or the permit holder for any damage to the vacant lot or seawall. In addition, city staff will provide notification of the proposed temporary use of the vacant lot to all property owners within a 300-foot radius of the subject vacant lot, together with other conditions of the permit as may be required by the city.

(d) Any type of demolition material shall be either removed from the lot or placed in a dumpster within five days. Demolition activity may not occur outside the hours of 8:00 a.m. to 5:00 p.m., Monday through Saturday.

(e) Failure to comply with the provisions of this section shall constitute a violation of this code. Contractors in violation shall receive a revocation of applicable permit(s) and shall not be granted any additional permits for the period of time a violation exists. If the violation has not been cured within the time specified in the notice of violation, starting the next day a fine of \$250.00 per day for a first violation and \$500.00 per day for a repeat violation shall be assessed until the violation is corrected. Future permits shall not be issued to the contractor until all fees, fines, and costs have been paid in full.

(f) Special exceptions: The contractor may seek an administrative extension beyond the permit period provided the city manager or designee is presented sufficient information justifying the contractor's need. Justification may include inclement weather, unavailability of materials or other unexpected conditions beyond the control of the contractor. Staff may provide a maximum 10-day extension provided the request is justified.

(g) Boat and barge repair shall not be allowed on vacant residentially zoned parcels. The use of any such boat, barge or vessel shall be subject to the specific requirements of Code section 54-111 and subsection 54-112(i).

(h) Only equipment and vehicles directly associated with the permitted repairs will be allowed on the property, and only during an open permit.

~~In addition to the uses described above, a construction temporary use permit shall be obtained for the use of a vacant lot for the seawall manufacture, construction, repair and related boat dock construction activities on all vacant lots or parcels under the following conditions:~~

~~a. The contractor shall notify the city, as part of the building permit application process for seawall manufacture, construction, repair, and related boat dock construction activities, of its intentions to use a vacant lot for such purpose.~~

~~b. The contractor shall provide written permission from the property owner of the vacant lot. A copy shall be submitted to the city building services division and made a part of the temporary use permit application. The city shall require a signed document~~

~~holding the city harmless from any claim by the property owner or the permit holder for any damage to the vacant lot or seawall. City staff shall provide notification to the property owner indicating any vacant lot utilized for seawall manufacture, construction, repair, and related boat dock construction activities may not be used again for an additional 365 days following expiration of the last temporary use permit utilized for the subject vacant lot. In addition, city staff will provide notification of the proposed temporary use of the vacant lot to all property owners within a 300-foot radius of the subject vacant lot, together with other conditions of the permit as may be required by the city.~~

~~c.— The contractor shall post the subject property with a permit board and all applicable permits including a copy of the temporary use permit.~~

~~d.— Manufacture of precast seawall panels and related boat dock construction activities on a vacant lot shall only be performed for a maximum of 100 consecutive days while an associated repair permit is active. More than one permitted seawall repair or marine construction contract may be staged at the vacant lot concurrently. Upon completion of the use and prior to the expiration of the 100-day period, the contractor shall restore the lot to pre-use condition. Any vacant lot so used shall not be used for seawall manufacture, construction, repair, and related boat dock construction activities for an additional 365 days following issuance of the last associated certificate of completion or CO, with the exception of an emergency repair or replacement to the seawall at the subject vacant lot.~~

~~e.— Failure to comply with the provisions of this subsection shall constitute a violation of this code. If a violation is found, code compliance staff shall provide a notice of violation to the violator and allow for up to ten business days to cure. If the violation is not corrected by the time specified for correction, a stop work order shall be issued by the City of Marco Island Building Services Department. Contractors in violation shall receive a revocation of applicable permit(s) and shall not be granted any additional permits for the period of time a violation exists. If the violation has not been cured within time specified in the notice of violation, starting the next day a fine of \$250.00 per day for a first violation and \$500.00 per day for a repeat violation shall be assessed until the violation is corrected. If a violation is not corrected within ten business days from the date of issuance of the notice of violation, the city or city's designee may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with all fines imposed pursuant to this section. Future permits shall not be issued to the contractor until all fees, fines, and costs have been paid in full. Assessed fines may be appealed to the code enforcement board. Repeat violation shall mean a violation of this code by a person who has been previously found to have violated the same provision of this code within five years prior to the violation, notwithstanding the violations occur at different locations.~~

~~f.— Special exceptions: The contractor may seek an administrative extension beyond the 100-day period provided the city manager or designee is presented sufficient information justifying the contractor's need. Justification may include inclement weather, unavailability of materials or other unexpected conditions beyond the control of the contractor. Staff may provide a maximum 45-day extension provided the request is~~

~~justified. Exceptions shall not be used to extend use of the vacant lot beyond 145 consecutive days.~~

~~g. The contractor shall provide a silt fence along the side yard property lines.~~

~~h. Any type of demolition material shall be either removed from the lot or placed in a dumpster within five days. Piling, decking, and boatlift equipment that will be later reused on that lot, shall be permitted to remain on site. Demolition, if by cutting, shall require a wet saw method, except for steel rebar. Demolition activity may not occur outside of the hours of 8:00 a.m. to 5:00 p.m., Monday through Saturday. Dumping or storage of any material not directly associated with current permitted job is expressly prohibited.~~

~~i. Manufactured seawalls shall not be stacked more than five feet in height.~~

~~j. The public works department shall determine whether temporary structures will be required to protect the swale area and proper stormwater conveyance.~~

~~k. Boat and barge repair shall not be allowed on vacant residentially zoned parcels. The use of any such boat, barge or vessel shall be subject to the specific requirements of Code section 54-111 and subsection 54-112(i).~~

~~l. Only equipment and vehicles directly associated with the permitted repairs will be allowed on the property, and only during an open permit.~~

SECTION 3. 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 4. Effective Date. This Ordinance shall be effective July 1, 2021 upon adoption by the City Council on second reading.

PASSED ON FIRST READING ON THE 19TH DAY OF JANUARY 2021, and ADOPTED ON SECOND READING BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND THIS 1ST DAY OF FEBRUARY 2021.

ATTEST:




Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

Jared Grifoni, Chairman

Approved as to form and legal sufficiency:



Alan L. Gabriel, City Attorney